

JUNK STORAGE LAW

A local law regulating the placement and storage of junk.

The Town Board of the Town of Sherburne hereby enacts the following in the area outside any incorporated village:

ARTICLE A: TITLE, PURPOSE, AUTHORITY

1. Title

This local law shall be known as the "Town of Sherburne Junk Storage Law."

2. Purpose.

By adoption of this law the Town of Sherburne declares its intent to regulate and control the storage or 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 and that junk and junkyards can constitute a hazard to property and persons and be a public nuisance. Such materials may be highly flammable and sometimes explosive. Junk and particularly junked vehicles can constitute attractive nuisances to children and certain adults.

3. Authority.

This law is adopted pursuant to the authority granted the Town in Section 10 of the Municipal Home Rule Law and in Section 130(15) of the Town Law. (Section 4-412 (1) of the Village Law.)

ARTICLE B: DEFINITIONS

For the purpose of this law, the following words and phrases shall have the meaning ascribed to them in this article.

JUNK: the outdoor storage or deposit of any on the following shall constitute Junk.

1. One (1) or more junked vehicles
2. One (1) or more abandoned or nonpermitted mobile homes or recreational vehicles.
3. One (1) or more appliances, including, but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, televisions, radios, stereos, ovens, vacuum cleaners, computers, typewriters.
4. Two (2) or more inoperable farm implements.
5. One (1) or more items of household furniture, including, but not limited to, couches, chairs, tables, lamps, dressers, mirrors, vanities, cabinets, countertops, bed frames, mattresses, box springs.
6. Construction debris, general household trash, tires, used metal, insulation, returnable deposit bottles and cans.

JUNKYARD: The outdoor storage or deposit of any of the following:

1. Five (5) or more junk vehicles.
2. Two (2) or more abandoned or nonpermitted mobile homes or recreational vehicles.
3. Five (5) or more appliances including but not limited to, washers, dryers, dishwashers, stoves, refrigerators, freezers, televisions.
4. Five (5) or more inoperable farm implements.
5. Any combination of the above that totals five (5) items.
6. Any amount of scrap or salvaged metal exceeding one (1) cubic yard.

JUNK VEHICLES: Any motor vehicle, specifically, but not limited to, automobile, bus, trailer, truck, tractor, motor home, motorcycle, motorbicycle, minibicycle, or snowmobile, or any other device originally intended for travel on the public highways which is unlicensed, wrecked, inoperable, dismantled or partly dismantled or is not in condition for legal use upon the public highway. With respect to any motor vehicle not required to be licensed by the Department of Motor Vehicles or 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.

ENFORCEMENT OFFICER: Any person appointed by the Town Board to represent them in particular matters pertaining to this local law.

PERSON: Any person, firm, partnership, association, corporation, company, or organization of any kind.

ARTICLE C: JUNK REGULATIONS

No junk, as defined herein, shall be located on any real property within the Town of Sherburne, except in permitted junkyards.

ARTICLE D: JUNKYARD REGULATIONS

All junkyards, as defined herein, shall be in compliance with the following requirements.

1. No junkyard shall be located within one hundred (100) feet of any adjoining property line, any residential building (except that belonging to the junkyard owner), public park, church, educational facility, nursing home, public building or other place of public gathering, or any stream, lake, pond, wetland, or other body of water.

2. The junkyard shall be set back at least fifty (50) feet from the right-of-way of any public highway.
3. There must be erected and maintained an eight (8) foot high fence adequate to prohibit the entrance of children and others into the area of the activity of business and to contain within such fence the materials dealt with by the operator of the junkyard. All the materials dealt with by the operator of the junkyard shall be kept within such fence at all times. Whenever the junkyard is not open for business, or temporarily not supervised, this fence, and any gate thereto, shall be secured or locked to prevent entry. The Board may waive the requirement of fencing where topography of other natural conditions effectively prohibit the entrance of children and others.
4. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence shall be of wood or other materials sufficient to totally screen the junkyard from view. As an alternative, the Planning Board may by waiver or variance, permit such screening by adequate planting of evergreen trees or shrubbery.
5. The junkyard shall not be used as a dump area by the public and there will be no burning of automobiles or other materials except in connection with the periodic crushing and removal of automobiles or other materials from such yards in compliance with the New York State outdoor burning law (see 6 NYCRR 215).

ARTICLE E: JUNKYARD PERMIT

1. Permit Required

No person shall establish or maintain a junkyard, as defined herein, without first obtaining a junkyard permit from the Town of Sherburne. All permits shall be issued for a period of two (2) years, after which time renewal shall be required.

2. Existing Junkyards, Temporary Permit

Any person presently maintaining a junkyard, as defined herein, on real property within the Town of Sherburne 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 Article D herein, a temporary permit may be granted for a period not to exceed one (1) year, during which time the place shall be arranged to comply with said requirements. If at the end of such period the place has not been arranged so as to comply with said requirements, such person shall cease and desist from maintaining a junkyard and all junk shall be removed.

ARTICLE F: APPLICATION PROCEDURE

1. Application Form

The applicant for a junkyard permit shall obtain application forms from the Town Clerk. The completed forms along with one copy of the proposed site plan, and the appropriate fees, shall be submitted to the Clerk. The Town Clerk shall submit the application materials to the Town Board.

An Environmental Assessment Form (EAF) shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Review Act, 6 NYCRR 617. If the EAF indicates that the proposed activity may have significant environmental consequences, the Town Board shall require that a Draft Environmental Impact Statement (DEIS) be submitted with the application. The application shall not be considered complete until the DEIS has been accepted by the Town Board.

2. Application Fee

A non-refundable application fee of Two Hundred Fifty dollars (\$250.00) shall accompany all applications.

3. Public Hearing

The Planning Board shall fix a time within sixty (60) days of the date a complete application is received for a public hearing. Notice of the hearing shall be made in the official newspaper no more than 20 nor less than 5 days prior to the date thereof. At the hearing the Planning Board shall hear the applicant and all other persons wishing to be heard on the application for a junkyard permit.

4. Approval or Disapproval

Within forty-five (45) days of said hearing the Planning Board shall render a decision to approve, approve with conditions or disapprove the application for a junkyard permit. The forty-five (45) day period may be extended by mutual consent of the applicant and the Planning Board. If the application is disapproved, the reasons for such disapproval shall be entered into the Planning 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 Board.

5. Issuance of Permit

If the application is approved by the Planning Board, a Junkyard Permit shall be issued by the Town clerk. If the application is approved with conditions by the Planning Board, the Town Clerk shall issue a Junkyard Permit upon notification by the Enforcement Officer that said conditions have been met.

ARTICLE G: GENERAL CONSIDERATIONS

In granting or denying a permit, the Planning Board shall take the following aesthetic and locational factors into consideration:

1. Aesthetic Considerations

- a) Natural or artificial barriers protecting the junkyard from view.
- b) Proximity of the site to established residential or recreational areas.
- c) Availability of other suitable sites for the junkyard.

2. Locational Considerations

- a) Type of road servicing the junkyard.
- b) The nature and development of surrounding property, such as the proximity of public gathering.
- c) 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.
- d) Local drainage patterns.
- e) Long range comprehensive plans for the town.
- f) The proximity of streams, lakes, wetlands, flood plains, groundwater supplies and public water supplies.

ARTICLE H: ADMINISTRATION AND ENFORCEMENT

1. Waivers

Where the Planning Board finds that due to special circumstances of a particular case, a waiver of certain requirements as stated in Article D herein is justified, then a waiver may be granted. No waiver shall be granted, however, unless the Planning Board finds, and records in its minutes that:

- a) Granting the waiver would be in keeping with the intent and spirit of this law, and is in the best interests of the community.
- b) There are special circumstances involved in the particular case.
- c) Denying the waiver would result on undue hardship to the applicant, provided that such hardship has not been self-imposed.

- d) The waiver is the minimum necessary to accomplish the purpose.

2. Enforcement Officer

- a) The enforcement officer shall upon request of the Planning Board make inspections of the premises of any junkyard for which application for a permit has been made, or any other existing junkyard within the town, and shall report to the Town Board on the conditions of such junkyard.
- b) The enforcement officer shall make periodic inspections of the Town to ensure that all existing junkyards have permits and that the requirements of this law are met. Any observed violations shall be reported to the Town Board.
- c) The enforcement officer shall not enter the premises of any private property without the consent of the owner.

3. Revocation of Permit

The Town Board may revoke a Junkyard Permit upon reasonable cause should the applicant fail to comply with any provision of this law. Before the permit may be revoked, a public hearing shall be held by the Town Board. Notice of the hearing shall be made in the official newspaper no more than 20 nor less than 5 days prior to the date thereof. The permit holder shall be notified of the hearing by certified mail at least five (5) days prior to the hearing. At the hearing the Planning Board shall hear the permit holder and all other persons wishing to be heard on the revocation of the junkyard permit. Should the Planning Board decide to revoke a permit, the reasons for such revocation shall be stated in the Planning Board minutes. The permit holder shall be immediately notified of the revocation by certified mail.

4. Penalties

Any person who violates, is prosecuted and convicted of any of the provisions of this local law shall be subject to a fine of not more than Five hundred dollars (\$500) and/or fifteen (15) days in jail.

5. Failure to Comply

In addition to the above provided penalties, the Planning 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 article of this local law.

ARTICLE I: PREVIOUS LAWS

This law, when enacted and filed with the Secretary of New York State, supercedes any and all existing local laws regarding junk and junkyards.

ARTICLE J: SEVERABILITY

If any clause, sentence, paragraph, section or article of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement 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.

ARTICLE K: EFFECTIVE DATE

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



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
1 Winners Circle
Albany, New York 12235

*Division of Agricultural Protection
and Development Services
518-457-7076
Fax. 518-457-2716*

May 27, 2004

Hon. Harry W. Conley, Supervisor
Town of Sherburne
17 E. State Street
Sherburne, NY 13460

Re: Guideline for the Review of Local Laws Affecting Junk, Litter and Junkyards

Dear Supervisor Conley:

The Department sent you a letter, dated August 11, 2003, concerning the Town of Sherburne's Junkyard Junk Storage Law and its application to farm operations located within a county adopted, State certified, agricultural district. Since that time, the Department has finalized the attached guidance document to provide direction to municipalities as they adopt and apply their "Junk Storage Law" to farm operations located within an agricultural district.

If you have any comments concerning the guidance document or if you would like to discuss this issue further, please contact Bob Somers, Chief of the Agricultural Protection Unit, at (518) 457-2713. The Town's attorney may contact Danielle Cordier, Senior Attorney, at (518) 457-2449.

The Department will close its file on this case unless an affected farmer requests the Department's review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim T. Blot', with a long horizontal flourish extending to the right.

Kim T. Blot
Director

Enclosures

cc: Bradd Vickers, New York Farm Bureau
Pershing Schlafer, Chair, Chenango County AFPB
Ruth A. Moore, First Deputy Commissioner, Dept. of A&M
Rick Zimmerman, Deputy Commissioner, Dept. of A&M
Joan Kehoe, Counsel, Dept. of A&M
Bob Somers, Dept. of A&M
Danielle Cordier, Dept. of A&M

Guidelines for Review of Local Laws Affecting Junk, Litter and Junkyards

Some local governments have developed Junk Storage Laws that may affect farm operations located within a county adopted, State certified agricultural district. The Department recognizes a local government's right to regulate certain aspects of the storage of "junk" within its geographic boundaries. However, Agriculture and Markets Law (AML) §305-a requires local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, to exercise these powers in such a manner as may realize the policy and goals of the Agricultural Districts Law and not unreasonably restrict or regulate farm operations within a county adopted, State certified agricultural district in contravention of the purposes of the Agricultural Districts Law unless it can be shown that the public health or safety is threatened. In the Department's view, local governments should exempt farm operations within a county adopted State certified agricultural district from the application of junk storage laws to the extent that such "junk" and "junked vehicles" are used by the farm operation for agricultural purposes and in an amount and type consistent with the needs and scope of the farm operation.

The Department performs §305-a reviews on a case by case basis. The following discussion outlines the Department's position with regard to common local junk storage law provisions which restrict farms.

Municipalities typically define the term "junk" to include, litter, waste paper, rags, used tires, discarded materials, appliances, household furniture, used metal, construction debris, unoccupied mobile homes, inoperable farm implements, and unlicensed, inoperable or "junked" vehicles. Some of these items are commonly found on farms and may or may not be considered "junk" to the farm operation. For example, tires are commonly used as a weight to keep coverings on bunk silos in place and items such as used metal, waste paper, rags, plastic, and discarded materials are collected and piled on the farm and periodically burned or taken to the local waste transfer station for disposal. Junked vehicles, particularly trucks, and farm equipment may be kept and used for spare parts to repair functional farm trucks and equipment or may be temporarily out of service. Unoccupied mobile homes may periodically exist on a farm if their labor needs are seasonal or if temporarily vacant because a farm worker leaves the operation. Farm worker housing may also remain unoccupied for a period of time if the farm changes ownership or upon the death of a farm operator, and pending settlement of the estate. For further explanation, see the Department's guidance document entitled *Guidelines for Review of Local Laws Affecting Farm Worker Housing*.

Municipalities may define junked vehicles to include unlicensed, old, wrecked, discarded, abandoned, dismantled or stored vehicles, tractors, trucks, motor homes, motorcycles, trailers, automobiles, and buses. Often the regulating municipality considers vehicles not in condition for legal use on the public highway to be "junk" or a "junk vehicle." Some agricultural operations maintain unlicensed vehicles on the farm

for use on that property. Although unlicensed and unable to be used on a highway, such vehicles may be essential to the conduct of the operation. Old vehicles and farm equipment may be kept and used for spare parts to repair functional farm trucks and equipment.

In prior reviews, the Department has determined that municipal regulation as "junk" of certain pieces of heavy equipment, buses, campers, cars, farm equipment, trailers, dilapidated buildings and other items, that do not have a use in the production function of the farm, are not subject to AML §305-a restrictions. The Department has determined that the use of box trailers for the storage of hay, other agricultural commodities or farm equipment in an amount and scope directly related to the production function of the farm operation, are protected under the Agriculture and Markets Law.

Some local laws may define and interpret the word "litter" to include animal manure and compost. An increasing number of farm operations compost their animal waste to help reduce the amount of land needed for the application of green manure, reduce odor and provide the farmer with additional income. The Department does not view animal waste as "litter" or "filth" because of its beneficial uses for farm operations. For additional information, see the Department's *Guidelines for Review of Local Laws Affecting Nutrient Management Practices (i.e., Land Application of Animal Waste, Recognizable and Non-recognizable Food Waste, Sewage Sludge and Septage; Animal Waste Storage/Management)*.

Some municipalities require the screening of "junk" and "junk vehicles." A local government's administration of such requirements may, in some circumstances, unreasonably restrict farm operations. Aesthetics are an appropriate and important consideration under zoning and planning laws. However, the purpose of the Agricultural Districts Law is to conserve and protect agricultural lands by promoting the retention of farmland in active agricultural use and any aesthetics requirement which unreasonably restricts a farm operation is problematic. Generally, farmers should not be required to bear the extra costs to provide screening unless such requirements are otherwise warranted by special local conditions or are necessary to address a threat to the public health or safety. The Department has concluded that it is not unreasonably restrictive for a municipality to require that farmers move inoperable vehicles, farm equipment and tractors to a less visible location. Farmers may move such vehicles and equipment behind agricultural buildings, along existing fence rows where vegetation is present, behind topographic features, such as drumlins or sloping ground, or further away from public roads.

Generally, the Department would view as unreasonably restrictive a requirement that farmers obtain a junkyard license or permit to keep items (identified in the local law as junk, junk vehicles or litter) used on the farm, in an amount and scope directly related to the agricultural operation.

Section 302.8 of the *Property Maintenance Code of New York State (PMCNYS)*, issued by the New York State Department of State and entitled "Motor Vehicles," states in part, that "...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." The Codes Division of the Department of State has expressed the opinion that PMCNYS §302.8 is not applicable to unlicensed or inoperative vehicles used for agricultural purposes by a farm operation located within a county adopted, State certified agricultural district when the number and type of vehicles is consistent with the needs and scope of the farm operation.