

## **ARTICLE 35-100: REGULATING JUNK AND JUNKYARDS**

### **Section 35-100. Title**

This local law shall be known as the "Local Law Providing for Licensing and Regulating Junk and Junkyards" and shall constitute Article 35-100 of the Town of Busti Code.

### **Section 35-101. Legislative Intent**

(a) In the Town of Busti, damaged, worn out, scrapped or discarded materials or objects, such as automobiles and other vehicles, building materials, machinery, metal, wastepaper, rags, glassware, tinware and plastic, have been, or are in the future may be stored, stocked or used in a dangerous or unsanitary manner on lands, yards, junkyards or other places within the town;

(b) The places in which damaged, worn out, scrapped or discarded materials or objects are stored, have been, and or in the future may be stored, tend to become overgrown with weeds, littered with rubbish and debris and infested with rats, mice, insects, reptiles and other vermin;

(c) Such conditions tend to attract children and other people and endanger their lives and health, safety and welfare, spread disease, invite plundering, attract vagrants, create fire hazards and other health and safety hazards, create, extend and aggravate blight, interfere with use and enjoyment of and reduce the value of private property and interfere with the comfort and well-being of the public;

(d) Thieves and receivers of stolen property frequently attempt to dispose of stolen property by representing it to be legitimately acquired junk, scrap or debris;

(e) Adequate protection of public health, safety and welfare of the inhabitants, visitors and guests in the Town of Busti requires that the business in handling and dealing in junk be regulated and controlled.

(f) Therefore, it is the intent of the Town Board of the Town of Busti that a clean, wholesome, attractive community and environment is declared to be of importance to the health, safety and welfare of the inhabitants and the safeguarding of the 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 and the general welfare of the inhabitants. It is further declared that the unrestrained accumulation of junk, vehicles, building materials, machinery, metal, wastepaper, rags, glassware, tinware and plastic, among others, is a hazard to such health, safety and welfare of the inhabitants of the Town of Busti, necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junkyards in a suitable location, as hereinafter defined, can serve a useful purpose and may need to be accommodated when not in conflict with the express purpose of this action.

### **Section 35-105. Definitions**

mobile homes no longer used as such, whether for the purpose of resale or used parts or components therefrom, 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; but "junk" shall not include materials or objects held and used by a manufacturing process.

(c) JUNKYARD-includes, but is not limited to include an automobile or vehicle salvage yard; an automobile or vehicle reduction yard; a motor vehicle junkyard; an automobile or vehicle wrecking establishment; an automobile or vehicle graveyard; a scrap metal processing yard or facility; a vehicle dismantling yard or facility; a mechanical disassembly yard or facility; or any premises, establishment, place of business, or lot, lands or structure, covered or uncovered if outdoors, whether in connection with another legitimate business or not, which is used for the collecting, storing, keeping, buying, selling, exchanging, dismantling, handling, compacting, baling, shredding, processing or salvaging of junk or salvage. Storage of three (3) or more inoperative motor vehicles other than in a fully enclosed building shall constitute a junkyard.

(d) JUNKYARD AREA-that portion of any piece of property used in the operation of a junkyard.

(e) MOTOR VEHICLE-all passenger automobiles, trucks, trailers, buses, motorcycles, tractors, bulldozers, machinery and equipment, drawn by power other than muscle power, originally intended for use on public highways, racetracks, dirt roads, mines, airports, quarries, construction sites or farms. Off road farm equipment stored and used on farm premises that is operable is exempt from this definition.

(f) PERSON-any individual, firm, association, partnership, corporation, company or organization of any kind.

#### **Section 35-110. License and Certificate of Approval Required**

No person, whether personally, by agents or employees, singularly or along with some other business or enterprise, shall operate, establish or maintain a junkyard until he, she or it has obtained a license to operate such junkyard and has obtained a certificate of approval for the location of such junkyard.

No landowner shall permit, allow, tolerate or consent to the operation of a junkyard on his, her or its property until such landowner or junkyard operator has obtained a license to operate such junkyard and has obtained a certificate of approval for the location pursuant to the terms of this Local Law.

No junkyard, except those referred to in Section 35-170 hereof, shall be allowed in any portion of the town except in that portion of the CAMP-Conservation Agriculture Mobile Park District as defined by the Town of Busti Zoning code which is bounded as follows: on the north by Kortwright Road, on the west by the Town of Harmony; on the east by

- (a) The name, residence, address and telephone number of each individual property owner and operator, partner, or if a corporation or other organization, each officer and director.
- (b) The trade name and address and telephone number of the business on behalf of which the application is made.
- (c) The exact address and location of the place where the business is, or is proposed to be carried on, plus a survey and proposed site plan of the premises to be used, giving the precise location of all fencing, buildings, water, sewer and gas mains or laterals, and the general drainage pattern of the land. Such survey shall also show the precise portion of the property that may be devoted to the operation of a junkyard. In the event that additional premises are used for junk storage and if such premises were not included in the previous application, the applicant is required to file a supplementary application including all of the information as herein required and in the same form and subject to the same conditions as the original application. If such supplementary application is duly approved, a supplementary license will be issued.
- (d) The zoning classification in which each of the premises described in Subsection (c) hereof is situated.
- (e) A statement as to whether each of said premises are described in Subsection I hereof complies in all respects with zoning and Building Code of the Town of Busti.
- (f) 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 of the State of New York.
- (g) The location of all premises where said applicant stores junk, permanently or temporarily, in the Town of Busti.
- (h) The names and address of the owner or owners of the real property and the nature of the right under which applicant possess said property.
- (i) Whether applicant has obtained a valid junk dealer's license under Article 6 of the New York State General Business Law.
- (j) Whether the application is for a temporary or permanent license.

**Section 35-120. Hearing on Applications**

A hearing on the application shall be held by the Town Board within the town not less than four (4) nor more than six (6) 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 (7) days before the date of the hearing.

**Section 35-130. Licensing Standards**

and/or site plan requirements of the Town of Busti.

**Section 35-135. Location Standards**

At the time and place 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 junkyard. In passing upon the same, it shall take into account, after proof of legal ownership or right to such use of property for the license period by the applicant, and zoning district in which the property is located, the nature and development of surrounding property, such as the proximity of churches, 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 35-140. Aesthetic Standards**

At the hearing regarding the location of the junkyard, 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 serving the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed access routes thereto, as well as the reasonable availability of other suitable sites for the sites for the junkyard.

**Section 35-145. Determination of Town Board Appeal**

After the hearing, the Town Board shall, within two (2) weeks, make a finding as to whether or not the application should be granted, giving notice of its finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approval of location, shall be forthwith issued to remain in effect until December 31st of the year. Approval shall be personal to the applicant at the specific location applied for and not assignable. Licenses shall be renewed without hearing, provided that all provisions of this local law are complied with during the license period, that the junkyard does not become a public nuisance under the common law and that 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 78 of the Civil Practice Law and Rules.

**Section 35-150. Duration Renewal**

Such license, except a temporary license, shall be effective from date of its issuance until the 31st day of December of the year of such issuance, upon which date such license shall expire. An applicant for a renewal license shall file with the Town Clerk a written

junkyard. No junkyard license shall be effective unless the junkyard is in compliance with the Town of Busti Zoning Law.

**Section 35-165. Regulations**

(a) Each junkyard shall be located wholly within a building or shall be completely enclosed within a fence with entrance only through a suitable gate which shall be locked except when the junkyard is staffed and open for business. The fence gate shall not be wider than reasonably necessary for the conduct of the licensed business. The building exterior or fence facing any public highway, street or road, and for the first two hundred (200) feet back from the point where such building or fence turns substantially away from the street, road or highway, shall be opaque and constructed of wood or similar material and if a fence shall be at least six (6) feet in height. Any fence shall be erected no nearer than fifty (50) feet from the closest edge of the highway and not nearer than one hundred (100) feet from any existing dwelling on neighboring property and no nearer than (25) twenty-five feet from each property line. Where the topography, natural growth of timber or other considerations accomplish the purposes of the local law in the whole or in part, the fencing requirements hereunder may be waived or modified by the Town Board upon granting the license; provided, however, that such natural barrier conforms to the purposes of this Local Law.

(b) Inside, adjacent to and continuous with such above-referenced fence, applicant shall maintain a strip of land at least ten (10) feet in width which shall be kept free of all junk or other obstruction so as to provide a fire road around the entire area where business activity is conducted.

(c) All motor vehicles of any kind whatsoever and parts thereof and all junk as hereinabove described, stored either permanently or temporarily by applicant, shall be kept within the enclosure of the junkyard except for reasonable transportation of same, which shall then be conducted only during reasonable business hours.

(d) No motor vehicles or other junk shall be piled to any height above six (6) feet.

(e) The junkyard, together with all things therein, shall at all times be maintained in a sanitary condition, and arranged in neat rows so as to permit easy, clean passage and inspection of the premises and to insure easy access in the event of fire or contamination by environmental hazard.

(f) No garbage, or other waste liable to give of a foul odor or attract vermin shall be kept on the premises, nor shall any refuse or garbage of any kind be kept on the premises unless such is junk as defined herein and is in use in the licensed business.

(g) No junk or other material shall be burned on the premises, except in accordance with the other applicable provisions of the law governing the burning of refuse or junk.

(h) No junkyard shall be allowed to become a nuisance, nor shall any junkyard be

### **Section 35-170. Existing Junkyards**

For the purposes of this section of this Local Law only, the location of junkyards already established shall be considered approved by the Town Board where located and the owner thereof deemed suitable for the issuance of a license but nothing herein contained shall constitute approval under the Town of Busti Zoning Law which requires approval and compliance separate and apart from this Local Law. Within sixty (60) days from the date this local law shall take effect, however, the owner shall furnish the Town Board the information as to location, which is required in an application, and the governing board shall issue him, her or it a license valid for the remainder of the calendar year. A licensee may apply for one (1) additional six (6) month period to come into compliance if considerable process toward compliance can be shown after a five (5) month period. Such license shall be renewed only upon satisfactory proof that all provisions of this local law, including the fencing requirements; have been fully complied with, except that the setback and boundary line dimension provisions may, in the discretion of the Town Board, be waived or modified based upon a finding that no neighboring property or the public at large is harmed or prejudiced by such waiver or modification.

### **Section 35-175. Inspections**

(a) The Inspections Officer (Code Enforcement Officer) or his duly authorized representative shall inspect the junkyards of all junk dealers licensed under this local law at least once a year to determine whether such yards are being operated in accordance with the provisions of this local law and other applicable provisions of law.

(b) No person shall refuse entry to the Town Inspections Officer or other Town Officer attempting to enter any premises for the purpose of inspection. Such entry shall be permitted not only to areas open to the public but also to all other areas, provided that no employee shall be required to accompany any officer in any area that the employee deems to be dangerous, if the employee tells the inspector or officer that the area is, in the employee's opinion, dangerous.

### **Section 35-180. Penalties for Offenses**

(a) The owner or licensee of any such place of business 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 or the penalty therefrom. Each day such violation shall continue or be permitted to exist shall constitute a separate violation.

(b) For each violation of any provision of this local law, the person violating the same shall be subject to a fine of not more than one hundred dollars (\$100.00).

(c) 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

(f) If any junk is stored or placed in any part of the operator's property other than that designated for such purpose on that person's application, without first supplementing such application, the junkyard license shall be revoked.

**Section 35-185. Separability**

In the event any portion of this local law is declared to be unenforceable by the court of competent jurisdiction, all of the remainder shall continue in full force and effect.

**Section 35-190. Effective Date**

This law shall take effect when filed with the Secretary of State.

**Section 35-200. Revocation**

This local law shall rescind and replace Local Law No. 1 for the year 1997.

**ADOPTED 8/3/98**

**AMENDED 9/22/01**

**A LOCAL LAW AMENDING THE LOCAL LAW PROVIDING FOR LICENSING AND REGULATING JUNK AND JUNKYARDS IN THE TOWN OF BUSTI**

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

**Section 1.**

“Section 35-176. Enforcement and Compliance -- Notice of Violation” is hereby added to the Town of Busti Local Law Providing for Licensing and Regulating Junk and Junkyards as follows:

(a) Whenever the Town Inspections Officer shall declare that any property shall be in violation of this article, he shall issue a notice of violation to the owner, tenant, or occupant in control of or in possession of such property, that specifies the provision of law being violated, outlines the facts constituting such violation and the manner in which it must be corrected, and sets the date by which the violation must be corrected.

(b) All written notices under this section shall be served on the owner, tenant or occupant by posting a copy of such violation notice upon the front portion of the affected property or upon the main structure and by mailing a copy of such notice by ordinary mail to the owner of the property as shown on the latest assessment rolls of the town.

hereunder.

### Section 3.

“Section 35-181. Removal by Town - Charges” is hereby added to the Town of Busti Local Law Providing for Licensing and Regulating Junk and Junkyards as follows.

(a) Upon the failure of an owner, tenant or occupant to comply with a notice to correct a condition complained of, the Town Board may hold a public hearing. The public hearing shall be held upon notice posted conspicuously on the front portion of the affected property or upon the main structure and forwarded to the last known address of the property owner as shown on the latest assessment rolls of the town, by certified mail, return receipt requested. Posting and service of such notice shall not be less than fifteen (15) days prior to the date of such hearing.

(b) The Town Board, after a public hearing as provided in Subsection (a), may cause any condition that exists in violation of this chapter to be removed from any property within the Town of Busti upon the failure of such owner, tenant or occupant to comply with any order of the Town Board. Said removal may be performed by the Superintendent of Highways or other designee, including a private contractor. The Town Board shall ascertain the cost of the proceeding and the costs of removal, and such costs shall be charged and assessed against the owner of the property. The expense so assessed shall constitute a lien and charge on the 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 removal of any condition in violation of this chapter by the Town of Busti or its agents shall not operate to excuse such owner, tenant or occupant from properly maintaining any premises as required by this article, and such owner, tenant or occupant shall, notwithstanding such action, be subject to any other penalties for herein.

9/22/01