

ORDINANCE

A Local Ordinance Providing for Licensing and
Regulating Automobile Junk Yards in the
Town of Wilmington, Essex County, New York

BE IT ENACTED by the Town Board of the Town of Wilmington,
Essex County, New York 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 the Town of Wilmington 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 ordinance..

Section 2. DEFINITIONS.

For the purposes of this ordinance, "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 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 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 for sale for remelting purposes only.

"Town" as used in this ordinance shall mean the Town of Wilmington, Essex County, New York.

"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 a 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 Wilmington. The application shall contain a description of the land to be included within the junk yard. Notwithstanding any of the provisions of this ordinance, no junk yard hereafter established shall be licensed to operate if such yard or any part thereof shall be within five hundred feet to 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 nor 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 ordinance.

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, provided all

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, every 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

Town Board, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this ordinance.

Section 12. ESTABLISHED JUNK YARDS

For the purpose of this Ordinance, the location of junk yards already established shall be considered approved by the Town Board where located and the owner thereof deemed suitable for the issuance of a license. Within sixty days from the effective date of this Ordinance, however, the owner shall furnish the Town Board the information as to location which is required in an application, together with the license fee, and the Town Board shall issue him a license valid until January 1, 1969, at which time said owner must apply for renewal as herein provided. The issuance of such a license to owners of established junk yards shall, however, be contingent upon compliance by the owner with all other provisions of this Ordinance, including but not limited to the fencing requirements as set forth in Section 11 of this Ordinance.

Section 13. VIOLATION OF ORDINANCE AND OFFENSE: PENALTIES THEREFOR.

(a) The owner or licensee of any such junk yard who commits or permits any acts in violation of any of the provisions of this ordinance shall be deemed to have committed an offense against such ordinance, and also shall be liable for any such violation or the penalty therefor. Each day such violation shall continue or be permitted to exist shall constitute a separate violation.

(b) For every violation of any provision of this ordinance the person violating the same shall be subject to a fine of not more than one hundred dollars or imprisonment not exceeding thirty days

(d) Any person violating this ordinance shall be subject to a civil penalty enforceable and collectable by the Town in the amount of one hundred dollars for each such offense. Such penalty shall be collectable by and in the name of the Town of each day that such violation shall continue.

(e) 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 ordinance.

Section 14. REPEAL.

All local ordinances or regulations heretofore adopted in conflict with this ordinance are hereby repealed.

Section 15. SAVING CLAUSE.

If any clause, sentence, paragraph, section or part of this ordinance 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 16. EFFECTIVE DATE.

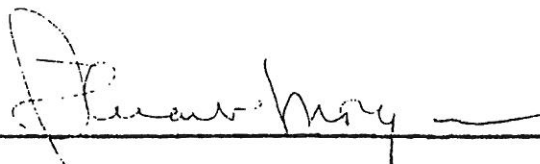
This ordinance shall take effect ten days after the publication and posting of a copy of such ordinance pursuant to Section 133 of the Town Law, except that such ordinance shall take effect from the date of its service upon any person or party served personally with a copy thereof, certified by the Town Clerk under the corporate seal of the Town, and showing the date of its passage

STATE OF NEW YORK)
) SS:
COUNTY OF ESSEX)

I, Stuart Morgan, Town Clerk of the Town of Wilmington, Essex County, New York, do hereby certify that I have compared the annexed Ordinance enacted by the Town Board of the Town of Wilmington, Essex County, New York with the original thereof filed in my office at Wilmington, New York on the 6th day of November, 1967, and the same is a true and correct copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this 6th day of September, 1969.

(Town Seal)



Town Clerk of the Town of Wilmington,
Essex County, New York

AMENDED ORDINANCE
(Amending Ordinance date, November 6, 1967)

A Local Ordinance Providing for Licensing and Regulating Automobile Junk Yards in the Town of Wilmington, Essex County, New York

BE IT ENACTED by the Town Board of the Town of Wilmington, Essex County, New York as follows:

This Amendment to the aforementioned Ordinance shall include revisions to Section 2: Definitions and Section 3: Requirement for Operation or Maintenance.

SECTION 2: DEFINITIONS

Junked Vehicles means any motor vehicles whether automobile, bus, trailer, truck, tractor, motor home, motorcycle, mini bicycle, snowmobile, all terrain vehicle, go-cart, bicycle, golf cart, lawn tractor, boat, snow blower, lawn mower, travel trailer, camper, or any other pieced machinery originally intended for travel on the public highways which (1) is unlicensed, wrecked, stored, discarded or dismantled or partly dismantled; which is not intended or in any type of usable condition. With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more then six (6) months and is not in condition to be removed under its own power, shall be presumptive evidence that such motor vehicle is a “junk vehicle”.

SECTION 3: REQUIREMENT FOR OPERATION OR MAINTENANCE

Individual Junk Vehicles No individual junk vehicle, as that term is defined herein, may be located so as to be visible from public roads, public trails, public boat or canoe routes for a period of greater than six (6) months. In the event that a junk vehicle is visible from these areas, the junk vehicle must be removed within ten (10) days of receiving notice from an authorized officer of the Town of Wilmington.

Anyone in violation of this Section 3 shall be subject to the same penalties as set forth in Section 13 of the original Ordinance.

BE IT FURTHER ENTEND THAT: All other provisions of the original Ordinance regarding this Licensing and Regulations of Automobile Junk Yards, dated November 6, 1967 shall remain in full force and effect.

This Ordinance shall take effect ten (10) days after publication and posting of said Ordinance pursuant to applicable Section of Town Law.

STATE OF NEW YORK }
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COUNTY OF ESSEX }

I, Gerald Bruce, Town Clerk of the Town of Wilmington, Essex County, New York, do hereby certify that I have compared the annexed Ordinance enacted by the Town Board of the Town of Wilmington, Essex County, New York with the original thereof filed in my office at Wilmington, New York on the 14 day of July, 2010, and the same is a true and correct copy of said original and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this 14 day of July, 2010.

Gerald Bruce
Gerald Bruce, Town Clerk

(TOWN SEAL)