

PROPOSED
TOWN OF MALONE
JUNK STORAGE LAW

February 24, 2007

ARTICLE 1 INTRODUCTION

Section 100 Authority

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

Section 110 Title

This law shall be known as the "Town of Malone Junk Storage Law."

Section 120 Purpose

The purpose of this law is, through the regulation of junk and 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 junk or a junkyard is located and the property of other persons in the neighborhood and the community; and to further the goals of the Town of Malone Comprehensive Plan.

Section 130 Prior Existing Junk Dealers Law

This law does not repeal or supersede Chapter 44, Junk Dealers, of the Code of the Town of Malone. Both this law and aforesaid law shall be complied with.

Section 140 Applicability

- A. The provisions of this law are intended to apply to existing junk and junkyards as well as to proposed or future junk storage.
- B. A farm operation containing active farmland as defined herein is exempt from the provisions of this law.

Section 150 Zoning Permit

Any new proposed junkyard requiring a Zoning Permit shall obtain both a Zoning Permit and a junkyard license as provided herein before becoming established.

ARTICLE 2 DEFINITIONS

Section 200 Word Interpretation

For the purpose of this law, the following words and phrases shall have the meaning ascribed to them in this article.

Section 210 Definitions

Active Farmland. Not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more. (This definition is intended to be consistent with the definition of

"land used in agricultural production" in Article 25-AA of the New York State Agriculture and Markets Law.)

Antique Motor Vehicle. A motor vehicle, but not a reproduction thereof, manufactured more than twenty-five (25) years prior to the current year, which has been maintained in or restored 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 (10) years prior to the current year and which because of discontinued production and limited availability, it 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 specification and appearance.

Enforcement Officer. Town of Malone Code Enforcement Officer.

Junk. Includes any of the following.

- a. One (1) junk vehicle
- b. One (1) piece of junk equipment.
- c. Two (2) or more appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
- d. Two (2) or more abandoned or irreparably damaged pieces of indoor furniture including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
- e. Any combination of the above that totals two (2) items.

Junk Appliance. Any household appliance, including but not limited to, a stove, washing machine, dryer, dishwasher, freezer refrigerator, air conditioner, water heater, or television, which is stored outside of any residence or structure.

Junk Equipment. Any equipment which meets all the following conditions: (a) it is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled; (b) it is not in working order; (c) it has remained unused for more than one year.

Junk Furniture. Abandoned, discarded, or irreparably damaged furniture including, but not limited to, sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs, and chests of drawers.

Junk Mobile Home. Any manufactured housing unit designed with a chassis, and constructed to be towed or otherwise transported whole or in part to a site, and which is designed to permit occupancy for dwelling, sleeping, or storage purposes and which meets all of the following conditions: (a) it is unoccupied and in its present condition does not meet the requirements of the New York State Uniform Fire Prevention and Building Code for residential occupancy; and (b) 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. An unregistered, old, secondhand, motor vehicle, no longer intended or in condition for legal use; or used parts or waste materials from a motor vehicle which, taken together, equal in bulk one such vehicle. The term motor vehicle shall include, but is not limited to,

automobiles, trucks, construction or earth moving vehicles, snowmobiles, and all-terrain vehicles. A vehicle is considered junk when it meets all of the following conditions:

- a. It is unlicensed.
- b. It is either abandoned, wrecked, stored, discarded, dismantled, or partly dismantled.
- c. It is not in any condition for legal use upon the public highways.
- d. It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time before such repair.

An antique motor vehicle or a classic motor vehicle, as defined herein, shall not be deemed to be a junk motor vehicle.

Junkyard. Includes any of the following.

- a. The outdoor storage of two (2) or more junk vehicles.
- b. The outdoor storage of one (1) or more abandoned mobile homes or travel trailers.
- c. The outdoor storage of two (2) or more pieces of junk equipment.
- d. Any open lot or area for the dismantling, storage or sale of such items as parts, scrap, or salvage of machinery, scrap metals, waste papers, rags, or used or salvaged building materials.

Recyclables. Newspapers, magazines, cardboard, clean plastic containers, clean metal cans, metals, or other materials collected by waste haulers, not to include garbage.

Town Board. Town Board of the Town of Malone

ARTICLE 3 JUNK REGULATIONS

Section 300 Keeping of Junk

No junk as defined herein shall be located so as to be visible from any public road or from any neighboring residential property. For purposes of this section, a residential property shall mean any parcel of land upon which is located a residential structure.

Section 310 Compliance

Existing conditions shall be brought into compliance with the requirements of this section within 120 days of the effective date of this law.

ARTICLE 4 JUNKYARD REGULATIONS

Section 400 License Required

No person shall establish or maintain a junkyard, as defined herein, within the Town of Malone unless a license has first been issued for such junkyard pursuant to this law. No person owning, having any right to, or any interest in any real property within the Town of Malone shall license, rent, lease, or otherwise license the use of such real property of any part thereof for a junkyard unless a license has first been issued for such junkyard pursuant to this law. All licenses shall be issued for a period of one year, after which time renewal shall be required.

Section 410 Temporary License for Prior Existing Junkyard

Any person maintaining a junkyard prior to the effective date of this law within the Town Malone shall apply for a license within 60 days of the adoption of this law. If the junk storage area does not meet the requirements of this law, a temporary license shall be granted for a period not to exceed one year, during which time the junk storage area shall be arranged to comply with said requirements. If at the end of such period the junk storage area has not been arranged to comply with said requirements, such person shall cease and desist from maintaining a junkyard and all junk shall be removed from the premises.

Section 420 Location

No junk storage area shall be located within:

- a. 500 feet of any public park, church, educational facility, nursing home, public building or other place of public gathering;
- b. 100 feet of any adjoining property line;
- c. 200 feet of any stream, lake, pond, wetland or other body of water;
- d. 100 feet from the right-of-way of any public highway.

Section 430 Minimum Lot Size

The minimum lot size for a junkyard shall be two (2) acres.

Section 440 Fencing

- A. There must be erected and maintained an eight (8) foot high fence enclosing the entire junkyard and a locking gate, adequate to prohibit the entrance of children and others into the area of the activity or business, and to contain within such fence the materials dealt with by the operator of the junkyard. All junk 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 shall be accomplished within the enclosure.
- B. Fencing requirements may be waived where topography or other natural conditions effectively prohibit the entrance of children and others.

Section 450 Screening

Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence provided in Section 430 above shall be of wood or other materials sufficient to totally screen the junkyard from view. Such screening may be permitted by adequate planting of evergreen trees or shrubbery.

Section 460 Approval Standards

In granting or denying a junkyard license pursuant to this law the Town Board shall take the following factors into consideration.

- a. The nature and development of surrounding property, such as the proximity of public parks, churches, educational facilities, nursing homes, public buildings, or places of public gathering.
- b. Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
- c. The proximity of streams, lakes, wetlands, flood plains, groundwater supplies, and public water supplies.
- d. Local drainage patterns.
- e. Long range comprehensive plans for the Town.
- f. Proximity of the site to established residential or recreational areas.
- g. Availability of other suitable sites for the junkyard on the property.

Section 470 Burning

No materials shall be burned in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see NYCRR Part 215).

Section 480 Burying

No junkyard items shall be buried in a junkyard except in compliance with the New York State Solid Waste Disposal Law (see NYCRR Part 360).

Section 490 Approved Junkyard Items

No junkyard items shall be stored in any junk storage area other than those items specified on a junkyard license approved by the Town Board pursuant to this law.

ARTICLE 5 JUNKYARD LICENSE APPLICATION PROCEDURE

Section 500 Application

The applicant for a junkyard license shall obtain application forms from the Town Enforcement Officer. The completed forms along with one copy of the proposed site plan, and the appropriate fees, shall be returned to the Enforcement Officer. The Enforcement Officer shall submit the application materials to the Town Board.

Section 510 Site Plan Contents

The site plan shall be drawn to scale or indicating all dimensions and show:

- a. existing and proposed structures, including fences;
- b. property lines including the names of owners of adjacent property;
- c. streams, lakes, wetlands, floodplains, and other water bodies;
- d. wells and sanitary facilities;
- e. roads and easements;
- f. existing and proposed junk storage areas;
- g. existing and proposed accessways, and parking and loading areas;
- h. list of the types of junk that are proposed to be stored in the storage area.

Section 520 Environmental Assessment Form

An Environmental Assessment Form (EAF), either the short EAF form or full EAF form as appropriate, shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Review Act, 6 NYCRR Part 617.

Section 530 Application Fee

The annual fee for a junkyard license shall be established by resolution of the Town Board. Said fee shall accompany all applications, and all yearly license renewals.

Section 540 Referral to Planning Board

The application shall be referred to the Town of Malone Planning Board. The Planning Board shall submit an advisory opinion on the application to the Town Board within 45 days of its receipt.

Section 550 Public Hearing

The Town Board shall fix a time within 45 days of the date a complete application is received for a public hearing. Notice of the hearing shall be made in a newspaper in general circulation in the Town at least five days prior to the date thereof. At the hearing the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a junkyard license.

Section 560 Town Board Action

Within 45 days of said hearing the Town Board shall render a decision to approve, approve subject to conditions, or disapprove the application for a junkyard license. The 45 day period may be extended by mutual consent of the applicant and the Board. All findings of the Board shall be entered into the official minutes of the Town. The decision of the Board shall immediately be filed in the office of the Town Enforcement Officer and the applicant shall be notified of the decision and the reasons for such decision by mail within five days of the decision of the Board. Upon approval of the site plan and application, and payment of the fees and reimbursable costs due the Town, the Board shall endorse its approval upon a copy of the final site plan and application.

Section 570 Issuance of License

If the application is approved by the Town Board, a junkyard license shall be issued by the Enforcement Officer. If the application is approved with conditions by the Board, the Enforcement Officer shall issue a junkyard license.

Section 580 Renewals

Licenses shall be renewed upon payment of the annual license fee without hearing, provided that all provisions of this chapter 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.

ARTICLE 6 EXCEPTIONS, WAIVERS AND APPEALS

Section 600 Exceptions

- A. The Town Board may grant an exception to provisions of this law in the case of a junk storage area used in conjunction with a commercial or industrial use where the storage of junk or debris is clearly secondary to the primary nature of the business, and where said storage does not create a significant adverse impact upon neighboring properties or the community in general.
- B. In rendering their decision, the Town Board shall take into account:
 - 1. The proximity and character of surrounding properties.
 - 2. Visibility from public roads,.
 - 3. Any possible adverse environmental impacts including water pollution, odor, noise, and aesthetics.
 - 4. Any other factors it deems in the general welfare of the community.
- C. The Town Board may impose any conditions in deems necessary to protect neighboring properties and to promote the general welfare, including but not limited to:
 - 1. Requiring a security fence surrounding the junk storage area of a type and construction approved by the Town Board.
 - 2. Requiring vegetative screening.
 - 3. Prohibiting the storage of certain types of junk or debris.
 - 4. Requiring a fifteen (15) foot wide fire lane between any junk and any fence or screening that shall be kept open and free of any materials.

Section 610 Waivers

Where the Town Board finds that due to special circumstances of the particular case, a waiver of certain requirements of this law are justified, then a waiver may be granted. No waiver shall be granted, however, unless the Board finds, and records in its minutes that:

- a. Granting the waiver would be keeping with the intent and spirit of this law, and is in the best interests of the community.
- b. There are special circumstances involved in the particular case.
- c. Denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed.
- d. The waiver is the minimum necessary to accomplish the purpose.

Section 630 Appeals

Any person aggrieved by this law may appeal to the Town Board for an interpretation, or a waiver, from a provision of this law.

ARTICLE 700 ADMINISTRATION AND ENFORCEMENT

Section 700 Enforcement Officer

The Enforcement Officer shall upon request of the Town Board make inspections of the premises of any junkyard for which application for a license has been made, or any other existing junkyard within the Town, and shall report to the Town Board on the conditions of such junkyard. The

Enforcement Officer shall make periodic inspections of the Town to ensure that all existing junkyards have licenses and that the requirements of this law are met. Any observed violations shall be reported to the Board. The Enforcement Officer shall not enter the premises of any private property without the consent of the owner. It shall be the responsibility of the applicant to arrange for all required inspections of the premises prior to license issuance or renewal.

Section 710 Revocation of License

The Town Board may revoke a junkyard license upon reasonable cause should the applicant fail to comply with any provision of this law. Before a license may be revoked, a public hearing shall be held by the Board. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. The license holder shall be notified of the hearing by certified mail at least five days prior to the hearing. At the hearing the Board shall hear the license holder and all other persons wishing to be heard on the revocation of the junkyard license. Should the Board decide to revoke a license, the reasons for such revocation shall be stated in the Board minutes. The license holder shall be immediately notified of the revocation by certified mail. Should any junkyard license be revoked, the operator shall cease and desist from operating a junkyard. All junk shall be removed from the premises within 60 days. If after 60 days the junk is not removed, the Town reserves the right to have the junk removed and disposed of and all costs of such removal and disposal shall be borne by the land owner.

Section 720 Fines and penalties

A. Criminal sanctions

1. A violation of this law may be enforced by criminal sanctions as follows:

First offense:	Fine not exceeding \$350 or six months imprisonment or both
Second offense:	Fine not less than \$350 or more than \$700, or up to six months imprisonment or both
Third offense, or subsequent offense (if committed within five years of first offense)	Fine not less than \$700 or more than \$1,000, or up to six months imprisonment or both

2. Every such person shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.

3. The Enforcement Officer or agent may commence criminal proceedings in the justice court by issuing an appearance ticket to any alleged violator and/or by filing an information and supporting deposition pursuant to the New York Criminal Procedure Law. Alternative, the Enforcement Officer or agent or the Town Board may request the District Attorney to prosecute the violation or to appoint the Town Attorney as a special district attorney for that purpose.

4. Such fines may be compromised or released as part of any disposition.

B. Civil penalties.

1. As an alternative to criminal sanctions, the Town may institute proceedings for civil penalties in the amounts stated herein for each such violation:

First offense:	Civil penalty not exceeding \$350
Second offense:	Civil penalty not less than \$350 or more than \$700
Third offense, or subsequent offense (if committed within five years of first offense)	Civil penalty not less than \$700 or more than \$1,000

2. Each week's continued violation shall constitute a separate additional violation, for which separate and additional civil penalties may be imposed and recovered.
3. Such penalties may be compromised or released as part of any disposition.

Section 730 Alternative or Additional Actions and Remedies

- A. In the case of any violation or threatened violation, the Town may institute any appropriate action or proceeding against the landowner and/or other responsible person(s) to prevent such unlawful action, to restrain, correct or abate such violation, and to compel compliance with the provisions of this law and any permit, approval or variance issued pursuant to its provisions. The relief specified herein may be sought in addition to an action or proceeding for criminal sanctions or civil penalties.
- B. The Town Board may negotiate appropriate corrective, remediation, abatement, and restoration measures by entering into an enforceable settlement agreement or consent order with any violator and/or owner. Such agreements or orders may require the violator and/or owner too pay a monetary penalty which (a) covers exemplary or punitive damages, and (b) reimburses actual costs incurred by the Town in connection with its enforcement action such as attorneys' fees, disbursements and costs of emergency and other corrective and restoration measures. If the monetary payments are not made, they may constitute the basis of a lien charge attachable to the premises as a special assessment or charge assessable and collectable on the tax bill associated with the subject premises.

ARTICLE 8 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 judgment 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 judgment shall have been rendered.

Section 2 Effective Date

This law shall be effective upon filing with the Secretary of State.