

A local law to be known as "TOWN OF OTSEGO JUNK STORAGE LAW"

SECTION 1: This local law shall be known as the "Town of Otsego Junk Storage Law".

SECTION 2: AUTHORITY

This law is adopted pursuant to the authority granted the Town in section 10 of Municipal Home Rule Law and section 136 of the General Municipal law (pertaining to the regulation of junkyards).

SECTION 3: PURPOSE AND INTENT

By adoption of this law, the Town of Otsego declares its intent to regulate and control the storage and keeping of junk, and to regulate junkyards whether operated for commercial profit or otherwise. The Town Board hereby declares that a clean, wholesome and attractive environment is of vital importance to the continued general welfare of its citizens.

This law is enacted in recognition of the fact that junk and junk vehicles, as defined in section 5, can constitute both a public and private nuisance; can be highly flammable and sometimes explosive; can constitute attractive nuisances to children; can pollute soil and water through leakage of gasoline, oil and battery acids; can constitute a blight on the landscape and destroy the aesthetic qualities of the Town; can be a breeding ground for insects, rodents, and similar creatures; can depreciate the value of property on which they are located and the value of surrounding properties.

SECTION 4: PRIOR EXISTING JUNKYARD LAW

This local law shall replace and supersede any prior existing junkyard law as well as that portion of the Local Land Use Law dealing with junkyards in existence in the Town of Otsego.

SECTION 5: DEFINITIONS

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

Junk Vehicle: Any vehicle, including but not limited to, an auto, bus, truck, trailer, motor home, motorcycle, minibicycle, boat, snowmobile, ATV, or any other device originally intended for travel which meets the following conditions:

A. It has not been registered or has not passed a New York State Inspection within the previous 12 months.

B. It has remained outdoors for a period of 6 months and can be seen from a public highway or any neighboring or other property in this or neighboring townships.

Junkyard: Land used for the collecting, storage or sale of wastepaper, rags, scrap metal or discarded material or for the collecting, wrecking, dismantling, storage, salvaging, or sale of vehicles or machinery parts.

Junk Appliance: Any stove, washing machine, dryer, freezer, refrigerator, or other household or lawn and garden device or equipment in inoperable condition or abandoned, junked, discarded, wholly or partially dismantled, no longer in condition for ordinary use for the purpose for which it was designed originally.

Junk Trailer: Any house trailer, mobile home or unregistered camper which:

A. Is uninhabitable for a period of more than six (6) months, as per the New York state Uniform Fire Prevention and Building Code;

B. Is unfit for use and cannot be put into operational condition, except at a cost in excess of its market value after repairs; or

Junk Farm and Construction Equipment: Any tractor, truck self-propelled or drawn implement or stationary piece of equipment which cannot be used for its intended purpose and has been discarded or abandoned for use as a farm vehicle, farm implement or farm equipment or for any other purpose and said abandonment has continued for a period of more than twelve (12) months; any inoperable construction-related machinery and equipment, including but not limited to earth grading, excavating and paving equipment, steel tanks, containers, flatbed carriers and cranes, which is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled and said abandonment has continued for a period of more than twelve (12) months.

Rubbish or Debris: Shall include, but not be limited to, ordinary household or store trash of flammable character, such as barrels, cartons, boxes, crates, furniture, rugs, clothing, rags, mattresses, blankets, rubber tires, lumber, brick, stone, and other building materials no longer intended or in condition for ordinary use; any and all tangible personal property no longer intended or in condition for ordinary and customary use.

Junk: Shall include junk vehicles, junk appliances, junk trailers, junk farm and construction equipment, rubbish and debris as described above. Junk does not include inoperable vehicles, implements, equipment or machinery retained for the purpose of salvaging usable parts in connection with the ongoing operation of a business, whose purpose does not include the sale of parts or devices in which said parts or devices have been included provided that such items are stored in such a way as to not be visible from any public highway or other parcel of land and which does not constitute a public hazard.

Enforcement Officer: Any person appointed by the Town Board to represent the Town Board in particular matters pertaining to this local law.

Permit Issuing Committee: Any group of persons appointed by the Town Board to review permit applications for junkyards. Person: Any person, firm, partnership, association, corporation, company or organization of any kind.

Business: A continued or regular activity for the purpose of earning a livelihood such as a trade, profession or occupation, or a commercial activity. Evidence of a business shall be shown by the filing of a Federal business tax return or an appropriate business schedule (i.e. Schedule C to 1040) to a personal Federal tax return.

SECTION 6: JUNK STORAGE REGULATIONS

No person shall have or permit the existence or the accumulation of rubbish or debris, junk appliances, junk vehicles, junk trailers, junk farm equipment, or junk construction equipment out of doors on property owned by such person and visible from any public highway or other parcel of land except that:

- A. Two junk vehicles may be stored out of doors.
- B. Other junk may be placed out of doors for no more than two weeks to facilitate pickup and disposal.

SECTION 7: JUNKYARD REGULATIONS

A. Location:

1. No junkyard shall be located within:

- a) Two hundred (200) feet of any adjoining property line;
- b) Two hundred (200) feet of any stream, pond, wetland or floodplain (as designated on maps prepared by the Federal Emergency Management Agency (FEMA) for the Town of Otsego), other body of water, or
- c) Two hundred (200) feet from the right of way of any public highway.

2. No site shall be approved for use as a junkyard if the topography of the surrounding property is such that land within three hundred (300) feet of the junkyard site has an elevation higher than any point on the junkyard site.

B. Screening:

Where a junkyard is visible from a public highway or from neighboring properties, an eight (8) foot high fence shall be erected of wood or other materials, as approved by the Town Board, sufficient to totally screen the junkyard from view. As an alternative, the Town Board may permit, such screening by the planting of evergreen trees or shrubbery, or some combination of fencing and landscaping. In addition, on the inside, adjacent to, and contiguous with such fencing, a graded strip of land at least fifteen (15) feet in width shall be maintained and kept free of all dry vegetation or other combustible materials so as to provide a fire lane around the perimeter of the junkyard.

C. Burning:

No materials shall be burned on a junkyard site except in compliance with the New York State Outdoor Burning Law (see 6 NYCRR 215).

D. Burying:

No junkyard items shall be buried.

E. Approved Junkyard Items:

No junkyard items shall be stored other than those items specified on a junkyard permit approved by the Town Board pursuant to this Local Law.

SECTION 8: JUNKYARD PERMIT

A. Permit Required: No person shall establish or maintain a junkyard, as defined herein, without first obtaining a junkyard permit from the Town of Otsego. All permits shall be issued for a period of one (1) year, after which time renewal shall be required. To renew a permit, the holder shall demonstrate compliance with this law by a Certificate of Compliance issued by the Code Enforcement Officer.

B. Existing Junkyards Temporary Permit: Any person presently maintaining a junkyard, as defined herein, on real property within the Town of Otsego must apply for a permit within sixty (60) days of the adoption of this Local Law. If the place where such activity is conducted does not meet the requirements of section 7 herein, a temporary permit may be granted for a period not to exceed one (1) year, during which time the premises shall be brought into compliance with said requirements.

If, at the end of such period, the premises are not brought into compliance, such person shall cease and desist from maintaining a junkyard and all junk shall be removed by the landowner within sixty (60) days. If after sixty (60) days the junk is not removed, the Town reserves the right to have the junk removed and disposed of and all costs of such removal and disposal shall be borne by the landowner, and, in addition, such person may be subject to the penalties set forth in section 14.

If the existing junkyard cannot meet the requirements of section 7 herein because of pre-existing site limitations, the Town Board may modify the requirements after a mitigation plan has been presented to the Town Board by the applicant. A mitigation plan must be filed with the Town Board within thirty (30) days of the Board's initial rejection of the permit application. If a mitigation plan is not filed within thirty (30) days or is rejected by the Town Board, such person operating the junkyard shall cease and desist from maintaining the junkyard and all junk shall be removed by the land owner within sixty (60) days from the date of the official rejection. If after sixty (60) days the junk is not removed, the Town reserves the right to have the junk removed and disposed of and all cost of such removal and disposal shall be borne by the land owner. In addition, such persons may be subject to the penalties set forth in section 14.

SECTION 9: JUNKYARD PERMIT APPLICATION PROCESS

A. Application Form: The applicant for a junkyard permit or permit renewal shall obtain application forms from the Town Clerk. The completed forms, along with one copy of the proposed or existing site plan and the appropriate fees, shall be returned to the Town Clerk. The Town Clerk shall submit the application materials to the Town Board for the Town Board's review. Applications must be submitted to the Town Clerk no later than ten (10) days prior to a regularly scheduled meeting of the Town Board in order to be considered at that meeting.

B. Environmental Assessment: An Environmental Assessment Form (EAF) shall be completed and submitted with all applications for new or existing junkyards, pursuant to the provisions of the state Environmental Quality Review (6 NYCRR 617). The application shall not be considered complete until the environmental review has been conducted and the Town Board has made a determination that the proposed junkyard will not have significant environmental consequences. No EAF will be required for permit renewal unless the renewal increases the size or changes the character of the junkyard.

C. Application Fee: A non-refundable application fee shall accompany all applications for initial permits. Routine annual renewal applications shall be accompanied by a non-refundable fee. These fees shall be set by a resolution of the Town Board from time to time.

D. Public Hearing: The Town Board shall hold a public hearing within forty-five (45) days of the date a complete application is received by the Town Board. Notice of the hearing shall be made in the official newspaper at least five (5) days prior to the date thereof. At the hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the junkyard application. A permit shall be renewable annually without a public hearing upon payment of the annual fee and inspection and approval of the Town Enforcement Officer, unless the renewal increases the size or changes the character of the junkyard.

E. Approval or Disapproval:

1. Within forty-five (45) days of the public hearing, the Town Board shall render a decision to approve, approve with conditions, or to disapprove the application for a junkyard permit. The forty-five (45) day period may be extended by mutual consent of the applicant and the Town Board.

2. If the application is approved by the Town Board, a Junkyard Permit shall be issued by the Town Clerk. Approval shall be granted to the applicant, only, and is not assignable.

3. If the application is approved with conditions by the Town Board, the Town Clerk shall issue a Junkyard Permit upon notification by the Enforcement Officer that said conditions have been complied with.

4. If the application is disapproved, the reasons for such disapproval shall be entered into the Town Board minutes. The applicant shall be notified of the decision and the reasons for such decision by certified mail within five (5) days of the decision of the Town Board.

SECTION 10: GENERAL CONSIDERATIONS

In reviewing, and prior to granting or denying a permit, the Town Board shall take the following aesthetic and locational factors into consideration:

A: Aesthetic Considerations:

1. Type of road serving the junkyard or from which the junkyard can be seen.
2. Natural or artificial barriers protecting the junkyard from view.

B: Locational Considerations:

1. The nature and development of surrounding property, such as the proximity of agricultural lands, churches, residential settlements, public buildings, or places of public gathering.
2. Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
3. The proximity of streams, wetlands, floodplains, groundwater supplies and public water systems.
4. Local drainage patterns.
5. The Master Plan as well as any long range comprehensive plans for the Town, if such exist.
6. Availability of other suitable sites for the junkyard.

SECTION 11: OPERATION AND INSPECTIONS

A. Requirements for Operation:

1. The permittee must personally own the land.
2. Such permit shall be displayed conspicuously at all times at the junkyard location.

3. The permittee is responsible for the proper and safe conduct of such activity or business, to minimize the fire hazard therefrom and to prevent trespass thereon. All junkyard operations shall be accomplished within the junk storage area.

B. Inspections:

1. The Town of Otsego Code Enforcement Officer is designated the enforcement officer for this Local Law and shall be granted access to the area of business of the applicant or permit holder at all reasonable hours to inspect the same for compliance.

2. The enforcement officer shall make inspections of the premises of any junkyard for which application for permit has been made and shall inspect at least annually, all junkyards within the town, and shall report to the Town Board on the conditions of such junkyards.

3. The enforcement officer shall make periodic inspections of the Town to ensure that all junkyards have permits and that the requirements of this law are met.

4. The enforcement officer shall not enter the premises of any private property without the consent of the owner. However, upon demonstration of "reasonable cause" a search warrant may be obtained from a Judge allowing access to the property. It shall be the responsibility of the owner to arrange for all required inspections of the premises prior to permit issuance or renewal. The refusal of the owner or permit holder to allow access to the property by the enforcement officer may subject the permit holder to the penalties set forth in section 14 and 15 of this law.

SECTION 12: ENFORCEMENT AND APPEALS PROCEDURE

A. The enforcement officer shall give written notice by personal service or by certified mail on the owner of the property in violation of these regulations. Such notice shall direct the person so served to terminate the open storage of such junk or the junkyard violation within thirty (30) days from mailing where service is certified.

B. At the expiration of thirty (30) days after the personal service of the notice or after expiration of thirty-three (33) days from the expiration of the mailing of notice by certified mail, the enforcement officer shall report to the Town Board in writing at the next scheduled meeting of the Town Board. Such report may include or refer to photographs of said violation. Such report and any such photographs shall be filed in the Town Clerk's office. After allowing another thirty (30) days for the filing of a permit application, the Town enforcement officer shall then lodge a complaint with the Town Justice of the Town of Otsego, charging any person in violation of this law with an offense against this law.

SECTION 13: REVOCATION OF PERMIT

The Town Board may revoke a junkyard permit upon reasonable cause should the permit holder fail to comply with any provision of this law. Should the Town Board decide to revoke the permit, the reasons for such revocation shall be stated in the Town Board's minutes. The permit holder shall be notified of the revocation by certified mail. Before a permit may be revoked, the Town Board must conduct a public hearing at which time all interested parties must be heard. Notice of the hearing shall be made in the official newspaper at least five (5) days prior to the date thereof.

Upon revocation, all operations shall stop and the owner will have sixty (60) days to remove all junk. If the junk is not removed, the Town reserves the right to have the junk removed and disposed of and all costs of such removal shall be borne by the permit holder and may be assessed on the real property from which said materials were removed and shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied.

SECTION 14: PENALTIES

Any person who shall violate any of the provisions of this local law shall be guilty of an offense and subject to a fine of not more than two hundred fifty dollars (\$250.00) or by imprisonment for a period not to exceed fifteen (15) days or by both imprisonment and fine. Every such person shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal to comply shall continue.

SECTION 15: FAILURE TO COMPLY

In addition to the above provided penalties, the Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any section of this local law.

SECTION 16: SEVERABILITY

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

SECTION 17: EFFECTIVE DATE

This law shall be effective upon filing with the Secretary of the State of New York.

12/31/96