

Town of Otego
Junk Storage Law

Local Law # 3 of 2010

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Town of Otego
JUNK STORAGE LAW
OUTLINE

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Municipal Home Rule Law §10

ARTICLE A: INTRODUCTION

Section 1. – Authority

Be it enacted by the Town Board of the Town of Otego as follows:

Section 2. – Title

This local law is adopted pursuant to the authority granted the in Section 20(3) of the Municipal Home Rule Law and shall be known as the Town of Otego “Junk Storage Law”.

Section 3. – Purpose

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

Section 5. – Definitions

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, bottles, 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

A. No person shall throw, deposit or abandon litter on any property within the Town of Otego, whether public or private and whether or not owned by such a person, nor shall any property owner use his land for the dumping of litter on his property by others

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.

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:

- 1. the temporary use of such vehicles or units for construction purposes for periods of less than ninety (90) days;*
- 2. when actively used in connection with active farming or agricultural operations.*

ARTICLE C: EXCLUSIONS

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, fireplace located in a building or a boiler exterior to the building but located 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 Town.
- (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

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

Section 2. – Complaints

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

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

A. 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.

B. In addition upon the failure of an owner, tenant or occupant with notice to correct a violation of the Town of Otego, the Town Board may hold a public hearing to determine whether the violation constitutes a public nuisance requiring abatement by the Town. 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 Town of Otego, 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 Town 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 Town'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 Town 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 Town, the Town 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 Town. The Town 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 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 Town'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.

Section 5. Penalties and Remedies

For the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this ordinance shall be deemed misdemeanors, and for such purpose, only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

- A. Any person who shall violate any of the provisions of this ordinance 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 (15) 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.
- B. Injunction. The Town 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.
- C. Election of Remedies. Nothing herein shall prevent the Town from proceeding under any, or all, of the above enforcement methods for any violation.
- D. Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in any other section of this ordinance, or in any other applicable law.

ARTICLE E: MISCELLANEOUS

Section 1. – Severability

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. – Effective Date

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

Filing date May 18, 2010

