

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

of

MACHIAS

Town

Village

Local Law No. 1 of the year 2002

"A local law REGULATING JUNK CARS AND REFUSE"

(Insert Title)

Be it enacted by the

TOWN BOARD

(Name of Legislative Body)

of the

County

City

of

MACHIAS

Town

Village

as follows:

See pages 1a through 1f.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

SECTION 1. LEGISLATIVE INTENT.

The accumulation, storage and abandonment of unusable motor vehicles and component parts thereof and litter, trash, refuse, debris, abandoned appliances and other waste materials on private and public property within the Town of Machias is hereby declared detrimental to the public health and welfare of the residents of the Town of Machias, aesthetically unattractive, detracts from the enjoyment of the environment by said residents and tends to depreciate property values. One purpose of this Local Law is to prohibit and/or regulate the placement, storage and/or abandonment of vehicles which, because of mechanical defects, are inoperable or unsightly. In order to accord owners of vehicles which are damage or inoperable a reasonable time to restore them to operating condition or to arrange for other disposition of them and in recognition of the fact that certain businesses necessitate the temporary parking of inoperable vehicles out of doors, the regulation does not apply to vehicles which have been situated on the property less than thirty (30) days.

The further purpose of this Law is to prohibit and/or regulate the placement of accumulations of vehicle parts or junk, garbage, litter or waste of any kind out of doors on private or public property.

SECTION 2. TERRITORY AFFECTED.

This Local Law shall be applicable to all territory in the Town of Machias, Cattaraugus County, New York.

SECTION 3. DEFINITIONS.

As used in this Local Law, the following terms shall have the meaning indicated.

A. Vehicle.

Any means of transport of conveyance having wheels originally designed and manufactured (1) to be moved or propelled by any power other than muscular power, or (2) be drawn or towed. A vehicle shall include, but not be limited to, automobiles, trucks, trailers, motorcycles and busses. Mobile homes are not considered vehicles.

B. Junk Vehicle - any vehicle which:

For any reason, is incapable, without repair, of being moved or propelled by application of internal power, or is incapable, without repair, of

being drawn or towed, if it is a vehicle such as a trailer, that was originally designed to be towed or drawn from behind an internally powered vehicle.

C. Litter:

A disorderly accumulation of objects; a pile. Carelessly discarded refuse.

D. Trash:

Worthless or discarded material or objects; refuse or rubbish.

E. Debris:

The scattered remains of something broken or destroyed; rubble or wreckage. Carelessly discarded refuse; litter.

F. Junk:

Discarded material, such as glass, rags, paper, metal or other waste materials, which may not be reused.

G. Rubbish:

Useless or rejected matter.

H. Refuse:

The worthless or useless part of something, (leavings).

I. Waste:

An unusable or unwanted substance of material, such as a waste product. Garbage, trash. Regarded or discarded as worthless or useless: waste trimmings.

SECTION 4. PROHIBITED STORAGE OF JUNK VEHICLES.

No person shall, within the Town of Machias, deposit, place, store or abandon on any parcel of real property or cause, permit or consent to be deposited, placed, stored or abandoned on real property owned or occupied as a tenant by any such person, more than one (1) junk vehicle for a period of longer than thirty (30) days after receipt by such person of the notice prescribed in Section 9 unless such vehicle(s) is completely enclosed in a garage or similar structure. This Section shall not apply to junk vehicles in junk yards as defined in and duly operating in accordance with Section 5, below, or as outlined in Section 13-B, Exceptions.

SECTION 5. JUNK YARD OPERATION.

A. Permit required.

No person shall engage in or conduct on real property within the Town of Machias, either for himself or on behalf of any other person, directly or indirectly, as an agent or employee, any activity which involves the collection, storage, dumping, dismantling, salvaging, sorting or otherwise handling or arranging for sale, salvage or disposal of junk vehicles in Section 3 above, without, first obtaining a valid junk yard permit by resolution of the Machias Town Board as provided herein.

B. Application.

Applications for a junk yard permit may be obtained from the Town Clerk. Completed applications are to be submitted to the Town Board for approval, after a properly conducted public hearing. The Town Board will either grant or deny the permit request at the next regularly scheduled Town meeting following the public hearing.

The applicant must complete all areas of the application, have the signature notarized and attach a signed "PROPERTY OWNERS NOTIFICATION AND CONSENT FORM" from each of sixty percent (60%) of the property owners and lessees located within 1,000 feet of the boundaries of the parcel or parcels described in the application as the proposed junk yard site.

C. Permit Fee.

There shall be an annual permit fee of \$25.00 due on January 31 of each calendar year, or part thereof, that a junk yard permit be in effect. There

shall be no public hearing for renewals of current, valid permits. Failure to pay the per year fee by its due date will render the current permit invalid.

SECTION 6. FENCING.

All junk yards shall be required to be enclosed by a closed mesh or board fence at least six (6) feet high with a gate that can be locked. The fence must eliminate the view of the junk yard from all public highways and adjoining properties. The fence shall be at least thirty-five (35) feet from the center of public highways and twenty-five (25) feet from adjoining properties. An unobstructed fire lane of twenty (20) feet shall be maintained either in or around the junk yard fence, immediately adjacent the fence, for fire an emergency personnel access. Additional, adequate fire lanes must be maintained within the junk yard as may be required by County and State regulations.

SECTION 7. DATE OF CONSTRUCTION AND COMPLETION; RENEWALS AND EXTENSIONS; REVOCATIONS.

Any permit issued pursuant to this Local Law is issued with the understanding that construction of the fence shall start within thirty (30) days of the issue date of the permit and shall be completed within ninety (90) days of the issue date of the permit. Any permit so issued is subject to revocation, without public hearing, unless this provision is complied with.

The Town Board may revoke any permit issued under this Law if it is determined, after a public hearing, that the permit holder has, for any reason, violated any of the provisions of this Law.

SECTION 8. PROHIBITED DEPOSIT OF LITTER AND WASTE MATERIALS.

No person shall, within the Town of Machias, deposit, store, accumulate or abandon on any real property, or cause, consent or permit to be deposited, stored, accumulated or abandoned on any property owned or occupied as a tenant, by such person outside of an enclosed structure, securely covered garbage can or suitable trash container, any junk, rubbish, refuse, waste matter or motor vehicle parts and components, for a period longer than eight (8) days after receipt by such person of the notice prescribed in Section 9.

SECTION 9. NOTICE.

After the Enforcement Officer has determined that a junk vehicle, junk, rubbish, litter or waste material is stored, deposited, placed or abandoned on a parcel of property in violation of the provisions above, the Enforcement Officer shall send written notice, by certified mail, returned receipt requested, to the owner or occupant of the property or to the owner of the vehicle, directing the removal of such vehicle within thirty (30) days or waste material within eight (8) days after receipt of such notice. If the situation persists after such time for removal expires, a violation of this Law exists. Once the violation exists, the violator shall be issued a summons to appear in the Town Justice Court to answer charges.

SECTION 10. PRESUMPTION.

There shall be a presumption that a person who has been cited by the Enforcement Officer with the notice as prescribed in Section 9 has stored, deposited, placed or abandoned or caused, consented or permitted the deposit, storage, abandonment or placement of junk vehicles, junk, garbage, litter or waste material described in such notice.

There shall be a presumption that service of the notice is complete upon receipt of such notice by owner or occupant of the property as confirmed by returned receipt of certified mail.

SECTION 11. ENFORCEMENT OFFICER.

This Local Law may be enforced by any Constable of the Town of Machias, appointed Code Enforcement Officer or any law enforcement agency.

SECTION 12. MANNER OF ENFORCEMENT.

A. A violator of this Local Law shall be guilty of a violation and such violation punishable by a fine of \$100.00 per day or imprisonment of not more than fifteen (15) days, or both. Each day the violation shall continue shall constitute a separate offense.

B. In addition to the enforcement in a criminal proceeding by fine or imprisonment, this Local Law may be enforced by instituting a special proceeding as authorized by Article 4 of the Civil Practice Law and Rule to compel compliance with the provisions of this Local Law or to restrain by injunction any violation thereof or to obtain any other appropriate relief.

C. A civil penalty of \$100.00 per day is hereby imposed for each day of violation of this Local Law which penalty may be collected in any judgment rendered in a proceeding under Paragraph B or in a civil action.

SECTION 13. EXCEPTIONS.

A. All junk yards in existence at the time this Local Law is enacted shall have a period of six (6) months to comply with the fencing requirements as provided in Section 6 and after compliance with such fencing requirements, the owner will be issued a permit, without public hearing. If owners of junk yards,

now in existence, do not comply with this provisions, they shall be considered in violation.

B. No owner or occupant of any property shall be considered in violation if their abandoned vehicles, junk , rubbish, or trash are hidden from ordinary view from public roads and adjoining properties by land contours or visual screens such as fences, trees or bushes. However, accumulation of more than five (5) junk vehicles, even though out of sight, stored on any real property owned by one person, is prohibited without a valid junk yard permit as addressed in Section 4.

SECTION 14. SEPARABILITY OF PROVISIONS.

If any clause, sentence, phrase, paragraph or part of this Local Law shall, for any reason, be finally adjudged by a court of jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Local Law but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof directly involved in the controversy or action which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of any such section would have been adopted had such provision not been included.

SECTION 15. EFFECTIVE DATE.

This Local Law shall take effect immediately upon the filing thereof with the Secretary of State.

(Complete the circulation in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2002 of the ~~(County)(City)~~(Town)(Village) of Machias was duly passed by the Town Board on April 15th, 2002, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concern. Charter revision proposed by petition.

I hereby certify that the local law annexed hereto, designated as local law No. of 19.... of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on..... 19...., became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19.... of the County of State of New York, having been submitted to the electors at the General Election of November 19...., pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph.....¹....., above.

Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF CATTARAUGUS

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Town Attorney

Title

~~County~~
~~City~~ of Machias
Town
~~Village~~

Date: _____

§ 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 moto

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.

HISTORY:

Add, L 1965, ch 1040, eff Sept 1, 1965.

Former § 136, add, L 1911, ch 700, amd, L 1943, ch 710, Pt 1, repealed, L 1955, ch 133, eff Mar 21, 1955.

Sub 4, amd, L 1972, ch 892, eff Sept 1, 1973.

Sub 12, amd, L 1972, ch 892, eff Sept 1, 1973.

Sub 15, add, L 1968, ch 108, eff Sept 1, 1968.

CROSS REFERENCES:

This section referred to in CLS Veh & Tr § 415-a.

Proceeding against body or officer, CLS CPLR Art 78, §§ 7801 et seq.

Receipt of services for mental disability or appointment of conservator not a disqualification for permit or license, CLS Men Hyg §§ 15.01, 77.25.

RESEARCH REFERENCES AND PRACTICE AIDS:

59 NY Jur, Towns §§ 176 et seq.

12 NY Jur 2d, Buildings, Zoning, and Land § 215.

13 NY Jur 2d, Businesses and Occupations § 337.

16 Am Jur Trials p 99, Relief From Zoning Ordinance.

Annotations:

Regulation of junk dealers. 45 ALR2d 1391.