

LOCAL LAW NO. 1, 1968

A local law providing for licensing and regulating automobile junk yards.

Became a law February 7, 1968. Passed by the local legislative body of the Town of Fenner. Filed in the office of the Secretary of State, February 10, 1968.

Be it enacted by the Town Board of the Town of Fenner, as follows:

Section 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 Town of Fenner 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 town 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 local law.

Section 2. Definitions. For the purposes of this local law, "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 same 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 motor 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.

"Town" as used in this local law shall mean the Town of Fenner.

"Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

Section 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 of junk yard business and (2) has obtained a certificate of approval for the location of such junk yard.

Section 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 Town Board of the Town of Fenner. The application shall contain a description of the land to be included within the junk yard. Notwithstanding any of the provisions of this local law, no junk yard shall be licensed to operate if such yard or any part thereof shall be within five hundred feet of a church, school, hospital, public building or place of public assembly.

Section 5. Hearing. A hearing on the application shall be held within the town not less than two or more than four weeks from the date of the receipt of the application by the Town Board. 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 town, which publication shall be not less than seven days before the date of the hearing.

Section 6. License requirements. At the time and place set for hearing the Town 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 local law.

Section 7. Location requirements. At the time and place set for hearing, the Town 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.

Section 8. Aesthetic considerations. At the hearing regarding location of the junk yard, the town 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 town 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 suitable sites for the junk yard.

Section 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 January first. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed annually as of January first in each year upon payment of the annual license fee without hearing, providing all provisions of this local law 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 town board may be reviewed under article seventy-eight of the civil practice law and rules.

Section 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. The town, 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 issuance of the license shall be conditional upon payment of same.

Section 11. Fencing. Before use, 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 local law in whole or in part, the fencing requirements hereunder may be reduced by the town board, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this law.

Section 12. Violation of local law and offense; penalties therefor.

- (a) The owner or license of any such junk yard who commits or permits any acts in violation of any of the provisions of this local law shall be deemed to have committed an offense against such local law, and also shall be liable for any such violation shall continue or be permitted to exist shall constitute a separate violation.
- (b) For every violation of any provision of this local law the person violating the same shall be subject to a fine of not more than twenty-five dollars or imprisonment not exceeding ten days or by both such fine and imprisonment.
- (c) Conviction for violation of this local law shall constitute and effect an immediate forfeiture of the license.
- (d) In addition to the above provided penalties and punishment, 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 to restrain by injunction the violation of such local law.

Section 13. Repeal. All local laws or regulations heretofore adopted in conflict with this local law are hereby repealed.

Section 14. Saving clause. If any clause, sentence, paragraph, section or part 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 thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 15. Effective date. This local law shall take effect upon its being duly filed in the office of the secretary of the State of New York as provided in section twenty-seven of the Municipal Home Rule Law.

At a regular meeting of the Town Board of the Town of Fenner, the foregoing local law was duly adopted and enacted. Motion made by Councilman Charles Record, seconded by Councilman Earl Hyatt.

Vote: Ayes - Councilman Charles Record
- Councilman Earl Hyatt
- Supervisor John Larkin
- Town Justice Merwin Hughes
- Town Justice William Gerbig
No's - None

Dated: February 7, 1968
Archie McEvers
Town Clerk