

Junkyard Local Law

Town of Berkshire
Local Law of 2012
Junkyard Licensing Local Law

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SECTION I: Purpose and Intent:

By adoption of this Local Law, the Town of Berkshire declares its intent to regulate junkyards, whether operated for commercial profit or otherwise, that fully comply with the intent of General Municipal Law section 136. The local law is intended to protect the welfare of all citizens by insuring a healthy and safe community, fostering a clean and attractive environment and recognizing that the presence of junkyards may be unsightly and detract from the value of surrounding properties.

This local law is intended to prevent the following:

- Exposure to dangerous materials including broken glass, fuels, battery acid, anti-freeze, lubricating fluids, or sharp edges and points.
- Dangerous attractions to children or animals.
- Contamination of soil, well water, and streams.
- Fire hazards due to flammable liquids, tires, and other auto materials.
- Unsightly appearances of property and/or detracting of values of surrounding properties.

SECTION II: Definitions:

“Code Enforcement Officer” (CEO) - The person authorized by the Town Board to enforce this local law and other relevant provisions of the New York State Uniform Fire Prevention and Building Code.

“Enclosed Storage” – A structure that conceals a vehicle from public view and prevents unauthorized access to the motor vehicle by the public. The structure must be built and maintained in accordance with the New York State Uniform Fire Prevention and Building Code.

“Farm Operation” – A property that meets the criteria defined in New York State Agriculture and Markets Law section 301(11).

“Junkyard” - Any place of open storage or deposit where two or more unused vehicles, trailers, equipment or the parts and materials thereof are held. Purpose may be for resale, reclaiming use, or salvage/disposal.

“Licensed Dismantler” - Any person who is engaged in the business of acquiring motor vehicles for the purpose of dismantling for parts or reselling such vehicles for scrap or will be undertaking any of the other activities relating to the salvage of vehicles. Such person must possess a permit obtained from the New York State Department of Motor Vehicles, Division of Vehicle Safety Services under Vehicle and Traffic Law.

“Open Storage” - Storage other than in Enclosed Storage (see above).

“Person” - An individual or any other legal entity.

“Unregistered Vehicle” - Any vehicle which is parked, stored, or abandoned by anyone, owner or otherwise, on lands, public or private, in the Town of Berkshire when the Vehicle:

- Does not display a valid registration sticker authorized by an agency of any State, or
- In the case of vehicles intended for use on public roads, does not have a valid inspection sticker from an inspection station registered under the laws of the State of New York, or
- Is no longer in an operable condition for its intended original use, or
- Is kept or used for the purpose of salvage or resale of parts thereof.

"Vehicle" – Every device in, upon, or by which a person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks, including, but not limited to, automobile, bus, trailer, truck, motor home, motorcycle, motor bicycle, mini bicycle, all-terrain vehicle (ATV) or snowmobile.

SECTION III: Provisions and Requirements:

- (a) The following conditions must be met in order to establish an approved junkyard:
1. The operator must possess a valid Junkyard License issued by the Town of Berkshire.
 2. The operator must be a Licensed Dismantler.
 3. An environmental review must take place in accordance with New York State Environmental Quality Review process (SEQR). An Environmental Assessment Form (EAF) must be completed by the applicant and submitted with the letter of application. The Town Board must engage a competent professional to review the application and EAF before making a declaration on the EAF. A draft environmental impact statement (DEIS) can be submitted or may be required to be submitted to further analyze environmental impacts and consider alternatives. See the full text of the SEQR process at <http://www.dec.ny.gov/regs/4490.html#18100> and find associated forms at <http://www.dec.ny.gov/permits/6191.html> . In addition, a question and answer page for the DEIS is available at <http://www.dec.ny.gov/permits/55758.html>. The DEIS process involves filing with the Department of Environmental Conservation (DEC) and reaching agreement between all parties, including the general public, on the total scope of all environmental impacts of the proposed project.
 4. A site plan review must be approved by the Town Board as described in the Town of Berkshire Site Plan Local Law. The review will evaluate the proposed location to confirm proof of ownership, examine the survey, and may take into consideration the nature and development of surrounding property such as the proximity of churches, residences, public buildings and places of public gatherings, as well as determine if the proposed location will have an unfavorable effect on the clean, wholesome, and attractive environment of the Town. In addition, the Town Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the residential and recreational areas or main access routes proposed, and also the reasonable availability of other suitable sites for the junkyard.

5. The project and parcel must be evaluated to determine if the land use change requires review by the Tioga County Planning Board. If the project has the potential to create inter-community or county-wide impacts, as required by New York State General Municipal Law, it must be reviewed at the county level.

(b) Additional requirements for operating a junkyard:

1. No junkyard may be located within 2,500 feet of a property boundary of a church, public building, place of public assembly, or any residence not occupied by the owner of the junkyard.
2. A junkyard must be entirely enclosed with fencing no less than eight (8) feet in height which will provide a screen from view from any adjoining highway or from any adjacent dwelling or business establishment of any kind. Fencing must be maintained in good repair, with neat appearance at all times and must be located at least 75 feet from the center of any adjoining highway and no less than 25 feet from the boundary of any neighboring property.
3. Inside and adjacent to the fence there must be maintained a fire lane of at least 10 feet in width which shall be kept free from combustible material and within which no structures will be permitted and no materials may be stored.
4. All vehicles, parts, materials, and equipment must be stored, and all handling and wrecking operations must be conducted, within the junkyard fencing, and not within the fire lanes, except as entry and exit are required in the ordinary course of business.
5. No operation involving the emission of noise shall be conducted in any junkyard before 8:00 o'clock A.M. or after 9:00 o'clock P.M.
6. Painting is prohibited unless conducted inside an approved spray booth that meets the requirements outlined in Section 302.8 of the New York State Uniform Code.
7. No materials shall be burned or buried in a junkyard except those in compliance with NYS DEC 6 NYCRR parts 215 and 360.
8. An operator of an existing junkyard who proposes to discontinue such operation rather than renew its license must remove all vehicles, material, and equipment to a licensed scrap yard or landfill within six months.
9. An operator must comply with any other New York State vehicle and traffic laws and New York State fire prevention and building code sections that apply.
10. An operator must handle all fluids in a manner that fully complies with Chapter 180, New York State Laws of 2006, Title 23 Vehicle Dismantling Facilities.

SECTION IV: Exclusions

- (a) Farm machinery, including tractors, where such machinery is actively used in Farm Operations. Farm machinery kept for parts shall be kept in a location not visible from any road, street or highway.
- (b) Unregistered vehicles used for the purpose of safety and rescue training by rescue services.

SECTION V: Administration and Enforcement:

(a) Administration - Application Process

1. The Town Clerk shall be the issuer of junkyard licenses as described below:

Individuals desiring to apply for a junkyard license must submit the following to the Town Clerk:

- a letter of application.
 - a survey map of the proposed junkyard showing its location and boundaries.
 - identity of the owner of the premises, and, if the applicant is not the owner, proof that the applicant has a right to use the premises as a junkyard.
 - Environmental Assessment Form (EAF).
 - All items outlined in the Site Plan Checklist (from Site Plan Review Local Law—see Section VII).
 - Proof of New York State Dismantler licensure.
 - Application fee.
2. The Town Clerk shall refer each application for a license to the Town Board at its next ensuing regular meeting. In the case of a new junkyard, the Town Board shall conduct a public hearing on the application. The hearing shall be held not more than three months after completion of the environmental review. At the hearing the Town Board shall hear the applicant and all other persons wishing to be heard concerning the application. In considering the application it shall take into account the suitability of the applicant with reference to their ability to comply with the fencing and other requirements of this Local Law and compliance to other local and state laws. Within one month after the hearing the Board shall determine whether the application will be granted and shall notify the applicant of this determination by mail.

If the determination is favorable, the Town Clerk shall issue the license and certificate of approval of location. Such license shall be deemed conditional for a period of six months; at the end of which time the Code Enforcement Officer will perform a site inspection to confirm the operator has fully complied with this Local Law. Should the operator be found not in compliance, the Town Board may revoke the license.

(b) Administration – Renewal Process

1. Original licenses shall be issued for a period of 12 months from the date of Town Board approval. Renewal licenses must be acquired thereafter and will be for a period of 12 months beginning on the same month and day of original issue. Not less than 30 days prior to the expiration of the license, each licensed operator shall apply in writing to the Town Clerk for a renewal license. Such application shall be referred by the Clerk to the Town Board at its next ensuing regular meeting. Provided that the Board is satisfied that the licensee has complied with the requirements of this Local Law, it shall direct that the renewal license be issued otherwise enforcement procedures will be followed.
2. No license issued hereunder, including a renewal license, shall be assignable to any other person except with the consent of the Town Board after inspection

(c) Enforcement:

1. The Town Board designates the Code Enforcement Officer to enforce this law pursuant to Berkshire Local Law– Administration and Enforcement of New York State Uniform Fire Prevention and Building Code. CEO duties shall include inspections of licensed junkyards or proposed junkyard sites, investigations of alleged unlicensed junkyards and investigations of all other complaints filed with respect to violations of this local law. The CEO will assist the Town Board with administration efforts by:
 - performing inspections of potential sites.
 - performing ongoing investigations and monitoring of existing sites.
 - reviewing sites requesting license renewals.
2. In the event a license is revoked, not sought, or upon denial of a license or a renewal license by the Town Board, it shall be the duty of the junkyard operator or resident to immediately cease operation of the junkyard or illegal storage and to remove from the premises all junk cars and other materials and equipment stored or held in violation of this Local Law. Upon failure to do so within such time as the Town Board may direct, the Town Board may cause such junk cars, materials, and equipment to be removed from the premises and charge the cost of such removal to the junkyard operator. Proceeds from the sale of any assets will revert to the Town of Berkshire.
3. The Department of Environmental Conservation (DEC) will investigate any reports of suspected environmental hazards or violations. DEC regulations concerning automobile recycling provide operators with guidance on issues such as disposal of waste fluids, tire storage, and battery storage. (See Section VII for reference materials)

SECTION VI: Enforcement Procedures: Appeals, Variances

- (a) Should a violation of this local law be identified, the CEO shall serve a written notification, by personal service or by certified mail, upon the operator of the junkyard where the violation occurred. This notice must include the name, address, description of the violation, an explanation of what corrective action is required, and the time frame in which the corrective action must occur.
- (b) If there is imminent safety risk to the public or an environmental hazard, then immediate action will be necessary as directed by the CEO.
- (c) If there is no imminent safety risk to the public or environmental hazard, the violation must be resolved within 30 days of receipt of the written notice pursuant to subsection (a) unless the junkyard operator owner appeals his case or submits a request for variance.
- (d) Within 30 days of receipt of the written notice, the operator has options to remedy the situation, submit an appeal/protest by providing documentation to the CEO, or request a variance from the Town Board.
 - 1. Remediation must include a written notification to the CEO of planned actions or actions taken to bring the junkyard into compliance with this local law.
 - 2. Appeal/protest allows the operator to contend that the cited condition does not violate requirements of Section III. The CEO will investigate the situation and inform the property owner in writing that the appeal has been upheld and the case dropped or the appeal has been rejected, in which case another 10 days is provided to remediate the violation.
 - 3. Variances generally are exception requests to the strict interpretation of this local law that the violator must submit to the Town Board and the CEO. An explanation of why a variance should be granted must be clearly documented and demonstrate reasonable cause for the request. The Town Board will review the request for reasonableness and either schedule a public hearing or deny the variance within 92 days. The requester will be notified of the date and time of that hearing or that the variance was denied. A ruling will be made on the request within 31 days of the public hearing. The time within which the Town Board must render its decision may be extended by mutual consent of the junkyard operator and the Town Board. If the variance is not granted, the CEO will notify the requestor that he/she is still in violation but will be granted an additional 10 days to remediate the situation. If granted, the meeting minutes shall record the reason as:
 - a. granting the variance would be keeping with the intent and spirit of this Local Law and is in the best interest of the community; or
 - b. there are special circumstances involved in the particular case; or
 - c. denying the variance would result in undue hardship to the applicant, provided that such hardship has not been self imposed.
- (e) No written response or remedial action by the operator within 30 days of receipt of the written notice, or within 10 days after an appeal or variance is denied, is deemed to be an admission that noted junkyard is in violation of this local law, and the CEO will present the violator with an appearance ticket pursuant to Criminal Procedure Law section 150.20 to appear in Town Court. Should the Junkyard fail to remedy the violation in the time period

imposed by the court, the Town Board may revoke the license and invoke procedures as described in Section V (c) 2 as noted above.

SECTION VII: Reference Material

This local law supersedes regulatory guidelines on junkyards contained in Local Law # 1 of 2006.

- (a) Article 25AA, Section 301 of New York State Agriculture and Markets Law: See complete definition of agribusiness under Section 301 at the web link below.
<http://public.leginfo.state.ny.us/menugtf.cgi?COMMONQUERY=LAWS>.
- (b) Forms for the Environmental Review process:
- EAF: <http://www.dec.ny.gov/permits/6191.html>
 - Negative Declaration:
http://www.dec.ny.gov/docs/permits_ej_operations_pdf/negdec.pdf
 - Positive Declaration:
http://www.dec.ny.gov/docs/permits_ej_operations_pdf/posdec.pdf
- (c) Chapter 180, New York State Laws of 2006, Title 23 Vehicle Dismantling Facilities.
<http://www.dec.ny.gov/chemical/28653.html>
- (d) Site Plan Check list <http://www.berkshireny.com/laws/Site%20Plan%20Review.pdf>

SECTION VIII: Severability/Invalid Segment

Should any section or provision of this Local Law contained herein or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Local Law as a whole or any part thereof other than the part declared to be invalid.

Section IX: Penalties

Any person convicted of violating any provision of this Local Law shall be guilty of a violation, and shall be liable for a fine of not more than one hundred dollar (\$100) for such violation. Any person so convicted as a second offense shall be liable for a fine of not less than one hundred dollars (\$100) and not more than two hundred (\$200), and for a conviction as a third offense shall be liable for fine of not less than two hundred dollars (\$200) and not more than five hundred dollars (\$500).

Section X: Effective Date

This Local Law shall take effect immediately upon filing by the Secretary of State.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

October 3, 2012

Town Clerk
12421 Rt. 58
Berkshire NY 13736

RE: Town of Berkshire, Local Law 3 2012, filed on October 2, 2012

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.state.ny.us.

Sincerely,
State Records and Law Bureau
(518) 474-2755