

Chapter 15

NUISANCES*

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*Cross references—Animals, Ch. 4; unsafe buildings, § 5-91 et seq.; environmental conservation, Ch. 6; sewers and sewage disposal, Ch. 18; solid waste, Ch. 19.

State law references—General authority of town to legislate to promote public welfare, Town Law, § 130(15); general authority to adopt local laws for the government, protection, order, conduct, safety, health and well-being of persons or property, General Municipal Law, § 10(1.(ii)a.(11)), (2.).



ARTICLE I. IN GENERAL

Sec. 15-1. Excavated land control.

(a) *Notice of public hearing.* The town clerk, by direction of the town board, shall give notice to the owner of record of a public hearing to determine whether or not an excavation upon the lands of such owner constitutes a hazard to public safety. The notice shall be in writing, and shall be served personally upon the owner of record of the lands, or by registered mail directed to the owner at the address shown on the last preceding assessment roll, not less than ten (10) nor more than twenty (20) days before the date set for such hearing.

(b) *Time limit for compliance; failure to comply.* If it is determined by the town board after such public hearing that the excavation constitutes a hazard to public safety, written notice shall be given either personally or by registered mail addressed to the owner of record of the land at the address shown on the last preceding assessment roll, that unless the excavated land is filled in or otherwise protected in accordance with the directions of the town board contained in the notice within thirty (30) days, the town superintendent of highways or other designated official of the town will fill in the excavated land or erect barricades or other protective devices as to properly protect against the hazards found to exist by the town board, and that the cost thereof shall be assessed against such lands and property in accordance with the the provisions of section 157 of the Highway Law.

(Code 1966, §§ 18-8, 18-9)

Cross references—Excavations and soil removal, Ch. 7; street excavations, § 20-51 et seq.

State law references—Authority of town to regulate excavated lands, Town Law, § 130(15-a); fixing, collection and lien for fees authorized, Municipal Home Rule Law, § 10(1.(ii)a. (9-a)); Statutes of Local Governments, § 10(5).

Secs. 15-2—15-20. Reserved.

ARTICLE II. JUNK VEHICLES*

Sec. 15-21. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial garage means a business repairing motor vehicles or any part thereof.

Disabled vehicle means a vehicle not within the definition of a junk vehicle which is registered for use on public highways which is inoperative, not in a condition for legal use on the public highways, or which is in need of repairs and is held for repairs on the premises for more than ten (10) days.

Junk vehicle means:

- (1) Any motor vehicle, whether automobile, bus, trailer, truck, tractor, mobile home, motor-cycle, motor bicycle, minibicycle or snowmobile, or any other contraption originally intended for travel on the public highways, which is abandoned, stored, left or located by its owner or any other person, or is permitted or condoned to be abandoned, stored, left or located by its owner or any other person, on public or private premises in the town; or
- (2) Any motor vehicle outside any establishment duly licensed by the town for the storage of junk vehicles which:
 - a. Is not registered by the state for operation on public highways and which has not been registered during the preceding twelve (12) months.
 - b. Is not currently registered and is not in a condition for legal use on the public highways. A vehicle which is in condition to pass the requirements for the state motor vehicle inspection sticker shall be deemed to be in condition for legal use on the public highways; the

*Cross reference—Removal and storage of vehicles by town, § 14-24.

State law reference—Abandoned vehicles, Vehicle and Traffic Law, § 1224.

lack of a current registration or of a current inspection permit shall not be considered in determining whether a vehicle is in such condition.

- c. Is no longer intended to be used on the public highways, the condition of the vehicle and circumstances surrounding its storage or abandonment being admissible for purposes of determining such intent.
- d. Is being held or used for the purpose of resale of used parts therefrom or for the purpose of reclaiming for use some or all of the materials therein or for the purpose of disposing of the same.

Open storage means storage other than in a completely enclosed structure, such as a garage, which is constructed of wood, brick or metal.

Repair settlement means determination by whatever means, including settlement of a claim, arbitration or legal action that any person other than the owner of a vehicle is liable to pay or will pay for the repair of damage to a vehicle resulting from any vehicular accident.

Wrecker means any business operating a vehicle for towing or hauling other motor vehicles.

Wrecker-commercial garage means any business operating as a wrecker and as a commercial garage or any two (2) businesses operating such two (2) businesses for the same parcel of property or any two (2) such businesses having fifty (50) percent common ownership.

(Code 1966, § 17-3)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 15-22. Statement of 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 unwarranted 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 its citizens. The unrestrained accumulation of motor vehicles not in operating condition is a hazard to such health, safety and

welfare of citizens of the town, necessitating the regulation, restraint and elimination thereof. This article is enacted in recognition of the fact that even a single junk vehicle abandoned or stored on private or public property:

- (1) Can constitute both a public and private nuisance.
- (2) Is a source of potential hurt to children and others who find them an attractive nuisance.
- (3) Is replete with broken glass, sharp torn metal edges and points, gasoline remaining in tanks of a highly explosive nature and combustible nature and hurtful acids in batteries, to mention but a few of the obvious sources of physical hurt found in junk vehicles.
- (4) Constitutes a blight on the landscape.
- (5) Destroys the aesthetic qualities of the town and is generally unsightly.
- (6) Tends to depreciate not only the property on which it is located but also the property of other persons in the neighborhood and the town generally.
- (7) Makes the town a less safe and less pleasant place in which to live and to do business.
- (8) Damages the welfare of the town as a whole.
- (9) Tends to result in uncontrolled grass and the collection of debris.
- (10) Tends to be a breeding ground for insects, rodents and similar harmful creatures.

(Code 1966, § 17-2)

Sec. 15-23. Rules and regulations.

The permit officer and/or the town police department may make reasonable rulings and may issue reasonable regulations in furtherance of and consistent with this article.

(Code 1966, § 17-12)

Sec. 15-24. Restrictions.

Open storage of one (1) or more junk vehicles shall not be permitted on private or public property within the town, except as permitted by this article.

(Code 1966, § 17-4)

Sec. 15-25. Notice and determination.

The town shall give written notice by registered or certified mail or personal service on the owner of the junk vehicle or on the owner or the tenant of any property on which a junk vehicle is openly stored. The notice shall direct the person so served (regardless of the ownership of the junk vehicle if the property owner or tenant is served) to terminate the open storage of such vehicle within the town, within ten (10) days of personal service or within thirteen (13) days from posting where service is by registered or certified mail. The notice shall state that if the person served contends that such vehicle is not a junk vehicle that he shall notify the town police department in writing of such contention within ten (10) days if served personally or within thirteen (13) days if served by certified or registered mail (the failure of the person served to so notify the town police shall not be deemed in any way to be an admission that the vehicle is a junk vehicle and no presumptions shall arise from such failure); and shall allow a representative of the town and the person served or a representative of the person served, if the latter so desires, to inspect the vehicle within five (5) days of notification. Within five (5) days after the inspection, the town shall inform the person served of its findings in writing, by registered or certified mail, or personal service. If the findings are that one (1) or more of the junk vehicles specified in the original notice are being stored by the person served with the original notice, the person shall terminate open storage of the junk vehicle within the town within five (5) days of personal service of the finding or within eight (8) days from posting where service of such findings is by registered mail. If the person so served institutes a proceeding under article 78 [§ 7801 et seq.] of the Civil Practice Law and Rules to set aside the determination, termination of storage shall not be required pending a decision in the proceeding. If the decision upholds the town's determination open storage of the vehicle within the town shall be terminated within five (5) days following service of notice of entry of the court's order, if an appeal is taken and a court stay of execution is granted, within five (5) days after expiration of the stay of execution.

(Code 1966, § 17-5)

Sec. 15-26. Permits for restoration.

(a) Upon written application and the deposit of thirty dollars (\$30.00), the town permit officer may issue a permit for the open storage of a vehicle within the definition of a junk vehicle under the terms of this article, pending the making of such repairs as are necessary to place the vehicle in a condition for legal operation for use on a public highway. The application shall include a representation by the applicant that the applicant intends, within the permit period, to repair the vehicle so that it will be in a condition for legal operation on public highways and that if the repairs have not been made by the end of the permit period, the applicant will terminate open storage of the vehicle within the town by the end of the permit period. The applicant shall state:

- (1) Whether he is the owner of the vehicle or, if not, the name and address of the owner.
- (2) A complete description of the vehicle.
- (3) Full details of the most recent registration of the vehicle by the state.
- (4) The most recent inspection of the vehicle and its most recent inspection sticker.
- (5) Full details of the defects of the vehicle which are to be repaired under the permit.
- (6) Whether the applicant will make the repairs himself or, if not, the person who will make the repairs.
- (7) The estimated cost of the repairs.
- (8) The place where the vehicle is presently stored.
- (9) The place where the repairs will be made.
- (10) Whether the applicant is the owner or tenant in possession of the premises where the vehicle is stored and where it will be repaired.

(b) If the applicant is the owner or tenant in possession of the premises, as a part of the application, he shall give to the town and its designees a license to enter such premises for the purposes of inspecting the vehicle and for removing the vehicle from the premises following the expiration of the permit if at such time such vehicle is a junk vehicle. If the applicant is not the owner or

tenant in possession of such premises, the application shall include a license from the owner or tenant in possession of the premises to permit such inspection and removal. Such licenses shall also state that the town shall have the right to make such inspection and removal from any other premises owned by the applicant or the licensor to which such vehicle may be moved within the town. Such license shall also state that it is irrevocable for a period of ninety (90) days from the expiration of the permit.

(c) A fee of ten dollars (\$10.00) shall be charged for the permit, and the applicant shall deposit with the town thirty dollars (\$30.00) which deposit shall be refunded if within the permit period the vehicle shall cease to be a junk vehicle, or open storage of such vehicle within the town is terminated. If neither condition is complied with, the deposit shall be forfeited to the town.

(d) A separate permit shall be required for each separate vehicle to be repaired. Such permits shall be issued for not in excess of sixty (60) days and may be extended once only for up to fifteen (15) days upon the payment of an additional fee of ten dollars (\$10.00). Inspection after the permit period has expired shall be at a time specified in a notice of inspection at least one (1) day following personal service or three (3) days following service by registered or certified mail. The applicant may participate in the inspection. The procedures in section 15-25 dealing with service of the determination, time for removal following such service and for stays on appeal shall apply to such post-permit proceedings.

(Code 1966, § 17-6)

Sec. 15-27. License for open storage.

(a) In this section "open storage" means storage outside a building. The town board may license the open storage of junk vehicles and disabled vehicles subject to such conditions as it deems appropriate to protect neighboring private and public property (including public rights-of-way) including:

- (1) The junk vehicle or disabled vehicle shall be stored in such part of the premises as reasonably specified in the license, locations to the front of the property and to the front

or side of a neighboring residence or other principal building to be avoided where reasonably practical. The town board may limit the size of the storage area. The storage area shall be enclosed with a solid fence at least eight (8) feet high on all sides and at least eight (8) feet high above the grade level of the street or streets adjoining the premises on the side adjoining the street or streets. Vehicles stored at the site shall not be visible within three hundred (300) yards from the storage area at a height of six (6) feet.

- (2) All vehicles shall be stored on the ground, and no vehicle shall be piled upon another vehicle.
- (3) The minimum size and maximum size of the storage area may be designated by the town board, and the area specified shall be fenced off from the remaining area of the lot or otherwise delineated, and storage of junk and disabled cars shall be limited to such delineated areas. However, vehicles awaiting repairs may be stored outside the storage area for up to ten (10) days.
- (4) The license shall be conditioned upon continued maintenance of all requirements of this section and of all additional requirements of the license and shall be revocable by the town board if any violations are not cured within five (5) days of personal service or eight (8) days of service by registered mail of notice to cure any violations.
- (5) The town shall have a license to enter the premises and the storage area at any reasonable hour to inspect for violations of the license.
- (6) The license shall expire upon the removal of all junk and disabled vehicles from the premises licensed or on December 31 of the year in which it is issued. Renewal licenses may be issued by the town clerk unless prior to December 1 of any year the town adopts a resolution to notify the licensee that the license will not be renewed or that an application for renewal must be made to the town board.

- (7) An annual fee of thirty dollars (\$30.00) shall be charged for the license.
- (8) All persons having an ownership interest in the licensed parcel or having a leasehold interest in such parcel shall be designated as licensees on the license. No license shall be issued which would result in any person being designated as a licensee on licenses for the storage of junk vehicles or disabled vehicles on more than one (1) site.
- (9) There shall be no sale of salvaged vehicle parts from any junk or disabled vehicle located on the premises and no installation on the premises into other vehicles of parts taken from junk or disabled vehicles located on the premises.

(b) No license, fee or screening shall be required for not over five (5) vehicles currently being actively used in farming or commercial operations, and no fee shall be required and the license may waive in whole or in part the requirement of screening or fencing for not over two (2) vehicles not being used for farming or commercial purposes if:

- (1) The vehicles are being used on private property and are being held for continuing operation on private property and are not being held primarily for nonoperating purposes.
- (2) The vehicles, if not in condition for legal operation on public highways, are in a condition so that they can be operated and so that operation on private property will not be unduly dangerous to the operator, passengers or others.
- (3) The vehicles are in such condition that there is no sharp metal, broken glass or other condition which would endanger children who might be attracted to play around the vehicles.

(c) The waiver of fencing or screening requirements may be revoked at any time that the town permit officer determines that the vehicles are no longer continuing to be used for operation on private property or that operation would be unduly hazardous or that damage to them makes them unduly hazardous to children, each as provided in the preceding subparagraphs. Within twenty (20)

days of personal service or twenty-three (23) days of posting of service by registered or certified mail, screening or fencing shall be provided as specified by the waiver revocation notice or the licensee shall submit satisfactory proof to the town police department that the vehicle again qualifies for the waiver, or open storage within the town shall be terminated. Appeal and stay of execution shall extend the time for such compliance in the same manner as provided for in section 15-25. (Code 1966, § 17-7)

Sec. 15-28. Right of entry; inspections.

The town police department and other representatives of the town shall have the right to enter and inspect at any reasonable hour any premises on which vehicles are openly stored and to inspect such vehicles. If within the time provided for such removal following service of a determination that a vehicle is a junk vehicle (including any extension of time resulting from any appeal or stay of execution), the open storage of the junk vehicle within the town is not terminated, the junk vehicle shall be automatically deemed a public nuisance, and the town or representatives of the town shall have the right to enter and remove such vehicle from any premises within the town where the vehicles may be found and to dispose of the vehicle. Neither the town nor any person acting on behalf of the town shall be liable to any person for the disposal or destruction of junk vehicles. The right of entry shall not be limited in any way by the existence or lack of existence of a request, authorization, license or other consent or approval of entry, inspection or removal.

(Code 1966, § 17-8)

Sec. 15-29. Storage by wreckers, commercial garages and wrecker-commercial garages.

(a) If operations are permitted by chapter 24, including rights under any nonconforming uses, and including any limitations, restrictions or conditions established according to law by the town board, the zoning board of appeals, the planning board or any court of competent jurisdiction and

are not in violation of any applicable private restrictive covenant or agreement filed or recorded in the county clerk's office:

- (1) Any wrecker may store junk vehicles on one (1) site, but not on more than one (1) site, within the town, provided that no junk vehicle is so stored within the town for more than fifteen (15) days.
- (2) Any commercial garage may store junk vehicles on any one (1) site, but not on more than one (1) site, within the town, pending and during repair of such vehicles, provided that no junk vehicle is so stored within the town for more than sixty (60) days, or if a permit for extended storage is issued, for sixty (60) days, plus any extension permitted.
- (3) Any wrecker-commercial garage may store junk vehicles on any one (1) site, but not on more than one (1) site within the town, provided that if such storage of any junk vehicle exceeds fifteen (15) days, that it shall be pending and during repair and shall not exceed an additional forty-five (45) days, or if a permit for extended storage is issued, forty-five (45) days plus any extensions permitted. Where the repair settlement is pending, in good faith, the foregoing time periods shall not start to run until either a repair settlement has been made or the junk vehicle has been stored within the town for four (4) months.

(b) For good cause shown, the permit officer may extend by permit any time period for such period of time as he determines is reasonably necessary to permit repair of a junk vehicle. The permit officer may refuse to permit extended storage if he determines that the applicant has not attempted to complete repairs within the regular time period, is not in good faith, or is in violation of this section in any way. A fee of five dollars (\$5.00) shall be paid for each permit and the applicant shall agree that the vehicle will be repaired or removed from the town at the end of the extension or any subsequent extension.

(c) Wreckers, commercial garages and wrecker-commercial garages shall keep records showing the make, engine number, license plate number,

if any, vehicle owner, vehicle owner's address, purpose for storage, any prior storage within twelve (12) months by them or, if known, by anyone else within the town, and the starting and ending dates of storage of each junk vehicle. Such records shall be shown to town officials upon request during business hours. Such records shall be prima facie evidence of the statements therein contained, but shall be rebuttable. In the absence of such records or other sufficient proof that a junk vehicle has not been stored in violation of this article, the operator of such businesses shall terminate storage of the vehicle within the town within five (5) days of receipt in person or within eight (8) days of the mailing of a notice to terminate such storage unless:

- (1) He contends that the vehicle is not a junk vehicle and requests an inspection under section 15-25.
- (2) He obtains a permit for extended storage for repair under this section.
- (3) He establishes by sufficient proof that the storage period has not expired.

(d) Anything in this section notwithstanding, any disabled vehicle may be stored on the premises of any gasoline station for up to seven (7) days. For this purpose, a vehicle shall be deemed disabled if within twenty-four (24) hours prior to such storage its condition changes so that it becomes a junk vehicle.

(Code 1966, § 17-9)