

TOWN OF HARPERSFIELD

LOCAL LAW NO. 002 OF THE YEAR 2006

A LOCAL LAW REGULATING JUNKYARDS IN THE TOWN OF HARPERSFIELD.

ARTICLE A: INTRODUCTION.

Section 1 - Authority:

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

This local law is adopted pursuant to the authority granted the Town in Section 10 of the Municipal Home Rule Law.

Section 2 - Title:

This local law shall be known as "A local law regulating junkyards in the Town of Harpersfield".

Section 3 - Purpose:

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 municipality; 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: The person(s) appointed by the governing 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, computer or other electronic equipment, 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 chest of drawers, which is stored outside of any residence or structure.

Junk Mobile Home: Any enclosed dwelling built upon a chassis, motor vehicle, or trailer used or designed to be used for

either permanent or temporary occupancy. To qualify as a junk mobile home, the dwelling must meet three out of five of the following conditions for six months or more:

- 1) the electrical service is disconnected or terminated.
- 2) it is abandoned as a dwelling unit.
- 3) it is no longer habitable for residential occupancy.
- 4) it is unoccupied and in its present condition does not meet the requirements of the federal HUD standards for residential occupancy.
- 5) it is either 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 moved 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 viewed or not from a public street or other location or in connection with another business or not:

- 1) Four or more junk motor vehicles.

- 2) One or more junk mobile homes.
- 3) Two or more junk appliances.
- 4) Any combination of the above that totals eight or more items.

Motor Vehicle: All vehicles propelled or drawn by power other than muscular power including but not limited to automobile, bus, trailer, truck, tractor, motor home, motorcycle, boat, 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: 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, streams, 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 municipality;
- 10) the type of junk to be stored or deposited in the junkyard; and
- 11) any record the applicant has of convictions for larceny or receiving stolen property.

ARTICLE C: SPECIFIC REQUIREMENTS.

Section 1 - Location:

No junk storage area shall be located where lot dimensions permit any adjoining property line; any public park, church, educational facility, nursing home, public building or other place of public gathering; any river, stream, lake, pond, wetland or other body of water; or the right-of-way of a public road.

Section 2 - Fencing and Screening:

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 Planning Board, upon granting the permit, provided however, that such natural barrier conforms with the purposes of this chapter.

The applicant shall erect and maintain a fence that is six feet high, encloses the entire junkyard.

Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence should be made of wood or other materials sufficient to screen the junkyard from view of roadways or neighboring properties.

Section 3 - Fire Safety:

Inside, adjacent to and continuous with the fence or enclosure, there shall be one strip of land at least three 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 governing board pursuant to this law.

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 municipality.

ARTICLE D: 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 permit shall have been issued for such junkyard pursuant to section C of this law. The Town of Harpersfield Planning Board is authorized by the Town Board to review and approve, approve with modifications, or deny permits.

Section 2 - Prior Existing Junkyards:

Any person maintaining a junkyard shall apply for a permit within 60 days of the effective date of this law. If the junkyard does not meet the requirements of this law, a temporary permit shall be granted for a period not to exceed one year, during which time the junkyard shall be brought into compliance with said requirements. If at the end of such period the junkyard does not comply with said requirements, such person shall cease and desist from maintaining a junkyard and all junk shall be removed from the premises by such person at their expense.

ARTICLE E: APPLICATION PROCEDURE.

Section 1 - Application:

An application for a permit under this local law shall be made in writing to the Planning Board on forms provided by the Town Clerk and be filed with the Town Planning board Chair, who shall within five business days transmit a copy to

the Code Enforcement Officer. The application shall be received by the Planning Board Chair ten days prior to their regular meeting in order to be placed on the agenda. The application shall be signed by the applicant(s) and the property owner(s), if they are different persons.

Section 2 - Application Fee and Site Inspection:

There shall be a \$25.00 application fee. 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. The Planning Board is authorized to establish an escrow fund, acceptable to the Town, to hire consultants to assist in the review of the application.

Within 30 days after a permit application is received, one Planning Board member and the Code Enforcement Officer will inspect the site and make a written report to the Planning Board for their consideration of the application.

Section 3 - Junkyard Application Contents:

Each person applying for a junkyard license shall complete an application supplied by the municipality and contain the following information:

1. A map of the site where the junkyard is proposed, including address and real property tax number;
2. Property lines including the names of the owners of the 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.
13. If applicant is a dealer: whether they have obtained a valid junk dealer's license under Article 6 of the State General Business Law.

Section 4 - Environmental Compliance (SEQRA):

A full environmental assessment form (EAF) (required by the State Environmental Quality Review Act ("SEQRA")) shall be completed and submitted with all applications. The Town Clerk shall have the form available for applicants.

If the Planning Board determines pursuant to SEQRA 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 ("DEIS"). The Planning Board shall not deem an application complete until the Board has either (a) issued a negative declaration or (b) accepted a DEIS as satisfactory with respect to scope, content and adequacy.

Section 5 - Public Hearing:

The Planning Board shall conduct a public hearing on any application for a permit. Any public hearing held hereunder may be combined with any public hearing held pursuant to SEQRA. 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. Further notice shall be made to adjoining property owners within 250 feet of the proposed location at least five days prior to the date of the hearing. The Planning Board shall require the applicant to provide a list of all such property owners based on the most current year's tax roll along with pre-addressed, postage paid envelopes for the Town's use for notifying residents or shall require the applicant to mail the notices and provide copies of return receipts to the Board.

Section 6 - Board Action:

Within 62 days of the close of said public hearing the Planning Board shall render a decision on the application for a junkyard permit based upon general considerations and the ability to meet the junkyard regulations. The 62 day period may be extended by mutual consent of the applicant and the Board. The Board shall have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to the proposed junkyard permit.

The Planning Board shall make findings related to the standards and purposes set forth in this law, and shall enter such findings into the official minutes. The decision of the Board shall be filed in the office of the Town Clerk within five business days from the date it was rendered and the applicant shall be notified of the decision and the reasons for such decision by mail within five business days of the decision of the Board. If denied, the Board shall include the reasons for such denial.

Section 7 - Issuance of Permit:

Upon approval of the junkyard plan and application, and payment of any fees and reimbursable costs due the municipality, the Planning Board shall endorse its approval upon a copy of the final junkyard plan and application.

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 F: 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 with proper documentation; or

(b) a member of the United States Armed Forces with proper documentation.

2. Operational seasonal vehicles or machinery during their off-season if kept in a location not visible from any road, street or highway, when practicable.
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 vehicle which is being restored.

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.

ARTICLE G: ADMINISTRATION AND ENFORCEMENT.

Section 1 - Enforcement Officer:

This law may be enforced by the Town Code Enforcement Officer. Said persons shall have the authority to enforce the provisions of this law and to inspect premises within the municipality 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, the Planning Board shall hold a public hearing. 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 and shall be given an opportunity to be heard.

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 20 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.

In the event personal service and service by certified mail return receipt requested fail, service may be made in accordance with any method available under Article 3 of the Civil Practice Law and Rules of the State of New York.

Section 3 - Operating a Junkyard Without a Permit:

If the Enforcement Officer shall find that a 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 who the Enforcement Officer has reason to believe has violated this law, and shall cause such person to appear before the Town Justice. The Code Enforcement Officer shall, prior to issuing an appearance ticket, issue an Order to Remedy whereby the alleged junkyard has 60 days to apply for a permit. If after 60 days no application has been filed with the Town, the appearance ticket will be issued and the penalties detailed in Section 4, below, will apply.

Section 4 - Penalties and Remedies:

- A. When the Enforcement Officer determines that a violation of this local law has occurred, the following enforcement steps shall be taken:
- i) The Enforcement Officer shall issue a written Order to Remedy, by personal service or by registered or certified mail, on the owner of the property where such violation exists, whereby the person has 60 (sixty) days from the date of receipt of said notice to correct the violation.
 - ii) If the violation is not corrected within such 60-day period, the Planning Board may initiate revocation of the junkyard permit. In addition, following such failure, the Town may institute enforcement action in accordance with the provisions of subsection (b) hereof. If such operation does not have a current

permit, such operation shall have 60 days to apply and receive a permit. If no permit exists after the 60 days, the Town may institute enforcement action in accordance with the provisions of subsection (b) hereof.

- B. i) Any person who shall violate any of the provisions of this law shall be guilty of a violation and subject to the following:
- a) A fine not to exceed \$250.00 or imprisonment for a period not to exceed fifteen days, or both;
 - b) A penalty of \$250.00 to be recovered by the municipality in a civil action.
- ii) In any proceeding instituted under this section, each day that such violation, disobedience, omission, neglect or refusal shall continue shall constitute a separate and distinct violation.
- C. Notwithstanding any other provision of this law, the Town Board may at any time authorize an action or proceeding be instituted and maintained 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.

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 judgement 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 judgement shall have been rendered.

Section 2 - Prior Existing Junkyard Law:

The following local laws or ordinances are hereby repealed: Junk Dealers Ordinance, Ordinance No. 1, November 12, 1963 and Rules and Regulations Governing Issuance of License Pursuant to the 1963 Ordinance, dated May 12, 1964.

Section 3 - Effective Date:

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