

# JUNK ORDINANCE

## AN ORDINANCE LICENSING AND REGULATING DEALERS BUSINESSES AND OTHER ACTIVITIES, RELATING TO THE COLLECTION, STORAGE OR SALE OF JUNK

Adopted June 5, 1962

(Latest amendment June 4, 2013 by LL #4-2013)

### SECTION 1. Legislative Intent and title.

By the adoption of this ordinance, the Town Board of the Town of Kirkwood declares its intent to license and regulate the activities of businesses commonly known as junkyard and automobile graveyards, including the use of lands and buildings in said town for the collection, storage or sale of used machinery, metal, paper rags, and, other used materials of whatever composition, including the processing thereof, in the interests of fire precaution and to further peace, good order and safety of persons and property in said town, and may be cited as the "Junk Ordinance of the Town of Kirkwood."

### SECTION 2. Definitions. As used in this ordinance:

- a. The term "person" shall mean individual, association, partnership or corporation, limited liability company or other business entity.
- b. The term "auto" shall mean passenger automobile, truck, tractor-truck, trailer, bus, motor-cycle or other vehicle, however propelled, as well as tractors, and bulldozers, and related machinery and equipment.

### SECTION 3. License required.

No person shall engage in or conduct on real property within the Town of Kirkwood, either for himself or on behalf of any other person, directly or indirectly, or otherwise, except as an employee in any business or activity, whether or not for profit, which involves the collection, storage, burning, dumping, disassembling, dismantling, salvaging, sorting or otherwise handling or arranging for sale, resale, storage or disposal or otherwise of bodies, engines, or parts of autos, or of any other second hand or used property of whatever material it is composed or any waste material composed of wood, paper, cloth, cardboard, plastics, metals, stone, cement or otherwise, without first obtaining a license thereof as hereinafter provided.

### SECTION 4. Application for license.

- a. An applicant for a new license hereunder pursuant to this ordinance to be issued after the effective date hereof shall execute an application under oath, upon a form supplied by the Town Clerk, containing the following information:
  - (1) The age of the applicant;
  - (2) Whether applicant has ever been convicted of a felony or misdemeanor;
  - (3) The names of three electors of the Town of Kirkwood who can attest that applicant is a person fit and capable of properly conducting the activity or business for which the license is sought;
  - (4) A description of the nature of business applicant intends to conduct, including the materials he intends to handle.
  - (5) The number of persons he intends to employ; and

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- (6) The name and address of the owner of the land to be used by applicant in connection with such activity, and unless applicant is the owner, the nature of his right to use such land.
- b. The applicant shall submit with such application a full scale map or plan of the real property, compliant with the requirements of Article 8 of the Environmental Conservation Law (SEQRA), upon which the activity or business is to be conducted showing: the location of buildings (present or to be constructed); water, sewer and/or gas mains in the location; drainage patterns; parking areas for customers and employees; location of fire lane at least 12 feet wide for use by fire trucks and equipment if necessary; location of streams, lakes, wetlands, flood plains and other water bodies, including those available for fire protection purposes; topography of the site and any plans for grading of the site to be shown at a contour interval of not more than five feet; locations of all wells and sanitary facilities on the property or within 100 feet of the boundary of the property; depth to the water table; fences and hedges; existing and proposed open storage areas; existing aquifers; soil type and characteristics; and, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law.
- c. Such application shall contain an agreement that applicant will conduct the activity or business pursuant to the regulations hereinafter set forth, and that upon his failure to do so, his license may be revoked forthwith.
- d. Prior to the issuance of a license, the Code enforcement Officer shall conduct an inspection of the premises, and if necessary, require the applicant to supply additional application materials deemed relevant in order to consider the following items:
- (1) As to Facility operation:
- Days and hours
  - Lighting
  - Daily traffic flow including a traffic study if deemed necessary
  - Product flow in the facility
  - Procedure for unloading and loading material
- Plan to assure that autos and machines being collected are free and clear of oils, fluids, gasses, degreaser and other contaminants, and if necessary, will be collected and contained in a leachate collection system.
- Whether the applicant intends to collect and process scrap or parts from automobile demolition, in which case what additional provisions are being made to safeguard the environment from pollutants.
- The types of metal items that the applicant intends to sell, salvage, collect or process, including batteries, turnings, barrels, etc.
- (2) Monitoring, sampling and analysis plan to be submitted by a professional engineer or other appropriate environmental professional.
- Pre-production analysis of soil and ground water quality, noise, air emissions and Odors and such other matters as deemed necessary.
- Monitoring during production.

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Monitory “temporary storage” to be less than six months.

- (3) Environmental testing of the land on which the facility will be located as a baseline prior to the commencement of operations, including a Phase I, Phase II and expanded Phase II Environmental Assessment as deemed necessary.
  - (4) A new or updated scale map as required by the licensing officer
  - (5) The storage operation, including the method of storage of various types of materials relating to combustibility.
  - (6) The number and placement of fire extinguishers, including the type(s) of extinguisher needed off and onsite for the type of material being stored.
  - (7) The need for prehistoric archaeological research to determine whether the site may have some sacred significance to Indian nations.
  - (8) The application of Flood Damage Prevention Local Law.
  - (9) Methods of screening, buffering and enclosures, including but not limited to fencing, hedges and walls, specifying the material, for example, whether solid, opaque, masonry, concrete or other materials, and the minimum height and setback requirements to provide substantial perimeter buffers and effective screening of the premises from adjacent uses and public roads.
  - (10) Proof of additional licensing, permitting or certification, as applicable.
  - (11) Consideration of any potential impact to groundwater supplies and/or public water supplies; the availability of municipal fire protection and the adequacy of the water supply for fire protection purposes; the nature and development of surrounding property; and the effect of the proposed scrap metal processing operation on the aesthetics of the environment.
  - (12) A detailed environmental assessment form pursuant to SEQRA and applicable local laws of the town of Kirkwood which assessment shall include a description and evaluation of the nature of the probable environmental impact, including specification of the predictable adverse effects. Any Environmental Impact Statement required shall be submitted on electronic media in Microsoft Word format.
- e. After confirmation from the Code Enforcement officer that the application and the premises are fully in compliance with this section, the Town clerk shall issue a provisional/temporary license to the applicant.

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### **SECTION 5. Provisional license.**

Any person engaged in or conducting a business or activity subject to regulation by this ordinance upon the effective date hereof shall apply for a license for such business or activity within 30 days after the effective date of this ordinance. Notwithstanding that the place where such person conducts said business or activity does not meet the requirements of this ordinance, such applicant shall be granted a provisional license for the balance of the calendar year in which issued, renewable only upon proof of compliance with all provisions of this ordinance; provided however, such provisional license shall be issued only upon showing that the applicant is otherwise a qualified person to engage in such business or activity.

If at the end of such year such person has not so arranged his place of such activity or business he shall forthwith cease and desist engaging in or conducting the same and shall remove from such place any autos, parts or other materials of the nature described herein.

If the person conducting such activity or business is not a sole owner thereof he shall state such fact at the time he applies for his temporary license and the Town Clerk at the time of issuing such temporary license shall send the owners or each of them a notice of the issuance of such temporary license to such person together with a copy of this ordinance.

### **SECTION 6. The license.**

- a. Upon the issuance of such license, a fee in the sum of One Hundred Dollars (\$100.00) shall be paid by the licensee to defray the administrative costs thereof and the cost of inspecting the premises during the term of such license to insure compliance with this ordinance. (Amended 9-6-05 by LL #7-2005)
- b. Such license shall be placed and at all times displayed in a conspicuous place at the licensee's principal place of conducting the business or activity for which it is issued.
- c. Such license shall be effective from the date of its issuance until the 31st day of December of the year of such issuance. Applications for renewal licenses shall be submitted in the December preceding the year for which such renewal license is sought and may be issued, either upon the applicant's reaffirmation of his original application and a statement showing any variations therein, or upon a new application as described in Section 4 of this ordinance.
- d. Such license is personal with the licensee and cannot be sold, assigned, transferred or otherwise disposed of.
- e. Such license may be revoked by the Town in accordance with Section 8. Upon revocation of a license, the owner of the property upon which such business or activity was conducted shall properly remove all autos, parts and materials left upon the licensed premises.
- f. Where an applicant for a license as herein provided shall hold a valid license issued by the supervisor, pursuant to the provisions of Article 6 of the New York State General Business Law, then such applicant shall be allowed a credit of Five (\$5.00) Dollars upon issue of a license pursuant to this ordinance.

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### **SECTION 7. Regulations.**

- a. A licensee hereunder shall be personally responsible for the management of the business or activity for which the license is granted.
- b. A strip of land at least twelve (12) feet in width shall be kept free of all dry grass or other growth or other combustible material so as to provide a fire lane or line around the perimeter of the whole area where the activity or business of the licensee is being conducted. Additional fire lanes running from the front to the rear of the property at least twelve (12) feet each in width and not more than forty (40) feet apart shall be maintained by the licensee. These fire lanes may be used as drive ways by the licensee but must be kept open for the use of fire trucks and equipment if necessary.
- c. The autos, parts and materials dealt in by the licensee shall be piled or arranged in neat rows so as to permit easy, clear passage through the area. Said autos, parts and materials shall not be stored within the twelve (12) foot areas mentioned in paragraph "b" above.
- d. There shall be maintained at each such place of business or activity for which a license is issued at least one (1) fire extinguisher of approved design and capacity for each 40,000 square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available for use.
- e. The licensed premises shall not be used as a dump area for the disposal of garbage or trash.
- f. No person shall set fire to or burn or cause to set fire to or burn any materials without first obtaining a permit from the Commissioner of Environmental Conservation of the State of New York.
- g. The licensee shall provide a motor vehicle parking space with necessary egress and ingress of at least 600 square feet adequate in size to accommodate customer's vehicles so that same need not be parked on the public streets and highways.
- h. Any state or municipal law enforcement officer, health or fire authorities, town clerk or any member of the Town Board or any of its duly authorized representatives, shall be granted access to the area of the activity or business of the licensee at all reasonable hours to inspect the same for compliance herewith.  
  
The Applicant shall grant all such authorities and Town officers and employees permission to enter upon the Site with reasonable prior notice to Applicant to determine that these conditions are being fulfilled and complied with and to report such determination to the Town Board. The Town Board may devise a schedule for the orderly and systematic inspection of each junk yard. If such inspection is made by a Town employee, such charge shall be in accord with the hourly rates upon which the Town employee's salary is based and fringe benefits and reasonable overhead.
- i. The licensee shall maintain screening, buffering and enclosures, including but not limited to fencing, hedges and walls, to provide substantial perimeter buffers and effective screening Of the premises from adjacent uses and public roads.

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SECTION 8. Violation of ordinance an offense; penalties therefor:

- a. A violation of this ordinance is an offense, punishable by a fine not exceeding one hundred dollars imprisonment for a period not to exceed fifteen days, or both.
- b. A civil penalty not to exceed one hundred dollars per day of violation.
- c. In addition to the above prescribed penalties, the Town Board may in its discretion revoke any permit or license previously issued after a public hearing at which the applicant shall have an opportunity to be heard, or in the alternative, may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with this ordinance by injunction, abatement or otherwise compel cessation of each violation, and obtain restitution to the Town for costs incurred by the Town in remedying each violation, including but not limited to reasonable attorney's fees.
- d. Additional enforcement provisions:
  - (1) **Compliance Orders.** The Code Enforcement Officer is authorized to order, in writing, the remedying of any condition or activity found to exist in, or on about any building, structure, or premises in violation of this ordinance. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates this ordinance; (4) specify the provision or provisions of this ordinance which is/are violated by the specified condition or activity; (5) specify the period of time which the code enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by certified mail.
  - (2) **Appearance Tickets.** The Code Enforcement Officer and his designee are authorized to issue appearance tickets of any violation of this ordinance.
  - (3) **Injunctive Relief.** An action or proceeding may be instituted in the name of the town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this ordinance, Certificate, License, compliance Order, or other notice or order issued by the code Enforcement Officer pursuant to any provision of this ordinance. In particular, but not by way of limitation, where the construction or use of a building or structure, or any activity on the premises, is in violation of any provision of this ordinance or a Compliance Order or other order obtained under this ordinance, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the compliance with this ordinance and the abatement of the condition or activity in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the town board.
- e. **Remedies Not Exclusive.** No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for a limitation of, the other remedies or penalties specified in this section, in

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other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in any other section of this local law, or in any other applicable law.

### **SECTION 9. Repeal.**

Any portions of ordinances, resolutions or regulations heretofore adopted in conflict with this ordinance are hereby repealed.

### **SECTION 10. Saving clause.**

If any clause, paragraph, section or part of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

### **SECTION 11. Effective date.**

This ordinance shall take effect ten (10) days after publication and posting thereof or immediately upon personal service, as provided by Section 133 of the Town Law.