



**Division of Local  
Government Services**

# **CONTROLLING JUNK**

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**JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES**

A Division of the New York Department of State

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# 1

## Introduction

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The accumulation of junk can reduce property values, be an eyesore and an attractive hazard to children, and be a potential health risk. Unfortunately, the inadequate disposal of junk is a problem that predates the birth of the nation. The problems associated with junk motor vehicles are a more recent phenomena. In the early 1960s, soaring new car production coupled with plummeting demand for automobile scrap metal by the steel industry led to an epidemic of abandoned cars nationwide. By 1965, thirty-five states either had or were considering state junkyard legislation. In September of 1965, New York State adopted a State junkyard law that is still applicable in many communities today.

In adopting the State statute discussed later in this publication, the State Legislature found that a “clean, wholesome, attractive environment” was of key importance to inhabitants of New York. At the same time, the Legislature recognized that commercial junkyard and salvage operations are necessary services that can contribute to the local economy and provide a controlled place for the disposal of certain items. Balancing the health and aesthetic impacts associated with allowing junkyards against the public need for junk and salvage operations has largely been left to city, town and village officials.

This publication was prepared to inform municipalities of the options available to them to control the accumulation of junk motor vehicles as well as other household debris. A municipality may use statutory authority to adopt local regulations requiring junkyards to be licensed. These regulations can limit the potential location of a new junkyard if the applicant is unable to meet separation or other requirements. In addition, the location of junkyards may also be limited through zoning. A municipality may also adopt junk storage regulations that address household debris and other clutter, not just abandoned motor vehicles and their parts. A municipality that chooses not to adopt local regulations may enforce the provisions contained in the State’s motor vehicle junkyard law, as well as the New York State Uniform Fire Prevention and Building Code (Uniform Code). The pertinent parts of the Uniform Code, presented in Section Three of this publication, address the storage of junk motor vehicles and provide fire safety provisions related to debris in the yard. The State motor vehicle junkyard law, discussed in section two, applies to the accumulation of two or more junk motor vehicles, but not to other kinds of junk, such as old refrigerators or bicycles. It sets up a process for the review and issuance of junkyard licenses by local governing boards. Most automobile junkyard operators will also need a State-issued dismantler’s permit, which is discussed in Section Four of the publication.

Section Five of this publication contains a discussion of the procedures to be followed by municipalities for controlling motor vehicle junkyards using local laws or ordinances; issues that should be considered when developing a local junkyard or junk storage law; guidance as to provisions that could be included in a law regulating motor vehicle junkyards or simply household debris stored in the open; and sample administrative forms.

# 2

## **The State Motor Vehicle Junkyard Law: General Municipal Law §136**

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The State motor vehicle junkyard law applies in any municipality that has not enacted its own law regulating junk motor vehicles. General Municipal Law (GML) §136 directs that no person shall operate, establish or maintain a junkyard until that person has obtained a license to do so and has obtained a certificate of approval for the location of the junkyard. A person who has a junkyard or wishes to establish one must follow the procedures in GML §136 unless the municipality has its own law or ordinance regulating motor vehicle junkyards. The State defines a “junk yard” in GML §136 as:

*“ . . . any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles . . . ”*

This broad definition encompasses many of the activities common to motor vehicle junkyards, but limits the application of the statute to those places where two or more inoperable, unregistered “motor vehicles” are stored or deposited. Its lack of application to tire piles or hubcap collections is an example of how limiting the language is, as those items do not “equal in bulk two or more such vehicles . . .”. A municipality may apply this section of the law to property where such vehicles are stored, regardless of whether the vehicles are being kept for resale or for personal use. The term “motor vehicle” is defined as “all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.”<sup>1</sup> This excludes manufactured homes and trailers, as well as all-terrain vehicles (ATVs) and snowmobiles. It could, however, include stock cars.

### **A**

#### ***Applications for a Motor Vehicle Junkyard License***

The process of licensing a motor vehicle junkyard under GML §136 is initiated by a written application made by the prospective junkyard owner to the governing board of the municipality (town board, village board of trustees, or city council) for a junkyard license and a certificate of approved location. The application for a license to operate a junkyard must include a description of the land to be used as the junkyard. If a community has zoning regulations, the application must be accompanied by a certificate from the local zoning board of appeals that the proposed location is not within a zoning district that prohibits such uses or that the proposed location is otherwise contrary to zoning.<sup>2</sup>

Upon receipt of the application, the governing board must schedule a public hearing to discuss the application. The hearing must be held not less than two or more than four weeks from

the date that the governing board receives the application. Notice of the hearing must be mailed to the applicant and published in a newspaper having a circulation in the municipality at least seven days in advance of the hearing.<sup>3</sup>

The statute provides that a \$25 license fee must be paid to the municipality by the applicant at the time of application for the license and certificate of approved location. This fee must be returned to the applicant if the application is denied. If the license is issued, the fee must be paid annually. In addition to the \$25 license fee, the municipality is authorized to charge the applicant for the cost of advertising the application and for the other reasonable costs associated with conducting the hearing.<sup>4</sup>

At the public hearing, the governing board shall hear from the applicant and “all other persons” who wish to be heard regarding the application. The board must take into consideration the factors below before issuing or denying a license to operate a junkyard and a certificate of approved location.

**For a License to Operate:**

- the applicant's ability to comply with the fencing requirements of the General Municipal Law or other reasonable local regulations; and
- a record of prior or existing willful violations of the statute.<sup>5</sup>

**For a Certificate of Approved Location:<sup>6</sup>**

- whether, in a community with zoning, the zoning board of appeals has certified that the property is in a zone that permits the use;
- proof of legal ownership or the right to use the property where the junkyard is to be located;
- the nature and development of the surrounding properties;
- whether the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke or of other causes; and
- information contained in the environmental assessment form (EAF).

Aside from the factors that a governing board must take into consideration when issuing a junkyard license, the statute entitles it to take into account the goal of a clean, wholesome and attractive environment. The governing board may consider the following aesthetic factors:<sup>7</sup>

- the type of roads servicing the site or from which the site may be seen;
- the proximity of the proposed junkyard to residential and recreational areas or to major routes leading to these areas;
- the reasonable availability of other sites; and
- the types of barriers that can be used to screen the proposed junkyard site from view.

Before granting a license and certificate of approved location, the municipality must be assured that the junkyard is, or will be, surrounded by a fence at least eight feet high that is placed no nearer than 50 feet away from any public highway.<sup>8</sup> The fence must have a gate that is closed and locked when the junkyard is not supervised, and it must “substantially screen” the contents of the junkyard from outside view.<sup>9</sup> The statute allows the governing board, in its discretion, to vary the fencing

requirements where topography or vegetation provide adequate screening. Substantially all junkyard activities must take place within the enclosed area.<sup>10</sup>

Within two weeks of closing the public hearing, the governing board must either grant or deny the license and certificate sought. The applicant must be given written notice of the decision by mail. If the application is approved, the license and certificate must be issued by the municipality, and will remain in effect until the following April 1st. It should be noted that both the license and certificate are issued to the applicant, and are not transferable to another party.<sup>11</sup>

An applicant must apply for a license renewal on an annual basis. A hearing may be required if (1) the applicant has not complied with all provisions of GML §136 and the previously issued license during the license period; (2) if the junkyard has become a public nuisance under the common law; or (3) if the applicant is convicted of any type of larceny or the receiving of stolen goods. A decision by the municipal governing board may be appealed to the State Supreme Court to review the municipal decision.



***Applicability of State Motor Vehicle Junkyard Law***

General Municipal Law §136 applies in cities (except New York City), towns and villages that have not adopted any ordinance or local law (including zoning laws) that license or regulate motor vehicle junkyards.<sup>12</sup>

If a city, town or village adopts its own local law or ordinance to license or regulate junkyards, as that term is defined by GML§136, then §136 will not apply, and may not be used as a basis for enforcement against an unlicensed motor vehicle junkyard operator.<sup>13</sup> This rule applies whether or not the local law or ordinance is more or less restrictive than GML§136.<sup>14</sup> The exception to this statement is subdivision 14 of GML§136, which applies at all times. It prohibits the establishment of motor vehicle junkyards where any part or yard of the junkyard is within five hundred feet of “a church, school, hospital, public building or place of public assembly.”<sup>15</sup>

Does GML§136 apply if a local government has adopted zoning? The language of the statute indicates that it applies even if a local government has enacted zoning, as long as the zoning regulation does not “license or regulate” junkyards. In practice, it may be difficult to assess whether a zoning law that permits junkyards in certain districts and not in others would be deemed to “regulate” that use. For local governments with zoning, a less ambiguous approach to regulating junkyards would be to adopt a separate local law or ordinance regulating junk.<sup>16</sup>

Even where the junkyard predates the enactment of the local junkyard law, owners must have applied for a license for the junkyard within sixty days from the passage of the State law, and are subject to fencing requirements and other requirements of the law.<sup>17</sup>



***Enforcement of State Motor Vehicle Junkyard Law***

If a junkyard (as defined by GML§136) is operating without the required license or certificate of approval, or the junkyard is not in compliance with the license or certificate of approval, the municipality has the authority to seek enforcement under General Municipal Law §136. The municipality should identify by local law the public officers authorized to enforce the provisions of GML§136. While the building inspector or zoning

enforcement officer is frequently authorized to enforce GML§136, another officer of the municipality may be charged with enforcing it.

A violation of GML§136 is prosecuted in the local criminal courts (justice courts, city courts, or on Long Island, district courts). Effective prosecution requires knowledge of criminal procedure, including the various methods for properly commencing a proceeding in the local criminal courts. The statute limits the remedy to a fine of \$100 for each week the violation continues.



### ***State Environmental Quality Review Act***

When a municipal board reviews an application for a junkyard, whether it is a motor vehicle junkyard under GML §136 or a junkyard as defined by local law or ordinance, the provisions of the State Environmental Quality Review Act (SEQRA) must be complied with. SEQRA applies to the granting of applications for licenses required by local, as well as to licenses and certificates under GML§136(4), since such applications involve discretionary approvals that may affect the environment by changing the use, appearance or condition of land.

Though no reported case has directly addressed the issue, it would appear that since the *reissuance* of a license does not involve a discretionary decision, the reissuance would be classified as a Type II action exempting the action from SEQRA.<sup>18</sup> Therefore, SEQRA would not apply to applications involving pre-existing or established junkyards unless the junkyard will be substantially increased in size or expanded in function.

Generally speaking, an applicant must complete an Environmental Assessment Form (EAF) which is reviewed by the governing board, assuming the governing board is the only involved agency. Based on the EAF and other relevant information, the governing board will then determine whether the proposed junkyard may have a potentially significant adverse impact on the environment. If the governing board determines there won't be a potentially significant adverse impact on the environment, the governing board issues a "negative declaration" and the SEQRA process is complete.<sup>19</sup> If not, a "positive declaration" is issued and a draft environmental impact statement (DEIS) must be prepared. The DEIS is used to analyze the impacts of the junkyard application, as well as alternatives and mitigation measures to reduce environmental impacts.

The application for a junkyard permit is not complete until the board has either issued a negative declaration or has accepted the DEIS as satisfactory with respect to scope, content and adequacy. The public hearing may then be held.

A detailed discussion of SEQRA's procedures and substance can be found on the New York State Department of Environmental Conservation website. (<http://www.dec.ny.gov/permits/6208.html>) The website also contains guides on assessing visual impacts and stormwater run-off, common environmental concerns associated with junkyards.

# 3

## **The New York State Uniform Fire Prevention and Building Code**

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The New York State Uniform Fire Prevention and Building Code (the Uniform Code) prescribes minimum standards for both fire prevention and building construction. It is applicable in every municipality of the State except the City of New York. All property owners must comply with the Uniform Code, with some limited exceptions discussed below.<sup>20</sup> The Uniform Code provisions dealing with junk and property maintenance are contained in The Property Maintenance Code. The exterior property section includes a section on junk cars:

§302.8 Motor vehicles. Except as provided for in statute or other regulations, two or more inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designated and approved for such purposes.

This provision regulates the parking or storage of inoperative or unlicensed motor vehicles where a municipality has not adopted a local law or ordinance addressing junk motor vehicles. If a municipality adopts a local junk car law or ordinance, the restrictions of §302.8 would not apply in that municipality as the Uniform Code would defer to the provisions of the local law. For example, some local laws allow more than one inoperative or unlicensed motor vehicle if the vehicles belong to a member of the armed services or if the vehicle is an antique car undergoing restoration. It is also the opinion of the New York State Department of State Codes Division that §302.8 does not apply to unlicensed vehicles used by farm operations in a county adopted, State certified, agricultural district.<sup>21</sup>

Another part of the Uniform Code, the Fire Code, addresses the outdoor storage of materials. While it does not address junk yards as such, several fire safety provisions within the Fire Code apply to related issues, such as those dealing with the storage of combustible materials (Chapter 3), the ability to provide fire protection (Chapter 5), and tire storage (Chapter 25).

# 4

## Other State Programs Relevant to Junkyards

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Many other sections of the State statutes and regulations impact junkyards and junk dealers. Examples from the Environmental Conservation Law, Vehicle and Traffic Law, and General Business Law are below.

### A

#### *Automobile Recyclers*

In addition to establishing SEQRA regulations, the Department of Environmental Conservation (DEC) regulates aspects of the automotive recycling industry to ensure protection of the environment. The subjects of regulation include disposal of waste fluids, control of storm water runoff, tank registration, refrigerant reclamation, waste tire storage, waste battery storage, open burning, solid waste disposal, and storage of used oil. DEC has published a guide on its website entitled, “Environmental Compliance and Pollution Prevention Guide for Automobile Recyclers.” <http://www.dec.ny.gov/chemical/28650.html>

Where serious environmental problems are suspected, a municipality should contact the regional office of the Department of Environmental Conservation.

Disposal of waste tires is an important solid waste issue facing automobile recyclers. According to the Department of Environmental Conservation (DEC), “[W]aste tires pose a significant environmental threat to public health and the environment. Waste tire piles provide a breeding ground for mosquitoes, which may carry disease, and also present a serious fire hazard.”<sup>22</sup> State law prohibits the storage of 1,000 or more waste tires without a permit. This requirement includes both whole tires and pieces of tires, as well as used tires being held for resale. Used tires that are still on rims and bolted on the automobiles (up to four per vehicle) are not regulated and do not count as part of regulatory threshold of 1,000 waste tires.<sup>23</sup>

### B

#### *Dismantler’s Permit*

Regardless of whether a municipality has a junkyard law, persons owning and operating a junkyard may need to obtain a dismantler’s permit from the New York State Department of Motor Vehicles, Division of Vehicle Safety Services under Vehicle and Traffic Law §415-a.<sup>24</sup> This permit is required where the permittee will be a vehicle dismantler, defined in the statute as “any person who is engaged in the business of acquiring motor vehicles or trailers for the purpose of dismantling the same for parts or reselling such vehicles as scrap,” or will be undertaking any of the other activities relating to the salvage of vehicles which are regulated. Since many junkyard business owners engage in those activities, they will also need to apply for a dismantler’s permit from the State.

A local government has limited involvement in the dismantler’s permit process. The applicant for a dismantler’s permit must first provide a copy of a license, issued by the municipality, evidencing that the business conforms to all local laws and ordinances, as well as conforming to GML §136 when it applies in the municipality.<sup>25</sup> Alternatively, the applicant may provide a statement from the local governing body that the business may operate at its location and that no local law license or permit is required. The statement must be on municipal letterhead and must contain the printed name, signature and title of the official preparing it.<sup>26</sup>

The New York State Department of Motor Vehicles is charged with administering and enforcing dismantler's permits, and if notified will send an inspector to the site of a possible unpermitted operation.<sup>27</sup> Acting as a dismantler without a permit from the State is a violation of Vehicle & Traffic Law §415-a (1), and carries criminal penalties.



### ***Junk Dealer's License***

Article 6 of the New York State General Business Law requires that a person who is engaging in the business of buying or selling old metal obtain a junk dealer license from the chief elected official of the municipality. An exception is made for people who have obtained a scrap processing license under Article 6-C of the General Business Law. The junk dealer's license expires on June 30th of each year and costs five dollars to renew. No person who has been convicted of larceny or knowingly receiving stolen property may receive such a license.



## **Regulating Junk by Local Law**

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In addition to the State programs and laws which have been adopted to combat the ill effects of unregulated junk, municipalities may adopt their own local laws, ordinances and programs. This exercise of 'home rule' power enables the municipality to tailor a law to meet its own needs, and to exert greater (or lesser) control over the accumulation of junk.<sup>28</sup> Specifically, the municipality can more broadly define "junk" beyond simply motor vehicles, such as including industrial scrap metal or household debris, enabling it to control most situations where junk is accumulated.

A municipality may adopt zoning to regulate the location and operation of junkyards. Closer scrutiny of junkyard applications may be done through review of a special use permit, a zoning tool, or through review of a site plan application, which may even be used by communities that have not adopted zoning. Municipalities may also adopt business licensing laws, including the licensing of junkyards, junk dealers and dealers in second hand articles. Applicants for a license to operate a junkyard would have to meet the requirements of the local law, which could be less or more restrictive than the state junkyard law. The business of collecting and selling junk is addressed in the *sample junkyard local law* which follows. Municipalities with county adopted, State certified agricultural districts may want to exempt farm operations from the application of junk storage laws, as such defined junk vehicles often have many viable agricultural purposes on farms. For more information, see the New York State Agriculture and Markets publication entitled "Guidelines for Review of Local Laws Affecting Junk, Litter and Junkyards."

[http://www.agmkt.state.ny.us/AP/agservices/guidancedocuments/305-aJunk\\_Junkyard%20Guidelines.pdf](http://www.agmkt.state.ny.us/AP/agservices/guidancedocuments/305-aJunk_Junkyard%20Guidelines.pdf)

Rather than dealing with business concerns, municipalities may need to address more general issues which stem from inadequate storage or disposal of litter, debris, and junk. Many State statutes give municipalities the authority to address property maintenance issues such as trimming of shrubs and lawns, repair of fences, and similar aesthetic, health and safety issues through the enactment of

local laws and ordinances or the adoption of municipal clean-up programs. The *sample junk storage law* which follows, illustrates one approach to the municipal regulation of messy yards.

Local laws are filed with the Secretary of State on forms available from the Department of State (DOS) or its website. <http://www.dos.ny.gov/forms/corporations/0239-f-1.pdf> The publication, "Adopting Local Laws" [http://www.dos.ny.gov/LG/publications/Adopting\\_Local\\_Laws\\_in\\_New\\_York\\_State.pdf](http://www.dos.ny.gov/LG/publications/Adopting_Local_Laws_in_New_York_State.pdf) is also available on the DOS website.



### ***Environmental Review of Proposed Law***

The adoption of a local junkyard or junk storage law or ordinance is an "action" under the State Environmental Quality Review Act (SEQRA).

The municipal governing board is responsible for preparing or overseeing preparation of an environmental assessment form (EAF) and determining whether the adoption of the proposed local law or ordinance may have a significant adverse impact on the environment. The municipal governing board would use the EAF to determine whether adoption of the proposed law or ordinance may have a significant adverse impact on the environment. The issuing of a "positive declaration" would require the preparation of a draft environmental impact statement (DEIS) by the legislative body.

The DEIS is used to analyze the impact or impacts of the proposed law or ordinance, as well as proposing alternatives and mitigation measures to reduce the identified environmental impacts. A detailed discussion of the SEQRA procedures and substance can be found on the New York State DEC website.



### ***Enforcing a Local Junkyard or Junk Storage Law***

Although the goal of any local law should be voluntary compliance, such compliance does not always occur. Where a party fails or refuses to comply with the local law, the local enforcement officer should follow the procedures specified in the local junkyard law, junk storage law, or the law which was enacted to enforce the Building Code.<sup>29</sup>

A local law may provide for criminal or civil enforcement or both. Criminal enforcement, assuming the local law provides for criminal penalties, takes place in the local criminal courts. Except in Long Island and New York City, the local criminal courts are the city courts and town and village justice courts. Criminal remedies include fines or prison time or both.

Civil remedies, if provided for in the local law, may include fines, or injunction, or both. An injunction is a court order requiring a person to do, or refrain from doing, a particular act. For example, an injunction may restrain an unlawful junkyard from continuing to operate. Injunctions may be issued by the New York State Supreme Court and city courts.

In some instances, local laws may also provide for a 'self-help' civil remedy. The authority to enact a 'self-help' provision derives from the constitutional delegation of police power authority to municipalities and the Municipal Home Rule Law.<sup>30</sup> Additionally, Town Law §64(5-a) authorizes towns to compel removal of debris at the owner's expense, and Town Law §130(16) authorizes the use of self-help provisions relating to unsafe buildings.<sup>31</sup> Self-help provisions allow the

municipality to take direct action to remove offending material from the property, upon the owner's failure to do so after proper notice. The cost of the removal may be assessed against the property. Among the issues the municipality may need to address is the question of where material would be disposed of, and the legal issues surrounding due process and the Fourth Amendment protection against unreasonable searches and seizures.<sup>32</sup>

Where a local junkyard license has been issued, but the requirements and conditions of the license are violated, enforcement measures may include the revocation of the license or permit. Due process requires that the permit holder receive notice and have an opportunity to be heard prior to permit revocation. The person in violation of the permit needs to receive notice of the hearing. At the revocation hearing, the board should listen to the permit holder and all other persons wishing to be heard on the revocation of the junkyard permit. If the board decides to revoke a permit, the reasons for such revocation should be stated in the board minutes. The permit holder should be immediately notified of the revocation by certified mail. The notification should direct the operator to cease and desist from operating a junkyard, and to remove all junk appliances, junk furniture, junk mobile homes, junk vehicles and materials originating from those items from the premises within a stated number of days.



#### ***Contents of a Local Junkyard Law***

A community may wish to regulate the placement of junk within junkyards, and license and control these facilities. The sample language which is included is intended to illustrate possible provisions of a junkyard law. This sample is not aimed at controlling the other kinds of junk that can be accumulated by residential users, that topic is covered by the junk storage law sample language.

Municipal officials seeking to adopt junkyard regulations should consider to what degree residents of the community may wish the upkeep of private property to be regulated. Officials are encouraged to consult with legal counsel in the drafting of the proposed local law or ordinance.

The adoption of a local junkyard law is often a response to problems arising from an existing use. While illegally operating junkyards may be eliminated through enforcement action, it is also possible for a municipality to terminate existing legal junkyards located in a part of the municipality no longer considered appropriate for a junkyard. An amortization provision, which allows the owner a phase-out period during which his or her investment in the property may be recouped, is often enacted as part of a junkyard control law. In enacting such a law, the municipality must carefully consider whether the amortization period is adequate in relation to the investment. It should also consider the harm caused by the yard, the difficulty of relocating a junkyard, and other factors.<sup>33</sup> When considering the length of the amortization period, the Court of Appeals has recognized that the critical question is whether the public gain achieved by the exercise of the police power outweighs the private loss suffered by owners of nonconforming uses.<sup>34</sup>

The samples here use general terms, such as “municipality” and “governing board,” whereas the local law a community may adopt should use specifics, such the “Town of Smallville” or the “Village Board of Trustees.” The samples are not all-inclusive, but are instead intended to guide you as you prepare your own local law.

## OUTLINE OF A JUNKYARD LAW

### ARTICLE A. INTRODUCTION

- Section 1. Authority
- Section 2. Title
- Section 3. Purpose
- Section 4. Definitions

### ARTICLE B. JUNKYARD PERMIT

- Section 1. Permit Required
- Section 2. Prior Existing Junkyards

### ARTICLE C. APPLICATION PROCEDURE

- Section 1. Application
- Section 2. Application Fee
- Section 3. Junkyard Application  
Contents
- Section 4. Environmental Compliance
- Section 5. Public Hearing
- Section 6. Board Action
- Section 7. Issuance of Permit
- Section 8. Waivers

### ARTICLE D. EXCLUSIONS

- Section 1. Restoration Permits
- Section 2. Seasonal Vehicle Permit
- Section 3. Vehicle For Sale Permits

### ARTICLE E. GENERAL CONSIDERATIONS

### ARTICLE F. SPECIFIC REQUIREMENTS

- Section 1. Location
- Section 2. Fencing and Screening
- Section 3. Fire Safety
- Section 4. Approved Junkyard Items
- Section 5. Burning and Burying

### ARTICLE G. ADMINISTRATION AND ENFORCEMENT

- Section 1. Enforcement Officer
- Section 2. Revocation of Permit
- Section 3. Operating a Junkyard  
Without a Permit
- Section 4. Penalties and Remedies
- Section 5. Abandoned Vehicles

### ARTICLE H. MISCELLANEOUS PROVISIONS

- Section 1. Severability
- Section 2. Prior Existing Junkyard Law
- Section 3. Effective Date

## Sample Provisions

### ARTICLE A: INTRODUCTION

#### Section 1. Authority

The enacting clause is specifically stated in Municipal Home Rule Law, Section 20(2). This quoted wording must appear in every local law. Failure to include an enacting clause renders a local law invalid.

*Be it enacted by the (name the legislative body) of the (name of local government)  
as follows:*

## **Section 2. Title**

The introduction to the law should contain a reference to the authority under which the law is being adopted, as well as its title.

*This local law is adopted pursuant to the authority granted the municipality in Section 10 of the Municipal Home Rule Law and in [Section 130(6) of the Town Law or Section 4-412(1) of Village Law].*

## **Section 3. Purpose**

The purpose of the regulations is also an important part of the local law. Common reasons for enacting such a law are shown.

*The purpose of this law is, through the regulation of junkyards, to promote a clean, wholesome, and attractive environment; protect the community from potential hazards to property and persons; protect water resources; preserve the aesthetic qualities of the municipality; prevent depreciation of the property on which a junkyard is located and the property of other persons in the neighborhood and the community; and to further the goals of the comprehensive plan.*

## **Section 4. Definitions**

Another important component in the introduction article of a junkyard law is the definition section. Defining crucial terms helps make the law more enforceable and more understandable to average citizens.

*Enforcement Officer: The person(s) appointed by the governing board to enforce the provisions of this law.*

*Junk Appliance: Any household appliance, including but not limited to, a stove, washing machine, dryer, dishwasher, freezer refrigerator, air conditioner, water heater, or television, which is stored outside of any residence or structure.*

*Junk Furniture: Abandoned, discarded, or irreparably damaged furniture including, but not limited to, sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs, and chests of drawers.*

*Junk Manufactured Home: Any abandoned or discarded structure, or part thereof, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, if erected on a site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. To qualify as a junk manufactured home, the dwelling must meet two out of three of the following conditions for six months or more:*

- (1) the electrical service is disconnected or terminated.*
- (2) it is abandoned as a dwelling unit.*
- (3) it is no longer habitable for residential occupancy.*

***Junk Accessory Vehicle: Any abandoned or discarded truck camper, camping trailer, camper, travel trailers, pop-up trailer, tent trailer or overnight trailer.***

***Junk Storage Area: The areas of any real property used or intended to be used for the placement, storage or deposit of one or more of the following: junk appliances, junk furniture, junk mobile homes, and junk motor vehicles.***

Laws that require proof of intent for their enforcement are more difficult to enforce since it is hard to prove what is on someone's mind (though it can be shown circumstantially). In *People v. Scott*, the Court of Appeals said, "Minimum due process requires that the prohibition must 'be spelled out in words even more explicitly, so that the citizen may receive unequivocal warning before conduct otherwise innocent be made the cause of fine or imprisonment' [citation omitted]. Standing alone, 'inoperative' does not satisfy that requirement."<sup>35</sup> The inclusion of presumptive language will help make the definition even more explicit.

***Junk Motor Vehicle: Any motor vehicle or used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicle, which is:***

- (1) unlicensed or unregistered; or*
- (2) abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or*
- (3) not in condition for legal use upon the public highways.*

***The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in condition for legal use upon the highways.***

***With respect to any motor vehicle not required to be licensed or a motor vehicle not usually used on public highways, the fact that such motor vehicle is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk motor vehicle unless refuted by verifiable and credible proof.***

The municipality must determine how much junk is sufficient to regulate property as a junkyard. Note that the definition below specifies that a junkyard involves outside storage. Therefore, a vehicle that can not be legally operated on the highway could be maintained on the property as long as it is stored inside.

***Junkyard: The outdoor storage or deposit of any of the following, whether in connection with another business or not:***

- (1) \_\_\_ or more junk motor vehicles.*

- (2) \_\_\_ or more junk mobile homes.
- (3) \_\_\_ or more junk appliances.
- (4) \_\_\_ or more pieces of junk furniture.
- (5) Any combination of the above that totals \_\_\_ or more items.

The definition of “motor vehicle” could also be expanded to include watercraft, construction equipment, and trailers.

*Motor Vehicle: All vehicles propelled or drawn by power other than muscular power originally intended for use on public highways, including but not limited to automobile, bus, trailer, truck, tractor, motor home, motorcycle, and mini-bicycle. This term shall also include an all-terrain vehicle or snowmobile.*

*Outdoor Storage: Storage other than in a completely enclosed structure, such as a garage or barn.*

*Owner of Motor Vehicle: A person, other than a lien holder, having possession or title to a motor vehicle. The term includes a person entitled to the use and possession of a motor vehicle subject to a security interest in another person and also includes any lessee or bailee of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period of greater than thirty (30) days.*

*Person: An individual, partnership, association, corporation, or entity of any other kind.*

## **ARTICLE B: JUNKYARD PERMIT**

### **Section 1. Permit Required**

It is not enough to define what a junkyard is, a municipality must also regulate whether one may be established. A clear statement identifying when a permit is required should be made. Through zoning, a municipality may regulate the location of junkyards within the community.

*No person shall establish or maintain a junkyard or permit the storage of junk unless a permit has first been issued for such junkyard pursuant to this law. No person shall license, lease or knowingly allow the use of real property for a junkyard unless a permit shall have been issued for such junkyard pursuant to section \_\_\_ of this law.*

### **Section 2. Prior Existing Junkyards**

The municipality can inventory existing property that falls into the definition of a junkyard. The local law may require existing junkyards to apply for a temporary permit within a limited time span. The enforcement officer can begin enforcement proceedings against those who fail to apply for the permit, and track whether those who do apply for the temporary permit come into compliance with the new law. The inventory that is assembled can also be used if a municipality decides after a period of time to eliminate, or amortize, existing junkyards.

*Any person maintaining a junkyard pursuant to a license issued under General Municipal Law §136 shall apply for a permit within 60 days of the effective date of this law. If the junkyard does not meet the requirements of this law, a temporary permit shall be granted for a period not to exceed one year, during which time the junkyard shall be brought into compliance with said requirements. If at the end of such period the junk storage area does not comply with said requirements, such person shall cease and desist from maintaining a junkyard and all junk shall be removed from the premises by such person at their expense.*

The municipality may decide that there are junkyards operating in undesirable locations. Rather than allowing them to continue under a new permit, the municipality may opt to establish a time period (amortization period) after which a junkyard must cease to exist. This amortization period would apply only to junkyards which are lawfully existing, not to junkyards which haven't received licenses under GML §136 or a prior local junkyard law, or to junkyards which have been established in violation of the zoning law.

*Any junkyard that is lawfully existing on the effective date of this local law in a zoning district where junkyards are not a permitted use will be considered a nonconforming use. Such nonconforming use shall be discontinued and all junk shall be removed from the premises within \_\_\_\_\_ years of the effective date of this law or the nonconformance shall be deemed to have continued in violation of this law. Such period shall be known as the amortization period. The person operating such junkyard may make an application to the governing board within six months of the effective date of this law establishing the due to specific circumstances such amortization period is unreasonable and will result in a substantial loss of investment. The governing board may, after consideration of such application and any evidence provided, grant a reasonable extension of the amortization period. Relevant factors for consideration will include: (1) initial capital investment; (2) investment realization to date; (3) life expectancy of the investment; (4) the existence or non-existence of a lease obligation.*

#### **ARTICLE C: APPLICATION PROCEDURE**

If a junkyard is allowed, there should also be a mechanism established to ensure that it is operating legally. This is typically done through a permit process. Permits may be issued for a specific term, after which time a renewal can be required.

##### **Section 1. Application**

The law should also establish a procedure in which to apply for a junkyard license.

*An application for a license under this local law shall be made in writing to the governing board on forms provided by the municipal clerk and be filed with the municipal clerk. The application shall be signed by the applicant(s) and the property owner(s) if different from the applicant.*

### **Section 2. Application Fee**

The law should also require payment of appropriate fees and submission of a proposed junkyard plan. While many local laws establish the amount of the fee in the law itself, a better practice is to authorize the fee and indicate that it will be established by a resolution of the governing board.

*The annual license fee shall be set at the annual organizational meeting of the governing board and paid at the time of the application and annually thereafter in the event of renewal. If the application is not granted, the fee shall be returned to the applicant less the cost of advertising if a hearing is held on such application, and any other reasonable costs incidental to the hearing and clearly attributable thereto. If the license is granted following a hearing, the issuance of such license shall be conditional upon the payment by the applicant (in addition to the application fee) of all costs that may be assessed pursuant to this local law.*

### **Section 3. Junkyard Application Contents**

The junkyard plan should be drawn to scale or indicate all dimensions and show all the items listed in the local law. Examples of such items are shown. The application should also ask for information about the applicants. Examples of possible inquiries are shown.

*Each person applying for a junkyard license shall complete an application supplied by the municipality and contain the following information:*

- (1) A map of the site where the junkyard is proposed, including address and real property tax number drawn at a scale of not more than one inch equals \_\_\_ feet;*
- (2) property lines including the names of owners of adjacent property;*
- (3) streams, lakes, wetlands, flood plains, and other water bodies, including those available for fire protection purposes;*
- (4) the topography of the site and any plans for grading the property to be shown at a contour interval of not more than five feet;*
- (5) the location of all wells and sanitary facilities on the property or within 100 feet of the boundary of the property;*
- (6) drainage patterns on the site;*
- (7) existing and proposed structures, including fences;*
- (8) roads and easements adjacent to, on or through said property;*
- (9) existing and proposed junk storage areas, indicating the type of junk or material which will be stored in each area; and*
- (10) existing and proposed access ways, aisles, parking and loading areas.*
- (11) the name, residence, address and telephone number of each individual owner, partner, or if a corporation or other organization, each officer and director.*
- (12) the trade name, address and telephone number of the business*
- (13) a statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, or any violation of Article 6 of the General Business Law.*
- (14) the name and address of the owner of the real property and the nature of the right under which the applicant possess the property.*

*(15) whether the applicant has obtained a valid junk dealer's license under Article 6 of the New York State General Business Law.*

#### **Section 4. Environmental Compliance**

The need to comply with environmental laws should also be noted in a local junkyard law.

*An environmental assessment form (EAF) shall be completed and submitted with all applications. For unlisted actions, the board may require either a short- or long-form EAF. For Type I actions the applicant shall submit a long-form EAF. If the board determines that the proposed activity may have a potentially significant adverse impact on the environment, the board shall prepare or cause to be prepared a draft environmental impact statement. The application shall not be deemed complete for review until the board has either issued a negative declaration or accepted a DEIS as satisfactory with respect to scope, content and adequacy.*

#### **Section 5. Public Hearing**

The licensing process should include a public hearing. The board may determine how many days in advance of the hearing the public notice must be published in the newspaper.

*The governing board shall conduct a public hearing within 62 days from the date a complete application is received. Notice of the hearing shall be made in a newspaper in general circulation in the municipality at least five days prior to the date of the hearing.*

#### **Section 6. Board Action**

The responsibilities of the reviewing board should also be established in the local law. If the applicant agrees to extend the time period for the board to make a decision, the board should request a written agreement to that effect.

*Within 62 days of the close of said hearing the governing board shall render a decision on the application for a junkyard permit based upon general considerations and the ability to meet the junkyard regulations. The 62 day period may be extended by mutual consent of the applicant and the board. The board shall have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to the proposed junkyard permit.*

*The board shall make findings related to the standards and purposes set forth in this law, and shall enter such findings into the official minutes. The decision of the board shall be filed in the office of the municipal clerk within five business days from the date it was rendered and the applicant shall be notified of the decision and the reasons for such decision by mail within five business days of the decision of the board. If denied, the board shall include reasons for such denial.*

**Section 7. Issuance of Permit**

The permit should not be issued until the applicant has paid the appropriate fees and expenses.

*Upon approval of the junkyard plan and application, and payment of the fees and reimbursable costs due the municipality, the board shall endorse its approval upon a copy of the final junkyard plan and application.*

**Section 8. Waivers**

The local law may authorize the reviewing board to grant a waiver of certain requirements of the law where they find special circumstances, such as those listed opposite.

*The governing board may waive certain requirements of the law if one or more of the following circumstances are met:*

*(1) granting the waiver would be in keeping with the intent and spirit of this law, and is in the best interests of the community; or*

*(2) denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed.*

*The governing board shall state the grounds for any waiver granted in the minutes of its decision. The waiver granted should be the minimum necessary to accomplish the purpose.*

**ARTICLE D: EXCLUSIONS**

The level at which a municipality may want to regulate junk motor vehicles varies. A municipality may choose to allow unlicensed, unregistered vehicles to be kept under certain circumstances. A explanation of what is excluded from the general prohibitions or licensing provisions would need to be provided. When developing exclusions, municipalities need to include relevant definitions. These definitions would be inserted in the definition section of Article A.

*The following conditions are hereby excluded from the definition of a junkyard:*

*(1) Unlicensed vehicles in operating condition stored by or for the owner while the owner is (a) a full time student of the immediate family attending a school, college, or university; and (b) a member of the United States Armed Forces.*

*(2) Seasonal vehicles or machinery during their off-season if kept in a location not visible from any road, street or highway, when practicable, otherwise a seasonal use permit must be applied for and received.*

*(3) Farm machinery, including tractors, where such machinery is actively used. Farm machinery kept for parts shall be kept in a location not visible from any road, street or highway.*

*(4) An antique or classic motor vehicles which is being restored under the conditions of a restoration permit.*

*Antique Motor Vehicle - a motor vehicle, but not a reproduction thereof, manufactured more than twenty-five years prior to the current year, which has been*

*maintained in or restored to, or will be maintained in or restored to, a condition which is substantially in conformance with the manufacturer's specifications.*

*Classic Motor Vehicle - a motor vehicle, but not a reproduction thereof, manufactured more than ten years prior to the current year and which because of discontinued production and limited availability, is considered to be a model or make of significant value to collectors or exhibitors and which has been maintained in or restored to a condition which is substantially in conformity with the manufacturer's specifications and appearance.*

### **Section 1. Restoration Permits**

To prevent an accumulation of excluded vehicles from becoming a junkyard, or to prevent vehicles from being kept that really don't qualify for the exclusion, the municipality may want to use a permit system. For example, the law could provide for restoration permits.

*Upon written application and a fee to be established by resolution of the governing board, the municipal clerk shall issue a permit for the open storage of one motor vehicle or one antique or classic vehicle otherwise prohibited by this local law, pending the making of such repairs as are necessary to place this vehicle in condition for legal operation for use on the public highway or for such use as it was originally intended. Such permit shall be valid only for the vehicle and location identified. Application for a restoration permit shall include the following:*

- (1) The name, address and telephone number of the applicant. The applicant shall be the owner of the vehicle.*
- (2) The name, address and telephone number of the owner or tenant of the property where the inoperable, unregistered or junk motor vehicle is stored. If the owner of the motor vehicle is not the owner or tenant of the property where the vehicle is stored, written permission from the owner or tenant of the property must accompany this application.*
- (3) The make, model, year of manufacture, serial number, and color of the motor vehicle.*
- (4) The most recent year of registration, state registered in, plate number and registration number.*
- (5) The expiration date of the most recent inspection and serial number of the inspection sticker.*
- (6) Identification of who will make the repairs and the location where those repairs will be made.*
- (7) Certification that the owner intends to restore said motor vehicle within \_\_\_\_ months from the date of the application.*

*The motor vehicle shall be adequately supported and shall not create a safety hazard while repairs are being made. Any violation will result in the immediate revocation of the restoration permit, and the vehicle shall be subject to the provisions of this junk law. Permits shall be valid for \_\_\_\_\_ days and may be*

*renewed for a specific vehicle \_\_\_\_ times for a period of \_\_\_\_ days. A copy of the restoration permit shall be affixed to the interior of the windshield in order that the permit information is visible from the street.*

### **Section 2. Seasonal Vehicle Permit**

Many people also keep a vehicle for transportation use during only part of the year, for example a late model car for winter travel or an old pick up truck for snow plowing. An exclusion and permit system could also be established for seasonal vehicles.

*Upon written application and a fee to be established by resolution of the governing board, the municipal clerk shall issue a permit for the open storage of one seasonal use vehicle per property, subject to the following conditions:*

- (1) The vehicle shall be owned by one of the inhabitants of the property.*
- (2) The vehicle shall have a current registration and inspection sticker permanently attached to the windshield.*
- (3) The permit shall be issued for not more than 180 days.*
- (4) The permit shall not be issued if the property has a “for sale” or restoration permit issued for another vehicle.*

### **Section 3. Vehicle For Sale Permits**

Many vehicle owners choose to sell their vehicles by themselves, rather than working with a car dealer. To accommodate this means of disposing of personal property while preventing the land from being used as a commercial used car sales lot, the municipality may want to require that a permit be obtained in order to keep an unlicensed and registered vehicle on the lot for sale.

*Upon written application and a fee to be established by resolution of the governing board, the municipal clerk shall issue a permit for the open storage of one vehicle for the purpose of offering for sale a vehicle that is currently not registered or licensed or inspected under New York State law subject to the following conditions:*

- (1) The vehicle shall be owned by one of the inhabitants of the property where the vehicle is being offered for sale.*
- (2) The vehicle shall be setback from the road so as not to create a visibility hazard.*
- (3) A copy of the permit shall be affixed to the interior of the windshield in order that the permit information is visible from the street.*

## **ARTICLE E: GENERAL CONSIDERATIONS**

The local law should establish general considerations that the governing board will consider in granting or denying a permit. These might include the following.

*To protect the clean, wholesome, safe and attractive environment of the community, the municipal board shall take the following factors into consideration in granting or denying a permit:*

- (1) the type of road servicing the junkyard or from which the junkyard can be seen;*
- (2) natural or artificial barriers protecting the junkyard from view;*

- (3) proximity of the site to established residential or recreational areas or main access routes thereto;*
- (4) the nature and development of surrounding property;*
- (5) whether or not the proposed location will affect the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes;*
- (6) the proximity of flood plains, groundwater supplies, and public water supplies;*
- (7) local drainage patterns;*
- (8) the availability of municipal fire protection and the adequacy of the water supply for fire protection purposes;*
- (9) the comprehensive plan for the municipality;*
- (10) proximity of the site to established residential or recreational areas;*
- (11) availability of other suitable sites for the junkyard;*
- (12) the type of junk to be stored or deposited in the junkyard; and*
- (13) any record the applicant has of convictions for larceny or receiving stolen property.*

## **ARTICLE F: SPECIFIC REQUIREMENTS**

To better control the location, appearance, and activities associated with the junkyard, a local law may also list specific requirements.

### **Section 1. Location**

In addition to repeating the limitations on location pursuant to GML §136 (14), the local law might establish other distance requirements.

*No junk storage area shall be located within 500 feet [or greater] from the following: any adjoining property line; any public park, church, educational facility, nursing home, public building or other place of public gathering; any stream, lake, pond, wetland or other body of water; or the right-of-way of communities that wish to control the accumulation of household waste and debris, and want to simply ban the accumulation of junk within public view, may choose to adopt a local junk storage law. This approach would allow property owners to accumulate junk out of view of the road or neighboring properties.*

### **Section 2. Fencing and Screening**

To shield the junkyard from public view, fencing and screening requirements may be listed. The fencing provision could also allow a waiver where topography or other natural conditions effectively prohibit the entrance of children and others to the junkyard.

Options on the type of fencing or screening may also be written into the law. Instead of a fence, the permitted screening could be accomplished by adequate planting of evergreen trees or shrubbery, provided that a sufficient setback of the junk storage area from the highway is established.

*The applicant shall erect and maintain a fence that is \_\_\_feet high, encloses the entire junkyard, contains a locking gate that is adequate to prohibit the entrance of children and others into the area of the activity or business, and contains within the fence all junk appliances, junk furniture, junk mobile homes, junk motor vehicles and materials originating from such items.*

*Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence would be made of wood or other materials sufficient to totally screen the junkyard from view of roadways or neighboring properties.*

### **Section 3. Fire Safety**

Because of the flammable nature of many of the items contained in a junkyard, a municipality may want to provide for a fire break and for safe access on the site for fire vehicles. Several suggestions are contained in Appendix C. An additional example is opposite.

*Inside, adjacent to and continuous with the fence or enclosure, one strip of land at least ten feet in width which shall be kept free of all dry grass, junk, plant growth, or other combustible material so as to provide a fire lane or break around the entire area where business activity is conducted.*

### **Section 4. Approved Junkyard Items**

The municipality may also explicitly limit the type of junk that is deposited in the junkyard. The governing board can specify in the junkyard permit which types of junk may be stored or deposited in the junk storage area, and the local law should state that no items shall be stored in any junk storage area other than those items specified on a junkyard permit.

*The governing board shall specify in the junkyard permit which types of junk may be stored or deposited in the junk storage area. No items shall be stored in any junk storage area other than those items specified on a junkyard permit approved by the governing board pursuant to this law.*

Storage of tires is a special concern. The Department of Environmental Conservation requires a permit for the storage of 1000 or more tires, whether they are whole or shredded. A municipality can regulate lesser amounts of tires.

*No person shall knowingly store, dump, litter, dispose of, or otherwise place more than 100 waste tires on private property. The term 'waste tire' shall mean whole tires or portions of tires.*

### **Section 5. Burning and Burying**

How the junkyard owner disposes of the junk should also be a concern of the municipality. Both burning and burying of items should only be done in compliance with state law.

*No materials shall be burned or buried in a junkyard except in compliance with Article 27 of the Environmental Conservation Law of the State of New York and its implementing regulations promulgated by the New York State Department of Environmental Conservation (Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York or "6 NYCRR Part 360") and any other applicable law or ordinance of the municipality.*

## **ARTICLE G: ADMINISTRATION AND ENFORCEMENT**

For a local law to operate successfully, violations of that local law need to be addressed before they become more widespread.

### **Section 1. Enforcement Officer**

A local junkyard law should delegate enforcement responsibility to the governing board.

*This law may be enforced by the building inspector, the zoning enforcement officer, or by any police officer of the municipality. Said persons shall have the authority to enforce the provisions of this chapter and to inspect premises within the municipality as necessary for said enforcement. The enforcement officer shall make periodic inspections of the municipality to ensure that all existing junkyards have permits and that the requirements of this law are met.*

### **Section 2. Revocation of Permit**

Where the requirements and conditions of a junkyard license are being violated, the license may be revoked. The person in violation of the permit needs to receive notice of the hearing.

*The governing board may revoke a junkyard permit upon reasonable cause should the applicant fail to comply with any provision of this law or any condition of the permit. Before a permit may be revoked, a public hearing shall be held by the governing board. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. The permit holder shall be notified of the hearing by written notice prior to the hearing.*

*Written notice may be served by personal service or through certified mail return receipt requested to the last known address of the property owner or junkyard operator if different than the property owner. Service of such notice shall be made \_\_\_ days before the scheduled hearing. When service is made by certified mail return receipt requested, service shall be deemed complete upon delivery of the notice.*

In the above examples, the person is personally served or served through the mail by certified mail return receipt requested. The Civil Practice Law and Rules of the State of New York set forth alternative kinds of service, which may be included as part of a local law for those situations where personal service and service by certified mail return receipt requested fail.

### **Section 3. Operating a Junkyard Without a Permit**

Where the enforcement officer finds that a person is operating a junkyard without a permit, the local law should provide a mechanism for getting the violator into court. One simple method is to authorize the enforcement officer to issue an appearance ticket. The violator would then have to appear before the municipal justice. An example is on the right.

*If the enforcement officer shall find that an alleged junkyard exists without the necessary permit, the enforcement officer is hereby authorized pursuant to Criminal Procedure Law Section 150.20 (3) to issue an appearance ticket to any person whom the enforcement officer has reason to believe has violated this law, and shall cause such person to appear before the [town/village/city] justice.*

### **Section 4. Penalties and Remedies**

The municipality should consider classifying the offense as a violation, which would avoid the need for a jury trial. Penalties or other remedies may be assessed against persons found in violation of the local junkyard law. In order to discourage repeat offenders and to encourage resolution of the violation, the local law should allow for penalties to be assessed weekly, much like a parking ticket that only gets more costly the longer you wait to pay it.

*Any person who shall violate any of the provisions of this law shall be guilty of a violation and subject to the following: (1) a fine not to exceed \$350.00 or imprisonment for a period not to exceed fifteen days, or both; or (2) a penalty of \$350.00 to be recovered by the municipality in a civil action.*

*Every such person shall be deemed guilty of a separate violation for each week such violation, disobedience, omission, neglect or refusal shall continue.*

The municipality should also include a provision in the local law allowing it to seek injunctive relief from the Supreme Court.

*The municipal board may also maintain an action or proceeding in the name of the municipality in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this law.*

### **Section 5. Abandoned Vehicles**

A municipality may find that a motor vehicle has been abandoned within the municipality. Vehicle and Traffic Law §1224 authorizes municipalities to remove and dispose of motor vehicles found to have been abandoned. A local junkyard law could authorize the enforcement officer to execute all notices and documents required to be given, mailed or filed with the Department of Motor Vehicles or any person. The procedure for enforcing this law should be spelled out.

*On notification by a property owner that a motor vehicle has been abandoned on his/her property by other than the owner, the owner's spouse, parents, children or*

*entity in which the owner has an ownership interest, the enforcement officer may follow the procedures established in Vehicle and Traffic Law §1224 to achieve the removal of the abandoned vehicles.*

**ARTICLE H: MISCELLANEOUS PROVISIONS**

**Section 1. Severability:**

To make the local law complete, it should include a “severability” section that prevents the whole law from being struck down just because a part of it is found defective. Such language is standard in many zoning laws. In addition, the law should also repeal existing junkyard laws, as well as indicate an effective date, typically upon filing with the Secretary of State.

*If any clause, sentence, paragraph, section or article of this law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such judgment shall have been rendered.*

**Section 2. Prior Existing Junkyard Law**

In addition to severability and effective date provision, the local law should repeal existing junkyard provisions in effect in the municipality.

*The following local laws or ordinances are hereby repealed: \_\_\_\_\_ [list local laws or ordinances which are being repealed] \_\_\_\_\_.*

**Section 3. Effective Date:**

Unless otherwise stated, a local law becomes effective twenty days after it is filed with the Secretary of State.

*This local law shall become effective upon the date it is filed in the Office of the New York Secretary of State.*



***Contents of a Local Junk Storage Law***

The junk storage law outlined here is intended to allow a municipality to regulate the unwanted accumulation of household waste and debris. (Additional provisions could be added to the law that would apply to commercial and industrial properties as well.) This type of regulation may be adopted as a stand alone law or ordinance (except in villages which may only adopt local laws), may be incorporated into a law or ordinance which also regulates junk cars, or may be part of a more comprehensive local property maintenance law or ordinance.

Where the provisions are similar to those included in a junkyard law, they have been omitted in this document for the sake of brevity.

**SAMPLE OUTLINE OF A LOCAL JUNK STORAGE LAW**

**ARTICLE A. INTRODUCTION**

- Section 1. Authority**
- Section 2. Title**
- Section 3. Purpose**
- Section 4. Applicability**
- Section 5. Definitions**

**ARTICLE B. PROHIBITED ACTS**

**ARTICLE C. EXCLUSIONS**

**ARTICLE D. ADMINISTRATION AND ENFORCEMENT**

- Section 1. Enforcement Officer**
- Section 2. Complaints**
- Section 3. Notice to Comply**
- Section 4. Enforcement and Summary Abatement**
- Section 5. Penalties and Remedies**

**ARTICLE E. MISCELLANEOUS**

- Section 1. Severability**
- Section 2. Prior Existing Junk Storage Law**
- Section 3. Effective Date**

**Sample Provisions**

**ARTICLE A: INTRODUCTION**

**Section 1. Authority**

The same authority for adopting a junk yard law may be used to adopt a junk storage law. Be sure to include the enacting clause as well.

**Section 2. Title**

Municipal Home Rule Law, Section 20(3) provides that every local law shall embrace only one subject, and that the title shall briefly refer to the subject matter.

*This local law shall be known as “A local law regulating junk storage in the [Town, Village, City] of \_\_\_\_\_.”*

**Section 3. Purpose**

The purposes for adopting a junk storage law are similar to those for adopting a junkyard law.

*The Governing Board hereby declares that a clean, wholesome, and attractive environment is of vital importance to the continued general welfare of its citizens, and that regulation of the deposit, accumulation, or maintenance of junk regardless of quantity is hereby prohibited anywhere within sight of persons lawfully traveling the public highways or within sight of neighboring property. By adoption of this law the municipality declares its intent to preserve and promote a reasonable quality of environment and aesthetics and to prohibit actions and conduct that tend to depreciate not only the property on which it is located but also the property of other persons in the neighborhood and the community generally.*

**Section 4. Applicability**

The municipality may have already adopted other local laws or ordinances which address property maintenance, such as unsafe buildings laws and a junkyard law. This section clarifies how this law relates to those laws.

*The provisions of this law shall apply in addition to the provisions of any other local law or ordinance adopted by the municipality. Where there is a conflict the more restrictive provision shall apply.*

**Section 5. Definitions**

Because the focus of this law is on junk in general, several definitions not used in the junkyard law would typically be included in a junk storage law. If the municipality does not have a separate junkyard law, consider including the following definitions as well: enforcement officer, junk appliance, junk furniture, junk mobile home, junk motor vehicle, motor vehicle, and person.

*Garbage: All putrescible animal and vegetable waste resulting from growing, processing, marketing and preparation of food items, including container in which packaged.*

*Rubbish, Clutter, Litter and Debris: Ordinary household or commercial trash such as paper and paper products, barrels, cartons, boxes, cardboard, cans, glass, metals, machinery, plastics, rubber, crates, furniture, rugs, clothing, rags, mattresses, blankets, cigarettes, tires, lumber, brick, stone and other building materials no longer intended or in condition for ordinary use; and any and all tangible personal property no longer intended or in condition for ordinary and customary use.*

***Junk: Worn out or discarded material of little or no value including, but not limited to a junk appliance, junk furniture, junk mobile home, junk motor vehicle or garbage, rubbish and debris.***

***Outdoor Storage: The placing, maintaining or keeping of junk, rubbish, clutter, litter or debris in a place other than a structure with a roof and fully enclosed on all sides.***

## **ARTICLE B: PROHIBITED ACTS**

The local law should clearly state what acts are prohibited.

***It shall be unlawful for any person to store, deposit, place, maintain or cause or permit to be stored, deposited, placed or maintained outdoors, any junk, clutter, litter and debris upon private property within the municipality.***

A second example is less restrictive, prohibiting the storage of junk only where it is visible from outside of the property.

***The deposit, accumulation, or storage of junk, regardless of quantity, is hereby prohibited within sight of persons traveling the public highways or within sight of neighboring property. The provisions of this law shall also be applicable to conditions existing at the time of enactment.***

The municipality may also want to address the storage of junk in nontraditional structures, such as buses, uninhabited mobile homes, semi-trailers, and cargo containers.

***It shall be unlawful for any person to use a bus, uninhabited mobile home, truck, truck trailer, horse trailer, semi-trailer, tank truck, or similar vehicles or units for the storage of junk on any premises. Exceptions shall be made for the temporary use of such vehicles or units for construction purposes for periods of less than ninety (90) days, or when actively used in connection with active farming or agricultural operations.***

## **ARTICLE C: EXCLUSIONS**

An unintended consequence of a junk storage law may be to restrict the storage of ordinary household items or items legitimately placed as part of a commercial operation, such as a licensed junkyard. To avoid confusions, some specific exclusions could be provided.

***Article B shall not apply to the storage or placement on the premises of the following material:***

- (1) Wood intended for consumption in a wood burning stove, furnace or fireplace located in a building on the premises.***
- (2) Lawn or yard or garden ornaments and implements.***
- (3) Lawn and patio furniture.***

- (4) Operable farm, garden and yard machinery and apparatus used on the premises.*
- (5) Standing fences.*
- (6) Hoses and sprinklers used for watering lawns or gardens.*
- (7) Storage or placement and accumulation of materials in connection with a commercial operation duly conducted on the premises where such storage, placement and accumulation is expressly permitted by the laws of the municipality.*
- (8) Construction materials and equipment used for the construction or renovation of a building on the premises for which a building permit has been issued.*

## **ARTICLE D: ADMINISTRATION AND ENFORCEMENT**

### **Section 1. Enforcement Officer**

To be effective, an enforcement officer should be designated by local law to enforce the junk storage law.

*This law may be enforced by the building inspector, zoning enforcement officer, or by any police officer of the municipality. Said persons shall have the authority to enforce the provisions of this chapter and to inspect premises within the municipality as necessary for said enforcement.*

### **Section 2. Complaints**

A system for handling complaints should be established to address when the accumulation of junk becomes a problem. People should be able to file a complaint with the enforcement officer, who should record and investigate the complaint. The enforcement officer should also be able to investigate any alleged violation that he or she has reason to believe has occurred or is occurring.

*Any person may file a complaint with the enforcement officer that a violation of this law may have taken place. The enforcement officer shall properly record and investigate any such complaint. The enforcement officer may also investigate any alleged violation that he or she has reason to believe has occurred or is occurring.*

### **Section 3. Notice to Comply**

Following an investigation of the property, the law would authorize the enforcement officer to prepare a written “Notice to Comply” (see Appendix B). The Notice to Comply could be served in the same manner as discussed for the junkyard law.

*The written notice to comply should contain the following information:*

- (1) The name of the owner or occupant to whom the notice shall be addressed.*
- (2) The location of the premises involved in the violation.*
- (3) A statement of the facts which it is alleged violates this law.*
- (4) A demand that the junk be removed or placed so as to be in compliance with the law within a specified number of days after the service or mailing of the notice.*
- (5) A statement that a failure to comply with the demand may result in prosecution.*
- (6) A copy of the law.*

**Section 4. Enforcement and Summary Abatement**

As in the case of an unlawful junkyard, the junk storage law should provide a method for getting a violator in court if they fail to comply with the notice. For example, municipalities may by local law authorize the enforcement officer to issue appearance tickets.

*The enforcement officer is hereby authorized pursuant to Criminal Procedure Law §150.20(3) to issue an appearance ticket to any person whom the enforcement officer has reason to believe has violated this law, and shall cause such person to appear before the municipal justice.*

Municipalities may find that some violators will refuse to clean up their property. In that situation, the municipality may in certain cases activate a ‘self help’ procedure specified in their local law. Since a municipality will incur expenses when removing junk from a premises, a statement allowing for recoupment of the costs should also be included in the self-help language. The local law could state:

*Upon the failure of an owner, tenant or occupant with notice to correct a violation of the [name of local government], the governing board may hold a public hearing to determine whether the violation constitutes a public nuisance requiring abatement by the municipality. The public hearing shall be held upon notice posted conspicuously on the subject property. The notice shall also be sent to the last known address of the property owner, as it appears on the current assessment records of the municipality, by certified mail, return receipt requested or served on the owner by personal service. Posting and service of such notice shall not be less than 15 calendar days, exclusive of the date of service, prior to the date of the public hearing. The notice shall:*

- (1) identify the premises as the same appears on the current assessment role;*
- (2) contain a statement of the conditions on the property deemed upon inspection to constitute a public nuisance;*
- (3) contain a demand that the condition or conditions constituting the public nuisance be immediately abated or removed before the date of the hearing specified in the notice;*
- (4) contain a statement that a failure or refusal to comply within the period specified may result in a duly authorized officer, agent or employee of the municipality entering upon the property and abating or removing the public nuisance; and*
- (5) contain a statement that the cost and expense of such abatement or removal shall be the responsibility of the owner, tenant or occupant, and, without limitation on the municipality’s potential remedies to recoup its expenses, such cost and expense shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.*

*Where the governing board finds, based on substantial evidence in the public hearing record, that the violation or violations amount to a public nuisance requiring abatement by the municipality, the governing board may cause the abatement or removal of the public nuisance. The abatement or removal may be*

*performed by the municipality or by its designee, or agent, including a private contractor lawfully engaged and authorized by the municipality. The governing board shall ascertain the cost of removal, and assess such expense against the record owner of the property. The expense so assessed shall constitute a lien in charge on real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other town/village/city charges. The foregoing shall not be construed as a limitation on the municipality's potential remedies to recover its costs.*

*The removal of any nuisance by the municipality's agents, shall not operate to excuse such owner, tenant or occupant from properly maintaining the premises as required by this law. Such owner, tenant or occupant shall, in addition to the remedies provided herein, be subject any other penalties provided for by this law.*

**ARTICLE E: MISCELLANEOUS**

**Section 2. Prior Existing Junk Storage Law**

In addition to severability and effective date provision, the local law should repeal existing junk storage provisions in effect in the municipality.

*The following local laws or ordinances are hereby repealed: \_\_\_\_\_ [list local laws or ordinances which are being repealed] \_\_\_\_\_.*

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**Appendices**

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# Appendix A: Sample Application for a Junkyard Permit

## Application for Junkyard Permit

### OFFICE USE ONLY

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Location of proposed junkyard - address: \_\_\_\_\_

Application No. \_\_\_\_\_

Date of Application: \_\_\_\_\_

Date of Public Hearing: \_\_\_\_\_

Date of Final Action: \_\_\_\_\_

Date Fee paid: \_\_\_\_\_

County Tax Map Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Is the proposed location of the junkyard within a zoning district which permits junkyards? \_\_\_\_\_

Is a special use permit required? \_\_\_\_\_ If yes, has one been granted? \_\_\_\_\_

### Attach the following items:

\_\_\_\_\_ a description of the land to be included within the junkyard.

\_\_\_\_\_ a description of the nature and development of surrounding property.

\_\_\_\_\_ a list of property owners whose property is adjacent to property proposed to be used as a junkyard.

\_\_\_\_\_ proof of legal ownership of the property or right to use the property for a junkyard.

\_\_\_\_\_ a copy of a short environmental assessment form, part 1 completed.

\_\_\_\_\_ payment of the application and permit fee.

#### A map drawn to scale which includes:

\_\_\_\_\_ the area to be used as a junk storage area, indicating the type of material or junk to be stored in each junk storage area.

\_\_\_\_\_ buildings located or proposed to be located within the junkyard area.

\_\_\_\_\_ the location of proposed entrances and exits from the property.

\_\_\_\_\_ identification of the roads servicing the site.

\_\_\_\_\_ the location of proposed aisles, parking and loading areas within the site.

\_\_\_\_\_ the location of gates, fencing and other barriers.

\_\_\_\_\_ property lines and easements that are within \_\_\_\_\_ feet of the boundary lines of the area proposed to be used for the junkyard.

\_\_\_\_\_ the location of any places of worship, schools, hospitals, public buildings or other places of public gathering within \_\_\_\_\_ feet of the boundary lines of the area to be used for the junkyard.

\_\_\_\_\_ identification of any streams or bodies of water within \_\_\_\_\_ feet of the boundary lines of the area proposed to be used for the junkyard.

\_\_\_\_\_ identification of a water supply available for fire protection purposes.

\_\_\_\_\_ an indication of the existing drainage pattern and proposed drainage pattern after grading.

\_\_\_\_\_ identification of any residential and/or recreational areas within \_\_\_\_\_ feet of the boundary lines of the area proposed to be used for the junkyard.

Please indicate what types of barriers you propose to use to screen the junkyard. \_\_\_\_\_

Have you ever been convicted of larceny or receiving stolen property? \_\_\_\_\_

If yes, please indicate when the conviction(s) occurred. \_\_\_\_\_

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

# Appendix B: Sample Notice to Comply

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## Notice to Comply with Junk Storage Law

(name)

(address)

(city, state, zip code)

Dear \_\_\_\_\_,

According to records of the [Town, Village, City] of \_\_\_\_\_ Assessor, you are the owner of property located at \_\_\_\_\_ (violation address) \_\_\_\_\_. On (inspection date) \_\_\_\_\_, I observed an apparent violation of the Junk Storage Law/Junkyard Law on your property, specifically: \_\_\_\_\_ (description of violation) \_\_\_\_\_.

That activity is a violation of Article \_\_\_\_\_, Section \_\_\_\_\_ of the Junk Storage Law/Junkyard Law, a copy of which is attached for your information. I hereby request that you either eliminate the violation or file plans with this office for corrective measures by \_\_\_\_\_ (date) \_\_\_\_\_.

If you believe that you are not in violation of the Junk Storage Law/Junkyard Law, please contact this office to review the situation. If you intend to bring your property into compliance with the law, but you cannot meet the stated deadline, please contact this office and we will attempt to work with you on a short extension.

If you do not take the requested action or make other arrangements with this office by \_\_\_\_\_ (date) \_\_\_\_\_, we will begin formal enforcement action against you. You will **NOT** receive an additional warning before we begin formal enforcement action.

**THIS IS THE ONLY LETTER YOU WILL RECEIVE.** Your next communication from us will involve formal enforcement action.

If you wish to discuss any aspect of your case, you can call me at \_\_\_\_\_ (phone number) \_\_\_\_\_. Because I am often in the field, the best time to reach me is between \_\_\_\_\_ (time and days available) \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
(name and title)

\_\_\_\_\_  
(date)

## Appendix C: Fire Protection of Outdoor Storage

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General fire protection recommendations have been offered by the Department of State Office of Fire Prevention and Control, based on recommendations contained within Appendix B- National Fire Protection Association Standard #230 - 1999 “Fire Protection of Storage.”

### General Items

Emphasis should be placed on:

- Control of potential ignition sources
- Elimination of items that may contribute to fire spread
- Providing favorable physical conditions to reduce fire spread
- Improving on-site fire protection capabilities

### Site Considerations

- Availability of municipal fire protection
- Adequate water supply for fire protection purposes
- Adequate all-weather roads for emergency service access
- Sufficient clear space from buildings or other exposure hazards

Proper fencing or other security measures to assure site security

### Material Piling

- Materials should be stored as low in height and small in area as practical
- Maximum height should be influenced by stability of pile, effective reach of hose streams, combustibility of material, and ease of pile breakdown
- Long narrow piles are preferred over large square piles
- Aisles should be maintained between piles, piles and buildings, and between piles and property lines
- Aisle width should be at least twice the pile height with a minimum width of 15 feet

### Buildings and Other Structures

- Comply with requirements contained within the New York State Uniform Fire Prevention and Building Code

### Management Responsibility

- Proper storage practices to prevent undue concentration
- Proper protection based on the hazards presented

### Yard Maintenance and Operations

- Free of accumulation of unnecessary combustible materials. Periodic clean up of the yard should occur
- Vegetation and weeds should be controlled
- Electrical equipment and installations should be in accordance with applicable codes and standards
- Use of open fires should be prohibited unless specifically required for the operation. In such a case, adequate safeguards should be in place to prevent ignition of the storage piles
- Smoking should be prohibited except in designated “safe” areas
- Welding and cutting operations should be done in accordance with standard safe practices
- Storage and handling of motor fuels and other flammable or combustible liquids should be in accordance with safe practices
- Repair operations should be adequately separated from storage operations

### Fire Protection

- Provision should be in place for prompt notification of fire department
- Provisions should be made for adequate, properly accessible water supply
- Adequate portable fire extinguishers shall be provided on site

## Appendix D: General Municipal Law §136

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### § 136. Regulation of automobile junk yards.

1. Legislative intent. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the state and the general welfare of its citizens. It is further declared that the unrestrained accumulation of junk motor vehicles is a hazard to such health, safety and welfare of citizens of the state necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junk yards as hereinafter defined, is a useful and necessary business and ought to be encouraged when not in conflict with the express purposes of this section.

2. Definitions.

For the purposes of this section, "junk yard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal produce is scrap iron, steel or nonferrous scrap for sale for remelting purposes only.

"Municipality" as used in this section shall mean a city of less than one million in population, town or village.

"Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

3. Requirement for operation or maintenance. No person shall operate, establish or maintain a junk yard until he
  - (1) has obtained a license to operate a junk yard business and
  - (2) has obtained a certificate of approval for the location of such junk yard.
4. Application for license and certificate of approval. Application for the license and the certificate of approved location shall be made in writing to the governing board of the municipality where it is proposed to locate the junk yard, and, in municipalities having a zoning ordinance or local law and a zoning board, the application shall be accompanied by a

certificate from the zoning board that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of such zoning ordinance or local law. The application shall contain a description of the land to be included within the junk yard.

5. Hearing. A hearing on the application shall be held within the municipality not less than two nor more than four weeks from the date of the receipt of the application by the legislative body. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in a newspaper having a circulation within the municipality, which publication shall be not less than seven days before the date of the hearing.
6. License requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain the junk yard. In considering such application, it shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the proposed junk yard, to any record of convictions for any type of larceny or receiving of stolen goods, and to any other matter within the purposes of this section.
7. Location requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junk yard. In passing upon same, it shall take into account, after proof of legal ownership or right to such use of the property for the license period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.
8. Aesthetic considerations. At the hearing regarding location of the junk yard, the governing board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the governing board may consider collectively the type of road servicing the junk yard or from which the junk yard may be seen, the natural or artificial barriers protecting the junk yard from view, the proximity of the proposed junk yard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junk yard.
9. Grant or denial of application; appeal. After hearing the governing board shall, within two weeks, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following April first. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed thereafter upon payment of the annual license fee without hearing, provided all provisions of this chapter are complied with

during the license period, the junk yard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The determination of the governing board may be reviewed under article seventy-eight of the civil practice law and rules.

10. License fees. The annual license fee shall be twenty-five dollars to be paid at the time the application is made and annually thereafter in the event of renewal. In event the application is not granted, the fee shall be returned to the applicant. A municipality, in addition to the license fee, may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the license conditional upon payment of same.
11. Fencing. Before use, a new junk yard shall be completely surrounded with a fence at least eight feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than fifty feet from a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts and all burning of same within the vicinity of the junk yard shall be accomplished within the enclosure. Where the topography, natural growth of timber or other considerations accomplish the purposes of this chapter in whole or in part, the fencing requirements hereunder may be reduced by the legislative body, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this chapter.
12. Effect of local ordinances or local laws. This section shall not be construed to affect or supersede zoning ordinances or local laws or any other ordinances or local laws for the control of junk yards now in effect or hereafter enacted in any municipality within the proper exercise of the police power of such a municipality and shall not be deemed to apply to any municipality which has any ordinance or local law or regulation to license or regulate junk yards.
13. Established junk yards. For the purposes of this section the location of junk yards already established shall be considered approved by the governing board of the municipality where located and the owner thereof deemed suitable for the issuance of a license. Within sixty days from the passage of this section, however, the owner shall furnish the governing board the information as to location which is required in an application, together with the license fee, and the governing board shall issue him a license valid until the next April first, at which time such owner may apply for renewal as herein provided. Such owner shall comply with all other provisions of this section including the fencing requirements set forth in subdivision eleven of this section.
14. Notwithstanding any of the foregoing provisions of this section, no junk yard, hereafter established, shall be licensed to operate of such yard or any part thereof shall be within five hundred feet of a church, school, hospital, public building or place of public assembly.

15. Violators of any of the portions of this section shall be guilty of an offense punishable by a fine not exceeding one hundred dollars and each week that such violation is carried on or continues shall constitute a separate violation.

1. GML 136(2)
2. GML 136(4)
3. N.Y. Gen. Mun. Law §136 (5) (McKinney’s 2007). Section 135 (5) states: “Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in a newspaper having a circulation within the municipality. . . .”
4. *Id.* at N.Y. Gen. Mun. Law §136 (10).
5. Olsen v. Town Board of the Town of Saugerties, 161 A.D.2d 1077 (3<sup>rd</sup> Dept. 1990). Arguably, such violations must have occurred on the same property.
6. *Id.* at §136 (7).
7. *Id.* at §136 (8).
8. *Id.* at §136 (11).
9. *Id.* at §136 (11). The courts have interpreted “substantially screens” to refer to “more than the type of material to be used in a fence. The phrase has been interpreted to refer to screening from view the operation of the automobile junk yard and its junk contents.” Bingham v. Town Board of the Town of Burlington, 116 A.D.2d 900 (3<sup>rd</sup> Dept. 1986).
10. N.Y. Gen. Mun. Law §136 (11).
11. *Id.* at §136 (9).
12. *Id.* at §136 (12).
13. Blesi v. Andruzzi, 173 A.D.2d 584 (2<sup>nd</sup> Dept. 1991); Town of Islip v. Serio, 105 Misc.2d 1078 (Sup. Ct. Suffolk Co. 1980).
14. *Id.*
15. N.Y. Gen. Mun. Law §136 (14).
16. In Scopelliti v. Board of Zoning Appeals of Hempstead, 115 A.D.2d 651 (2<sup>d</sup> Dept. 1985), the zoning board of appeals determined that an automobile dismantling business was an

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allowed use in a certain district under the town’s zoning law. The petitioners claimed that the town did not have an ordinance “regulating junk yards” and that section 136 of the General Municipal Law applied. The lower court and the Appellate Division disagreed (citing Town of Islip v. Serio) and held that section 136 did not apply. This case illustrates the difficulty a local government could have if it has a zoning law and wishes to rely on section 136 as its means to regulate junkyards.

17. The effective date of General Municipal Law §136 was September 1, 1965.
18. See 6 NYCRR Part 617.5.
19. See, generally, 6 NYCRR Part 617. The regulations and additional SEQRA-related materials are available on the Department of Environmental Conservation’s website at <http://www.dec.ny.gov/regs/4490.html>
20. The Codes of New York State are published by the International Codes Council (ICC). To obtain copies, visit the ICC website at <http://publiccodes.citation.com/st/ny/st/index.htm> or the Department of State’s website at <http://www.dos.ny.gov/DCEA/>
21. A copy of an advisory letter relating to junk cars in agricultural districts may be found at <http://www.dos.state.ny.us/code/pdf/TBPMmotorvehicles07.pdf> The Technical Services Unit of the Department of State, Division of Code Enforcement and Administration provides assistance to Code Enforcement Officials, design professionals, and the general public on the Uniform Fire Prevention and Building Code. Unlicensed vehicles have been protected as an essential activity to a farm operation in a state agricultural district under the §305-a of the Agriculture and Markets Law.
22. NYS Dep’t. Env’tl. Conserv., Environmental Compliance and Pollution Protection Guide for Automobile Recyclers, p. 22 (January 2003).
23. To store more than 1000 tires you need to be a permitted Solid Waste Management Facility under 6 NYCRR Part 360.
24. A permit is also required for those who operate as: salvage pools, mobile car crushers or itinerant vehicle collectors. N.Y. Vehicle & Traffic. Law §415-a (2) (McKinney’s 1996). Under Vehicle & Traffic Law §415-a(1-a) “salvage pools” is defined as: “any person acting on behalf of the vehicle owner or an insurance company, who sells, offers for sale or solicits bids for the sale of junk or salvage vehicles or major component parts of such vehicles, or displays or permits the display of such vehicles or parts upon premises owned or controlled by him, but who does not dismantle vehicles.” Vehicle & Traffic Law §415-a(1-c) defines “itinerant vehicle collectors” as: “any person who is engaged in the business of acquiring non-operable vehicles and who sells such vehicles or major component parts thereof to a vehicle dismantler or scrap processor.” Additional information about how the Department of Motor Vehicles regulates junk and salvage businesses may be found at <http://www.nysdmv.com/forms/cr81.pdf>

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25. N.Y. Veh. Traf. Law §415-a (4)(a) states: “Except as otherwise provided herein, no registration shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring registration is performed which conforms to section one hundred thirty-six of the general municipal law as such section applies and to all local laws or ordinances. . .” An exception to this would be applicants that have operated at the location since September 1, 1973. N.Y. Veh. Traf. Law §415-a(4)(c) (McKinney 1996).
  26. 15 NYCRR §81.2.
  27. To report violations of dismantling licenses, contact the Department of Motor Vehicles, Office of Vehicle Safety in Albany at (518) 474-5282.
  28. Municipal Home Rule Law §10 provides authority to counties, cities, towns and villages to adopt local laws, not inconsistent with general state law, for the protection and enhancement of the physical and visual environment, as well as to provide for the “safety, health and well-being” of the community. See Mun. Home Rule Law §10(1)(ii)(a) (11) and (12) (McKinney 1994), respectively; see also N.Y. Town Law §130(6) (McKinney 1987); N.Y. Village Law §4-412(1) (McKinney 1996); and N.Y. General City Law §20(13) (McKinney 2003). General Municipal Law §136 does not preclude the adoption of a local law on the topic of junkyards. See N.Y. Gen. Mun. Law §136 (12) (McKinney 1999); Blesi v. Andruzzi, 173 A.D.2d 584 (2d Dept. 1991).
  29. For additional information, see the Department of State publication entitled “Administration and Enforcement of the Uniform Fire Prevention And Building Code and the Energy Conservation Construction Code” at [http://www.dos.ny.gov/LG/publications/Administration\\_and\\_Enforcement\\_of\\_the\\_Uniform\\_Code.pdf](http://www.dos.ny.gov/LG/publications/Administration_and_Enforcement_of_the_Uniform_Code.pdf)
  30. See 1980 Opns. St. Comp. 157, citing Lane v. City of Mount Vernon, 38 N.Y.2d 344 (1976).
  31. See 4M Holding Company, Inc. v. Town Board of the Town of Islip, 81 N.Y.2d 1053 (1993).
  32. Id.
  33. Patricia E. Salkin, New York Zoning Law and Practice, Section 13:16 at pp. 13.20-13.21 (4<sup>th</sup> Ed. 2001).
  34. Modjeska Sign Studios, Inc. v. Berle, 43 N.Y.2d 468 (1977).
  35. People v. Scott, 26 N.Y.2d 286 (1970).