TOWN OF VAN ETTEN
VAN ETTEN, NEW YORK
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LOCAL LAW NO. 1 OF 1990

OF THE TOWN OF VAN ETTEN,

COUNTY OF CHEMUNG,

STATE OF NEW YORK.

A LOCAL LAW REGULATING

AUTOMOBILE JUNK YARDS

IN THE TOWN OF VAN ETTEN

CHEMUNG COUNTY,

STATE OF NEW YORK

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF VAN ETTEN, COUNTY OF CHEMUNG, STATE OF NEW YORK, AS FOLLOWS:

Section 1. Finding.

A clean, wholesome, attractive environment is hereby declared to be of importance to the health, safety and general well being of the inhabitants of the Town of Van Etten and to the orderly development and improvement of the Town and to the general welfare of the inhabitants. It is hereby found that the unrestrained accumulation of junk motor vehicles constitutes a hazard to such environment, to such development, and to such general welfare of the inhabitants. Accordingly such accumulation is hereby regulated as follows.

Section 2. Definitions.

As used in this Local Law, the following terms and phrases shall have the following meanings respectively:

"Motor Vehicle", any vehicle propelled or drawn by power, other than muscular power, originally intended for use on public highways

"Junk Car", any unregistered or second hand motor vehicle no longer intended or in condition for legal use on the public highways.

"Automobile Junk Yard" or "Junk Yard", any place of storage or deposit, whether in connection with another business or

not, where two or more junk cars are held whether for the purpose of reclaiming for use some or all of the material within, 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 purpose of parts or portions of motor vehicles which when taken together shall equal in bulk one or more junk cars.

"Established Junk Yard", An automobile junk yard already in existence on the effective date of this local law.

"New Junk Yard", An automobile junk yard proposed to be established after the effective date of this local law.

"Persons", any individual, joint venture, partnership, association or corporation. It shall include owners of premises and the vendees, lessors and lessees thereof, and, in the case of a vehicle or parts thereof, the last registered owner and all persons claiming an interest in same.

"Seasonal Vehicle", A vehicle intended to be used part of the year such as motorcycles, boats and trailers, motor homes or travel trailers.

"Classic Motor Vehicle", An older vehicle in near new condition, "most representative of the excellence of its kind", and is currently registered as a historic vehicle with the New York State Bureau of Motor Vehicles.

"Utility Vehicle", An unlicensed motor vehicle used for utilitarian purposes such as tractors, farm trucks, doodle-bugs or bulldozers.

Section 3, Establishment, operation and maintenance of Automobile Junk Yards.

No person shall establish, operate or maintain, nor permit another person to establish, operate or maintain an automobile junk yard within the town of Van Etten until they have obtained a license therefor and if a new junk yard, a certificate of approval of the location, and complied with the other requirements of this local law.

Section 4, Requirements, New Junk Yard.

A. Location. The location of a new junk yard must be approved by the Town Board. In considering such location the Board may take into consideration the nature and development of surrounding property such as the proximity of churches, schools, public building or places of public gathering, and whether the proposed location will have an unfavorable effect on the clean, wholesome and attractive environment of the town. In this connection the Board may consider collectively

the type of roads servicing the junk yard or from which the junk yard may be seen, Visibility from neighboring residences, the natural or artificial barriers protecting the junk yard from view, and also the reasonable availability of other suitable sites for the junk yard. In any event no new junk yard may be located within 500 feet of a church, school, hospital, convalescent or nursing type home, public building or place of public assembly.

B. Application. Any person proposing to establish a new junk yard must apply to the Town Clerk for a license to establish and operate such junk yard and also for a certificate of approval of the proposed location. The application must be in writing on a form furnished by the Town and contain information with respect to paragraph "A" above. It must also list any convictions of the proposed operator for larceny, receiving, processing or selling stolen goods, or offenses or crimes of similar nature. The applicant shall also comply with requirements of the State Environmental Quality Review Act and submit with the application an Environmental Impact Statement, if required thereunder.

C. Fee To Accompany Application. All applications must be accompanied by the require fee. If a license is not granted, the fee will be returned.

D. Hearing. The Town Clerk shall refer each application for a license to the Town Board at its next regular meeting. The Town Board shall thereupon set a date for a hearing on the application to be held not less than two weeks nor more than forty five days from the date of said Board Meeting. Notice of the hearing will be given to the applicant by first class mail, postage prepaid to the address given on the application and shall be published once in the towns designated newspaper at least five days before the date of the hearing. The Town shall also give notice by first class mail, return reciept requested to neighboring property owners within a 1200 foot radius of the proposed junk yard of the hearing and its purpose. At the time and place set for the hearing the Town Board shall hear the applicant and any other interested parties.

E. Decision. In considering the location and the applicants ability to comply with the requirements of this local law the Town Board shall take into consideration any records of convictions, and any other matters dealing with the purposes and requirements of this local law. Within one month after the hearing unless delayed for receipt of other information the Board shall determine whether the application and certificate of approval will be granted and shall notify the applicant by first class mail. If the determination is favorable the Town Clerk shall forthwith issue the license and certificate of approval for the junk yards location.

Such license and certificate shall be deemed conditional for a period of six months at which time the junk yard shall be inspected by the Board appointed representative. If found not to be in compliance, the license shall be revoked. If the Board shall deny the certificate of location or the license, it shall set forth the reasons therefore and direct return of the applicants filing fee.

F. Fencing. Every Junk Yard must be so fenced or screened, either by fencing which must be maintained in good repair and neat appearance or by shrubbery or by natural topography from view from any bounding highways or from any adjacent dwelling or business establishment of any kind. Where by reason of topography, such as a side hill location a complete screening from such view is not feasible, the Town Board may make such modifications of this requirement as, in its judgement are reasonable and are consistent with the purposes of the Local Law. Any such fencing or screening must be located at least 50 feet from the center of any bounding highway and not less than 25 feet from any property line.

G. Fire Lane. Inside and adjacent to the screens or fences, and, where there is no screening, inside and adjacent to the inside boundary of the junk yard, there shall be maintained a fire lane of at least ten feet in width which shall be kept free of any materials and within which no structures will be permitted.

H. Time of Operation. All operations of the Junk Yard shall take place within the screened or fenced area, and no operations involving noise shall be conducted before 8:00 A. M. or after 9:00 P. M.

I. Bonding; Insurance. Before any license is issued by the Town Clerk the applicant will furnish to the Town of Van Etten a Bond or Certificate of Insurance in the minimum amount of One million dollars ($1,000,000.00), holding the Town of Van Etten harmless from any liability resulting from any operations of the proposed Junk Yard. Such liability shall include but not be limited to personal injury, property damage, pollution or environmental damage. Such policy or bond shall name the Town of Van Etten as Additionally Insured.

J. Assignability. No license issued hereunder, including a renewal license, shall be assignable to any other person without the consent of the Town Board. The requirements and conditions applicable to the initial applicants shall apply to any proposed assignee.

Section 5. Established Junk Yards.

A. General Requirements. All portions of "Section 4" shall apply to Established Junk Yards except the requirements for location.

B. Licensing. Established Junk Yards shall apply for a license within six months of the effective date hereof, which license may be granted following the procedures of "Section 4 (B), (C), (D), and (E). Such license shall be conditionally granted, provided the applicant shall be in conformity with the provisions, (except as to location) of this Local Law within one year of its adoption.

C. Discontinuance. Any Person who does, or proposes to, discontinue operation of a junk yard rather than secure a license hereunder shall propose to the Town Board within six months of the effective date of this law a plan to remove, bury or relocate junk cars at said persons expense to a location where they are not visible from a public highway or from any residence or business establishment. If such a plan is approved by the Town Board, and in fact diligently executed, such owner or operator shall be excused from securing a license. If removal or disposition is to be within the Town of Van Etten, the applicant shall provide evidence of compliance with this and all other local, state and federal laws and regulations.

D. Discontinuance After Licensure. If rather than secure a renewal license the person chooses to discontinue operation of a junk yard they shall propose a plan of discontinuance as outlined in the preceding "Paragraph C", and shall make disposal as approved by the town board.

Section 6, Inspection.

The Town Board may cause any Junk Yard, whether or not licensed, and the site of any proposed new junk yard to be inspected by its appointed officer or agent, at any reasonable business hour.

Section 7, Term of License.

The original license shall be issued for a period which shall end the next December 31. Each renewal shall be issued for a period beginning January 1, and ending December 31.

Section 8, License Renewal.

Not less than forty five days prior to the expiration of a license each licensed operator shall apply in writing on a form provided by the Town, to the Town Clerk for a renewal license. Such application shall be referred to the Town Board at its next regular meeting. If the board is satisfied that the licensee has complied with the requirements of this Local Law and has not violated any state or federal law, rules or regulations with respect to operation of said junk yard, it shall direct that a renewal license be issued. If it has reason to believe that the licensee has not complied with all the requirements of this local law, or any state or federal laws, rules or regulations, it shall set forth such

reasons and establish a day, time and place of hearing upon such application and notify the licensee thereof by first class mail to the address listed on the renewal application. Such hearing shall be held not less than two weeks or more than forty five days after the mailing of said notice. Such hearing shall consider all relevant material, including relevant evidence and testimony from the licensee. The non attendance of the licensee will be deemed reason to deny said renewal application.

Section 9, License Fee and Expenses.

The fee for an original license or renewal of any lapsed license shall be fifty dollars ($50.00) and the fee for a renewal license shall be twenty five dollars ($25.00). The fees herein may be increased from time to time by a majority vote of the Town Board by resolution. In addition the applicant shall pay the costs of advertising any required public hearing and any other expense attributable to the application(s). All fees and expenses shall be paid to the Town Clerk upon filing of the application or renewal application.

Section 10, Other Laws.

This local law is not intended to replace or negate portions of any other laws, rules, regulations or ordinances enacted by any governing body. Should there be a conflict, the more restrictive statute or law shall apply.

Section 11, Penalties.

A. Fine and Imprisonment. Any person who shall violate any part of this local law shall be guilty of a violation, and upon conviction shall be punishable by a fine not exceeding $250.00 or by imprisonment not exceeding 15 days, or both. Such conviction shall constitute grounds for revocation of a junk yard license, if any, by the Town Board. Each weeks failure to comply shall constitute a separate offense. In addition, the Town Board may enforce this local law by injunction and by a civil action brought in the name of the town. In any civil action, the Town may, in addition to recovery for actual expenses incurred under "Section 11 (B), obtain a penalty of $50.00 for each day of said violation.

B. Costs of Removal; Notice. Upon failure to secure a license hereunder, or upon denial of a license or a renewal license, it shall be the duty of the person immediately to cease operation of the junk yard and to forthwith remove from the premises at said persons expense all junk cars and other proscribed materials there stored or held. Upon a persons failure to do so within ninety (90) days from a notice to remove, by first class and certified mail to do so, the Town Board may cause such junk cars and materials to be removed from the premises as provided in "C" below and to charge and

sue to collect such costs from said persons. Notice shall be given to the owner of record of the real property where such junk cars are located, and, if known and other than the property owner, upon the owner of any such junk car. The town board may also cause such unpaid costs of removal, storage, sale or disposition to be a lien against the property upon which the junk yard exists, and shall be added to the annual property taxes for collection upon notification in person or by first class mail and by certified mail, return receipt requested to the last known address of the property owner; if personal service is not made or both mailings are returned unclaimed or undeliverable, notice shall be deemed made after publishing once in the towns designated newspaper.

C. Removal, Storage, or Disposition of Proscribed Materials and Junk Cars.

(1) Upon the expiration of the ninety (90) day period after the notice to remove in "B" above, and after general or special authorization by the Town Board, the officer serving such notice shall cause such junk car(s) to be removed to a pound, designated for such purpose by the governing body, and there held for sixty (60) days.

(2) Claim of Owner. Within such sixty (60) day period, the owner of such motor vehicle, or the owner of such real property, or his agent, may claim such junk motor vehicle(s) from the custodian of the pound upon payment of the towing or removal charges and expenses therefor. Such owner or his agent shall immediately remove such junk motor vehicle(s) at his own expense to a legal storage space.

(3) Sale of Motor Vehicles. Upon the expiration of such sixty (60) day period, no claim having been made as provided by "Section 11 (C)(2)" of this local law, ownership of such junk motor vehicles shall be deemed forfeited and such motor vehicles may be sold or disposed of by the municipality to the highest bidder only for disposal as scrap. In the event such sale is insufficient to cover the costs of removal, storage and disposal a charge and lien as provided for in "Section 11 (B) shall be made against the real property owner for said removal, storage or disposal of such junk motor vehicle; any monies realized from any sale shall belong to municipality and be deposited in its general fund, and shall be credited against the sums otherwise due from said property owner.

Section 12. Exceptions.

A. A motor vehicle being held for repair by a New York State licensed automobile repair shop shall not be considered a "junk car", provided the same motor vehicle is held for a period not exceeding sixty days, and providing further such motor vehicle is in such condition that it could be

registered for use upon the public highways and is awaiting available parts on order from a parts distributor.

B. A seasonal vehicle or a classic motor vehicle shall not be considered a "junk car" as long as it is in such condition to be registered for use upon the public highways and is actually registered and used as such from time to time no less frequently than every two years. It shall be presumed that there has been no use for the purposes of this local law if any said vehicle has not been registered during said period.

C. A utility vehicle shall not be considered a "junk car" as long as it is used from time to time no less frequently than every two years.

D. A vehicle owned by a member of the armed forces shall not be considered a "junk car" as long as such person is an active member of the armed forces and such vehicle is in a condition that it may be registered for use upon public highways.

E. The storage of junk cars within a fully enclosed structure shall not constitute a violation of this law.

Section 13. Enforcement Officer.

The Town Board may at any time appoint an enforcement officer for the enforcement of this law, and shall fix his compensation therefor. His duties shall include the inspection from time to time of licensed junk yards, investigation of proposed junk yards, investigation of possible violations of this local law, the filing of complaints with respect to violations of this local law, and such other duties as the town board may from time to time prescribe. To effect the purposes of this law , the Sheriffs Office and State Police shall also be authorized hereby to engage in the above enforcement activities.

Section 14. Interpretation, Separability and Conflict.

If any section, paragraph, subdivision or provision of this local law shall be held invalid, such invalidity shall apply only to the section, paragraph, subdivision or provision adjudged invalid, and the rest of this law shall remain valid and effective.

Section 15. Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the New York State Secretary of State.