

Town of Otego

Junk Yard Law

LL#4 of 2010

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[HISTORY: Previously adopted by the Town Board of Otego as Local Law #1 of 2001]

General Reference

Town of Otego Site Plan Review Law, Article D. Procedure and Article G. Standards For Specific Uses, item 2. Junkyards .
Zoning Ordinance Section 534 Parking Storage of Certain Vehicles

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 to the Town in Section 10 of the Municipal Home Rule Law and shall be known as the Town of Otego “Junk Yard Law”.

Section 3. - Purpose/Intent

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 Town; 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

Enforcement Officer/Zoning Officer): The person(s) appointed by the Town 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 Mobile (Manufactured) Home: Any manufactured housing unit designed with a chassis, and constructed to be towed or otherwise transported whole or in part to a site, and which is designed to permit occupancy for dwelling, sleeping, or storage purposes and which meets all of the following conditions:

- (1) it is unoccupied and in its present condition does not meet the requirements of the New York State Uniform Fire Prevention and Building Code for residential occupancy; and
- (2) it is stored, abandoned, wrecked, discarded, dismantled, or partly dismantled.

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.

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.

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

- (1) Two (2) or more junk motor vehicles.
- (2) One (1) or more junk mobile homes.
- (3) One (1) or more junk appliances.
- (4) Two (2) or more pieces of junk furniture.
- (5) Any combination of the above that totals three (3) or more items.

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

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 Special Use Permit shall have been issued for such junkyard pursuant to Section 2 of this law.

Section 2. – General Criteria

The tract of land for which a Special Use Permit may be sought shall contain no less than 10 acres. Such tracts of land shall comply with the requirements of the Town of Otego Site Plan Review Law, Article D. Procedure, and also comply with the Article G. Standards For Specific Uses, item 2. Junkyards.

The land actually sought to be utilized as a junk yard shall not be within 50 feet of adjoining premises, unless the adjoining land owner shall waive such requirement, in writing. The land actually sought to be utilized as a junkyard shall be set back from the edge of any public highway

a distance of at least 25 feet.

There shall be erected between the area sought to be utilized as a junk-yard and any public highway, and between the junk-yard and adjoining premises, as above defined, a fence, so as to obscure the junk-yard from adjacent property not owned by the operator and from any public highway. See Article F, Specific Requirements, within this law and Standards for Specific Uses within the Town of Otego Site Plan Law.

Section 3. – Prior Existing Junkyards

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 two (2) 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 Planning 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 Planning 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

Section 1. Application

An application for a license under this local law shall be made in writing to the Planning Board on forms provided by the Zoning Officer and be filed with the Zoning Officer. The application shall be signed by the applicant(s) and the property owner(s) if different from the applicant.

Section 2. Application Fee

The annual license fee shall be set at the annual organizational meeting of the Town 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

Each person applying for a junkyard license shall complete an application supplied by the Zoning Officer and contain the following information as well as any additional information that may be required under the Site Plan Review Law:

- (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 100 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; and
- (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; and
- (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

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 Planning 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

A. Following conclusion of the SEQR review process, and within sixty-two (62) days after the close of the hearing, the Planning Board shall render its decision to either approve, approve with modifications, or disapprove the site plan. The 62-day period may be extended by mutual consent of the applicant and the board.

B. Approval. Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the town, the Planning Board shall endorse its approval on a copy of the site plan and shall immediately file the site plan and a written statement of approval with the Town Clerk.

C. Approval with Modifications. The Planning Board may approve the site plan and require that specific modifications be made. A copy of a written statement of approval containing the modifications required by the Planning Board shall be mailed to the applicant by certified mail. Upon approval and after payment by the applicant of all fees and reimbursable costs due the town, the Planning Board shall endorse its approval on a copy of the site plan and shall immediately file the site plan and a written statement of approval with the Town Clerk.

D. Disapproval. Upon disapproval of the site plan, the decision of the Planning Board shall immediately be filed with the Town Clerk and a copy thereof mailed to the applicant by certified mail along with a letter stating the Planning Board's reasons for disapproval

E. The board shall have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to the proposed junkyard permit.

Section 7. – Issuance of Permit

Upon approval of the junkyard site plan and application, and payment of the fees and reimbursable costs due the Town, the board shall file a copy with the Town Clerk and shall send a written statement of approval to the applicant by certified mail.

Section 8. – Waivers

The Planning 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 Planning 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 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

Upon written application and a fee to be established by resolution of the Town Board, the Town 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 twelve (12) 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 180 days and may be renewed for a specific vehicle one (1) times for a period of 180 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

Upon written application and a fee to be established by resolution of the Town Board, the Town 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.

ARTICLE E: GENERAL CONSIDERATIONS

To protect the clean, wholesome, safe and attractive environment of the community, the Planning 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 Town of Otego;
- (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

Section 1. – Location

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.

Section 2. – Fencing and Screening

The applicant shall erect and maintain a fence that is no less than eight (8) feet high, opaque (solid), painted of such color as will suit the natural surroundings, that 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

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 Planning 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 Planning Board pursuant to this law.

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

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 Town.

ARTICLE G: ADMINISTRATION AND ENFORCEMENT

Section 1. – Enforcement Officer

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

Section 2. – Revocation of Permit

The Planning 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 Planning 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 thirty-one (31) 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.

Section 3. – Operating a Junkyard Without a Permit

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 justice.

Section 4. – Penalties and Remedies

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 Town 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 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 provision of this law.

Section 5. – Abandoned Vehicles

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

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

The following local laws or ordinances are hereby repealed: Town of Otego Local Law #1 of 2001, “ Operation of Junk Yard”.

Section 3. – Effective Date

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