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Junkyard Dog Cases:
Enforcement of Codes & Statutes
& Remedies

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Junkyard Dog Cases: Enforcement of Codes & Statutes & Remedies

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I. "Which Breed Is It?" or The Initial Problem: Trash or Treasure

A familiar old adage holds that "One man's trash is another man's treasure." Put another way, "Something that one person considers worthless may be considered valuable by someone else." This maxim lies at the heart of many of the problems involved in junkyard cases, especially those that meet the title of this segment: "Junkyard Dog Cases."

Several years ago, I inherited a junkyard case for a new municipal client. As the property owner had just lost an appeal to the state supreme court, it was left to me to seek to compel compliance with a reluctant, disappointed, and uncooperative property owner. Eventually, we ended up in a court hearing. After listening to the property owner's justification for having so many vehicles and parts of vehicles on the property ("I like to tinker and make my own custom vehicles"), the judge said he had to see this. So we trundled off to the property, waded through a recent snowfall and viewed a yard full of partially dismantled vehicles and others that were completed or partially completed for single purpose uses, such as "this one hauls wood; this one moves dirt," and many more. The judge finally looked at the property owner and said "what the (X%&#@) do you need all this crap for?" Looking at me, he asked that I write up a proposed order saying what he could keep, what needed to go, and giving him time to comply – and above all be reasonable! The judge approved the order (which was, in fact, very reasonable) and eventually we obtained compliance, though it did not happen overnight.

In another case (in which I was not involved), a used materials purveyor objected to a town's efforts to characterize his operation as a junkyard. Seeking to bolster his argument that he had a constitutional right to use his property as he saw fit, he added a First Amendment component by bringing in "exotic" dancers to perform on a make-shift stage on his property.

These examples likely are not too separated from the experiences of any municipal attorney who has sought to enforce a state statute, local code, or zoning ordinance involving a "junkyard." Identification problems may be heightened by vague or even conflicting definitions, along with a host of problems that best can be addressed by preparation.

To start the discussion, most, if not all, state statutes are based, at least in part, on federal law associated with federal highways.[1] Accordingly, state laws are

[1] 23 CFR Part 751 contains rules adopted pursuant to 23 U.S.C. 136, prescribing "Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein." 23 CFR § 751.1. "The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate highways." 23 CFR § 751.3.

written to be at least as stringent as federal law and contain definitions consistent therewith.

Of course, junkyard issues are not confined to relatively narrow strips of land adjacent to federal highways, the so-called "effective control" zone.[2] State statutes may extend regulation to other areas and encompass activities that are broader than the junkyards encompassed within federal regulation. Local governments, too, may exercise control in the same manner by (a) delegation of control from the state, (b) express or implied authorization, or (c) use of home rule powers. In addition, junkyards are uses of land that may be regulated under the zoning power.

Accordingly, the regulatory definitions of "junk" and "junkyard" are the key first steps in deciding the trash or treasure question, quite aside from the other "players" in the contest.[3]

Another factor in state regulation is the distinction between licensing or permitting and regulatory controls. State laws, like New Hampshire's, with regard to junkyards located outside the state control zone, focus primarily on a requirement to obtain a license from the local authorities and less on specific regulatory aspects (including prohibitions of junkyards). Local authorities may use powers granted under state junkyard statutes to adopt regulations that specify conditions under which junkyard licenses will be issued. More likely, however, a local government may use its police or zoning power to define areas of the community in which junkyards are prohibited or permitted. The licensing or permitting scheme then becomes an additional regulatory hurdle.

A. Definitions and More. To start, FHWA rules define several terms regarding state obligations to enforce federal standards. [4] Notwithstanding the

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[2] Areas within 1,000 feet of Interstate and Federal-aid primary highways. 23 CFR § 751.9.

[3] For example, the cast in a junkyard case may include junkyard owners/operators, abutters, concerned citizens, or local officials.

[4] a. *Junkyard.*

1. A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.
2. An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.
3. An Illegal Junkyard is one which was established or is maintained in violation of State law.

definition's inclusion of non-automotive junk, an initial issue that may arise is the seemingly common misperception that junkyard controls relate solely to activities involving motor vehicles.[5] The definition of junk, though, clearly extends more broadly to other types of materials. With regard to motor vehicles, states may seek to provide greater clarity by stating, for example, that a motor vehicle junkyard will include an area where "two or more unregistered, or old motor vehicles, no longer intended or in condition for legal use on the highways, or used parts or materials from motor vehicles which, taken together, include in bulk two or more vehicles are held on property" (not licensed as a motor vehicle dealer).[6] Thus, motor vehicle "junk" issues involve concerns such as whether registering an inoperable vehicle removes it from consideration.

Even more difficult, though, is application of the term junk as defined in federal rules (and as may be incorporated into state law.) At what point does material become transformed from a treasured antique to "old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, or waste"?

Numerous factors come into play in considering if conditions on a property meet the necessary requirements to constitute a junkyard. Key to success, though, in any case will be a determination that the conditions on the ground meet the definition in the vehicle used for enforcement. A neighborhood complaint that a property looks like a junkyard may be based on failure to keep lawns neatly trimmed along with kids' toys being left out in the yard. Assuming that this is a controversy into which a government may seek to insert itself, such a scenario may raise enforcement issues, but perhaps not one involving junkyard statutes or ordinances.

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4. A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

b. *Junk.* Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

c. *Main traveled way.* The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

d. *Industrial zones.* Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of part 750, subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

e. *Unzoned industrial areas.* An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[5] In New Hampshire, at least, this perception may have arisen from the statute's placement in the statutory title dealing with motor vehicles.

[6] N.H. RSA 236:92.

Similarly, local governments may wish to be wary of seeking to enforce homeowners' association rules regarding the manner in which properties are maintained.

B. Documentation. In addition to the proverbial statements about trash and treasure noted above, there is another truism likely to have been experienced by anyone who has brought a code enforcement action. The conditions on the property are variable and the conditions that exist when a judge visits the property may differ substantially from those that existed when the action was brought (and to which the property will return once the judge leaves).

Time- and date-stamped photos or videos (where chain of custody can be demonstrated) are likely the second best evidence that can exist in a junkyard enforcement case.[7] While photographic evidence is clearly preferable to someone's "recollected" observations, care must be exercised so that no interference with property rights or due process occurs. Permission from the property owner or someone in meaningful control of the property is certainly appropriate if entry on premises is needed to obtain accurate photos. Capturing conditions readily visible from a street or other public area should not cause issues to arise. In most cases, depictions visible from a neighbor's private property should not cause concern. However, state law protections (statutory or common law) for individual privacy may create concern even if conditions otherwise would not invalidate admissibility of such evidence.

If photographic evidence cannot be obtained, contemporaneous documentation by transcription of observations may be helpful in terms of recalling not only what was observed but also when the observation occurred.

II. "To Spay or Not to Spay" or The Decision to Enforce

If every possible junkyard situation (one technically meeting definitions under most statutes, zoning ordinances or junkyard code provisions) led to an enforcement action, local government legal costs likely would soar and the list of defendants against whom actions are brought would be lengthy, indeed, probably including some local officials, as well.

In this author's experience, the "toughest" case to bring in any community is often the first one, seeking to enforce a legal standard that may not have been followed too stringently in the past. The "poor" property owner protests, "Why me? Go after everyone else if you're coming after me." The simple answer, of course, is limited resources justify "selective enforcement" and you have to start somewhere. Though non-enforcement in any one instance generally will not constitute binding precedent, estoppel or failure to enforce may be of persuasive importance in a jurisdiction or to a particular judge. Thus, in instances where

[7] The best evidence, not likely to exist in most cases, will be a judge's visit to the property at a time when its use as junkyard is clearly evident (as in the enforcement action first mentioned in this paper).

multiple properties have conditions that would justify enforcement, a potentially useful tactic is to have a "game plan" in place to demonstrate that the municipality's code enforcement practice will follow a "domino" theory of going after each violator in turn. If followed properly, one or more victories at the outset may produce voluntary compliance without actually having to commence multiple enforcement actions.

By the same token, the local "grapevine" will ensure that a municipality's failure to secure relief in a junkyard enforcement case will "hit the street" almost immediately. Therefore, an important word of caution, particularly in regard to choosing a case to start an enforcement campaign, is to try to select a sure winner (assuming there is such an animal) and not a junkyard dog case.

Before beginning an enforcement action, though, prudence suggests that the steps outlined in the remaining parts of this section of the paper be followed.

A. Basis for Action: Statute, Ordinance or Zoning Violation. Know why an action is brought, what is the legal basis for the action, and the available remedies for curing the violation (and providing some financial recourse for the community). Actions may range from one simply targeted to a specific junk condition on a property to a "kitchen sink" approach which combines junkyard enforcement with health and sanitation and zoning issues. The latter is the approach taken in sample pleading Form 6.

While the targeted approach may have some utility and benefits from simplicity and perhaps a more speedy resolution, its downsides, depending on jurisdiction and circumstances, may include barriers to future enforcement action by virtue of *res judicata*, double jeopardy, or collateral estoppel. The actual decision as to how best to bring an enforcement action will be determined by law and procedure in any jurisdiction. However, land use code enforcement (e.g., zoning, junkyard ordinances) may be closely tied factually to those pertaining to statutory junkyard enforcement action (presuming statutes apply). Accordingly, failure to combine the actions may lead to difficulty in bringing subsequent enforcement action. While multiple bases for enforcement may be a more complicated action, a single action could be more efficient and less costly in both legal expense and time required for witness preparation, depositions, and testimony.

B. Pre-Existing Use, Pre-emption, Estoppel. In any land use action, at least three factors can cause complications. Pre-existing uses (nonconforming uses in common zoning parlance) may be "grandfathered" and protected from subsequent enforcement actions. Each state's law governing continuation, alteration, expansion or extension of pre-existing uses may vary – not only from other states – but even from zoning to junkyard statute enforcement.[8] It is worth

[8] Though nonconforming use law has constitutional roots, its construction in statutes and ordinances may differ from minimal constitutional protections against deprivation of property

repeating, therefore, that knowing the legal basis for enforcement is a key first step.

Federal pre-emption of local control of junkyards is certainly less of a concern than is the case for (as an example) location and permitting of cellular communications facilities. Indeed, the FHWA rules mentioned above specifically note that states are free to enact more stringent standards within the effective control zone, and federal law does not limit states or local governments outside that zone. On a state level, though, statutes may limit local authority or impose standards or procedures as to how junkyard regulation occurs at the local level.

In addition, and once again based on state law and tradition, the effect of local enforcement and non-enforcement in one instance may or may not apply to enforcement actions in the future as to a particular property or to similarly-situated – or even different – properties.

In summary, a wise and prudent course of action in a "junkyard dog" case is to:

- Sniff out the factors that may limit discretion;
- Search the "yard" for buried obstacles;
- Scout the opposition to know their location and strategy; and
- Create plans for attack and retreat.

C. A Small Dose of Reality. As briefly mentioned earlier, junkyard cases often involve a concern with how a property looks as well as issues relating to public health and safety. Aesthetics, of course, is an important and valid goal of land use control. Nonetheless, aesthetics necessarily invokes the "trash or treasure"/"beauty in the eye of the beholder" analysis cited at the outset of this paper.

Success cannot be guaranteed, but chances for success may be enhanced by following a road map that:

- Identifies objectives of handling instances of concern;
- Always identifies the basis for action;
- Creates a record to justify decisions to enforce or not enforce;
- Preserves information in an accessible manner that allows for consideration of regulatory changes needed to improve or clarify enforcement.

A virtue that may be difficult to apply is patience. Compliance generally will not occur overnight, even with a court order.

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rights without compensation. Similarly, protections under junkyard laws and ordinances need not necessarily conform in all detail to zoning laws and ordinances.

III. "Stray Dogs" or Identifying the "Perp"

A. Owner v. Occupant. In addition to determining if conditions on the property constitute a violation (of statute or ordinance), and whether a junkyard is an allowed use, and whether the junkyard has been permitted or licensed, initial enforcement decisions need to focus on identifying a responsible party. If the junkyard operator is not the same person as the property owner, local authorities must review state law or local ordinances (as appropriate) to determine the appropriate parties with whom compliance issues must be addressed.

Since demonstrating the existence of a junkyard is a key element in strategy, gaining access to view and document conditions on the property is important. Merely asking someone on the property for permission to enter may be insufficient for purposes of voluntary consent to enter, so a little research in property records is appropriate to avoid getting sent to the "dog house."

Property assessment records, deed records, even expired junkyard licenses, and zoning records can be documents showing ownership. Yet, those records may not be current. If there is any question as to ownership or who may have authority to validly permit entry onto the property, a registry of deeds search may be the "safe bet." Administrative search warrants also may be available in some jurisdictions.

B. Compliance Resources. Once the identity of the owner/occupant/operator has been sufficiently confirmed, a number of approaches may yield compliance, at least in some respects.

- Absentee property owners truly may not be aware of conditions on a property. Once made aware of concerns, the owner may act without the need to further municipal enforcement.
- Though perhaps unlikely, making a person aware of complaints may yield some improvement (or may solidify the notion that a neighbor is a (choose one): busy body, idiot, do-gooder, pest, etc.
- Finding a non-governmental ally who can be persuasive may yield some action by a person who resists efforts by the government to "interfere" with property rights.
- Publicity can be risky and have adverse results if not used judiciously, but in the right situation, it may yield results.

C. Scofflaws. Some of the most difficult (and expensive) situations can involve persons who know what they are doing is a code violation. In such instances, judicial action may be unavoidable. Judicial reaction may vary from vigorous and involved concern over one who openly flouts the law to, perhaps more commonly, issuance of an order coupled with not a lot of concern – until the violator disobeys a judicial mandate.

IV. "Here, Boy!" or Notice, Access and Other Niceties of Due Process

As with any local government action that has the potential to involve criminal or civil penalties (fines or forfeitures) or which address the use of property, enforcement actions must be planned and implemented with an eye on constitutional protections. Other sessions of the Code Enforcement Conference address elements of the process that is "due" in greater detail.

It is sufficient to note here that enforcement efforts are enhanced by showing that:

- The owner has had advance and timely notice of the source of the violation, a description of the conditions constituting the violation, and the actions that must be taken to comply.
- Property rights have been respected by properly obtaining permission to enter upon the property or otherwise using proper process to do so.
- Unless safety or health concerns dictate otherwise, a reasonable and sufficient time has been allowed for compliance, with additional warnings provided (akin to progressive discipline in an employment context).
- Conditions that truly raise safety and health issues are addressed promptly and with multi-faceted approaches (e.g., calling in environmental authorities as needed[9]).

V. "Trying to Tame the Dog" or Negotiations

Notwithstanding the desire on the part of some municipal officials (rabid in the eyes of some), junkyard cases are seldom open and shut cases. Even when a trial results in a "victory" for local government, compliance may requires years and dollars more effort. The verbal network (now enhanced by social media) can crow (or yap) about delays and particularly about prosecution failures.

Similarly, but at the other extreme, the "network" will rapidly discern reluctance or inability to seek enforcement. With this version of "open government" so extant, a municipality's ability to effectively enforce junkyard licensing, permitting, and location requirements must include a satisfactory negotiations ability and strategy.

No single paper can effectively teach successful negotiation techniques and success will depend on so many variables it is unlikely that a single strategy can be developed that works in many cases, much less universally.

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[9] In one small town, the Selectmen called me indicating that a property owner was storing motor vehicle parts without obtaining a junkyard permit. A site visit showed that a strange-looking structure had been built with open compartments into which motor vehicle engines (in a variety of conditions) had been placed. There was evidence of liquids on the ground, and the structure was built within 15-20 feet of a small stream. What started as a permitting concern escalated into a potentially significant environmental matter. While the junkyard permitting issue remained alive, the immediate concern – and enforcement action – was instituted by the state environmental protection agency, which issued orders using its administrative powers. As a result, the structure was taken down, the "junk" motor vehicle engines removed, and environmental damage assessments were undertaken, all at the direction and expense of the state, and the junkyard issue largely disappeared.

The following pointers may prove useful:

- Know the law and both the strong and weak aspects of the situation.
- Have a goal, but maintain flexibility, particularly as to how that goal is attained.
- Allow the "violator" to suggest ways to come into compliance.
- Develop a strategy that is acceptable to all members of the teams – remember that a weak link can easily cause the chain to sever.
- When appropriate, consider amending the goal.
- At the outset, plan how success (or failure) will be addressed internally and externally.

VI. "Heel!" or Litigation

When negotiations are exhausted or it is clear that friendly persuasion will not meet the needs of the situation, look to instigate enforcement via litigation. If this is the first time that litigation is considered, however, it may already be too late for litigation to work efficiently and effectively.

Experience demonstrates that effective litigation may best be fostered in a situation where the enforcer gets the court order that complies in substance with the very first discussion with the violator – or at least with the first formal notice of violation. An effective pleading will point to the source of law or authority (including venue, jurisdiction and authority of the court to grant the relief requested).

A second component of an effective pleading will be proper naming of parties, including proper and timely service. By textual narrative and inclusion of copies of documents, the pleading should demonstrate an exhaustive, reasonable, and organized pre-trial effort to obtain compliance. The relief requested must be within the authority of the law or ordinance underlying the action and within the power of the court (e.g., injunctive and/or declaratory relief as needed).

If the pleading as initially constructed cannot connect all the dots or shows, in any manner, an inconsistent or incomplete record, a decision must be made as to whether the problem can be resolved at this stage or whether it is time to go back to the drawing board.

VII. "Pooper Scoopers" or Remedies

In looking at remedies, it is well to remember that junkyards do have utility and value regardless of the perspective of the eye of the beholder.[10] To exclude junkyards completely from a municipality may be desirable from an aesthetic

[10] Most members of the public would likely agree that recycling of tires through an auto graveyard beats having tires dumped in the woods. Today, teens with "affordable" cars may not have as easy a task as teens of yesteryear when it comes to refurbishing those vehicles due to the complexity of modern vehicles. Yet, it is undeniable that a market exists for used auto parts that can be reused without having to pay the price for original equipment replacement parts from auto dealers.

viewpoint; whether that is desirable from a utilitarian viewpoint is a matter beyond the scope of this paper.

The range of remedies in a junkyard dog case is not categorically different from the remedies that may be sought in the "run-of-the-mill" code enforcement case. The range runs from the ideal to the minimally acceptable. In the case of municipal enforcement, consideration must also be given to the identity of the person or entity to whom the remedy must be palatable.[11] Ultimately, of course, the municipal lawyer properly is viewed as serving the public. Remedies that further the goal of serving the public can be said to include:

- Remedies that actually produce or further the desired goal without having to reinstitute enforcement.
- Remedies that can be replicated when appropriate by pointing to past decisions.
- Remedies that actually can be achieved.
- Remedies that do not leave unanswered the future of the property and what actions are permitted.

VIII. Sample Forms and Documents

From the point that informal resolution appears doubtful, contacts should become more formal and communications should be in writing. It is, of course, a good practice to document all contact on enforcement measures, including investigation and inquiries, by creating a paper trail for the municipality's in-house files. The forms included in this paper envision progressing from inquiry and informal resolution up to court action. That progression need not be followed in every case, as there may be little benefit in duplicating prior notices when there is no possibility of resolution.

There should, however, be some documented point in the file where the individual was formally advised, in writing, of the claimed violation. This notice should include the basic components of any claimed violation:

- Conditions constituting the claimed violation.
- Dates on which violations are claimed to have existed.
- Statute(s) or ordinance(s) which are claimed to be violated.
- Remedial actions required to comply.
- Opportunity to contest or appeal or bring forward new or additional information that might affect a decision to proceed with enforcement.

Examples of Forms

The forms and documents included in these materials are neither model forms nor are they necessarily recommended for use in all cases. Each junkyard case

[11] For example, the governing board or city council may be the organizational entity client to whom a lawyer's duty is directed by rules of professional conduct. Other parties whose views may enter into consideration in deciding if the client entity is properly served include complainants, individual council members, code enforcement personnel, and even the violator.

presents individual considerations that will dictate the nature and content of forms for inquiries, notices of violations, and compliance actions.

In considering the forms to be used in a junkyard case, one preliminary consideration is what happens if "compliance" is not obtained. This means that a first step is to determine if the conditions on the property in question constitute violations of state statute, local zoning, site plan review requirements, conditions of approval, or some other ordinance or regulation. If there is no clear "violation," it is necessary to evaluate the municipality's role, which might perhaps be that of a mediator in resolving what essentially is a private property dispute.

The sample forms envision that a violation is deemed to exist and that the municipality will follow through with an enforcement action if satisfaction is not obtained in some manner. The forms also envision that a determination has been made that municipal action is warranted. For example, a complaint may have been received and a "drive-by" has shown that "junk" is clearly visible from the street. Alternatively, the municipality may have had to conduct an on-site inspection (with prior consent of the property owner or custodian, or a court-approved search warrant). The forms also envision that some level of informal contact has been initiated (e.g. a phone call or personal visit) and that this form of contact has not achieved resolution.

An Aside on Zoning Violation Actions (Under New Hampshire Law as an Example)
NHRSA chapter 676 envisions several different ways to enforce zoning ordinance violations. These may involve action in Circuit or Superior Court. Most junkyard cases that are not resolved prior to court action likely will involve disputes that need to be litigated to conclusion, so some of the Circuit Court (lowest court in New Hampshire) options available for zoning cases appear to be of limited utility.

The "cease and desist" order envisioned by NHRSA 676:17-a generally is used where the municipality believes that such an order may induce compliance, and, if compliance is not obtained, where the municipality believes that it is appropriate for it to take the necessary action to achieve compliance. This may have limited appeal in junkyards, particularly if there is any possibility of environmental damage or hazardous materials.

The plea-by-mail land use citation procedure set by NHRSA 676:17-b is most useful for assessing minor fines or penalties and not in instances in which the municipality needs the court's equity or injunctive power to compel compliance. If a situation might be resolved by issuance of an order from a judge, then this procedure might work.

The more usual instances in which court action will be initiated are those involving judicial intervention to assess fines, forfeitures or penalties AND to

enjoin violations and compel compliance (e.g. clean-up and orders prohibiting continuing violations). Form #3 is an example of a Notice of Violation for this type of proceeding. The assessment of monetary fines can be achieved in circuit court (subject to appeal rights to superior court) but the issuance of injunctive orders is generally best achieved by application to the superior court.

Comment on Statutory Violation Actions
Under NH law, municipalities may enforce junkyard states within the state's jurisdiction (RSA 236:90 - 110), as well as those statutes setting local licensing and standards for junkyards (NHRSA 236:111- 129).

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Junkyard Dog Cases: Enforcement of Codes & Statutes & Remedies

Sample Forms and Documents

The forms which are included in this package include:

1. *First Formal Inquiry Letter*
2. *Formal Notice of Junkyard Statute Violation*
3. *Formal Notice of Zoning Violation*
4. *Last Chance Letter*
5. *Compliance Agreement*
6. *Kitchen Sink Pleading*

[These samples are provided merely as examples of forms that may be used in New Hampshire. Naturally, forms need to be adapted to jurisdictional practices and requirements. They are provided simply as one person's ideas for ways to initiate efforts to seek compliance in junkyard cases. They are not intended as legal guidance or advice.]

FORM #1: FIRST FORMAL INQUIRY LETTER
[Following initial informal contact]

[To be placed on Municipal Letterhead]

RE: JUNKYARD INQUIRY

Dear _____ :

As you are aware from prior informal communications, it has come to the attention of this office that conditions on property owned by you in the Town of _____ appear to constitute a junkyard within the meaning of RSA 236:112. The Town has no record of your having obtained a license for the operation of a junkyard as required by RSA 236:114.

[If zoning compliance is also at issue, insert reference to the applicable zoning ordinance sections.]

If you have any information that you wish to call to the Town's attention indicating that (l) you are not operating a junkyard, (2) you have obtained a license, or (3) you otherwise are not in violation of these statutory [and zoning ordinance] requirements, please contact this office as soon as possible, and in no event later than _____.

You also may seek to obtain a license by filing an application with _____. If an application is received by _____, the Town may withhold instituting enforcement action. If satisfactory action is not taken as described in this correspondence by the dates indicated, the Town will commence legal action as appropriate.

Sincerely,
Code Enforcement Official/
Board of Selectmen, etc.

FORM #2. FORMAL NOTICE OF JUNKYARD STATUTE VIOLATION

[Note: If zoning ordinance violation is involved, combine with or separately send a Notice of Zoning Violation - Form #3]

[To be placed on Municipal Letterhead]

RE: NOTICE OF VIOLATION

Dear _____ :

On _____ , you were informed that the Town believed that you were maintaining a junkyard on your property in violation of State statutes [and the Town's Zoning Ordinance]. As of the date of this letter, you have not taken action required to bring your property into compliance. Accordingly, the Town is issuing this formal Notice of Violation.

- Property Location:
- Conditions Observed and Dates of Observation:

The foregoing observations indicate that a junkyard [is being/has been] maintained on said property without a proper license in violation of RSA 236:114.

- Remedial action required: Cease and desist all commercial activities immediately.
- Remove the materials constituting the junk on the property in accordance with the following schedule [Insert required actions and deadlines for action].

[Zoning Violation: In addition to the violation of State statutes, the conditions on this property appear to violate the Town of Zoning Ordinance as set forth in the enclosed Notice of Zoning Violation.]

This Notice constitutes formal notice to you of violations of New Hampshire law. The Town reserves all rights to institute legal action from this date forward, including assessments of fines and forfeitures, imposition of civil and criminal penalties, and injunctive relief. The Town will seek to recover all costs incurred, including attorney's fees.

The Town may elect to withhold immediate filing of legal action based upon your response to this Notice; but the service of this Notice constitutes formal notice to you, and all fines, forfeitures and penalties will be deemed to run from the date of this Notice.

The Town hopes that you will take action at this time to fully comply with State law to avoid further expense and inconvenience and legal consequences to you.

Please contact _____ if you wish to discuss this matter further. Please be advised, however, that this matter will shortly be referred to the Town's Attorney for enforcement, so your prompt attention and response are required.

Sincerely,
Code Enforcement Official
Board of Selectmen, etc.

FORM #3: FORMAL NOTICE OF ZONING VIOLATION

[Note: If statutory violations also are claimed, serve this notice with Form #2.]

STATE OF NEW HAMPSHIRE _____COUNTY
TOWN OF _____

NOTICE OF ZONING VIOLATION
PURSUANT TO RSA 676:17

To:
RE: Property in known as Tax Map Parcel _, Lot #__
Date:
From: Board of Selectmen (or enforcing authority)

This document constitutes formal notice of conditions on the above-identified property which appear to the Town/City of _____ to constitute violations of the Town/City's Zoning Ordinance. This Notice is issued by the [Board of Selectmen or other enforcing authority] as the enforcing official for the Town/City of Zoning Ordinance pursuant to RSA 676:17.

l. Conditions Constituting Violation of Zoning Ordinance.

List in detail conditions constituting the violation. **2. Zoning Ordinance Sections Involved.**

List and describe the article and section involved, including any definitions that should be made clear to the property owner.

3. Actions Required for Compliance.

In order for the property to be brought into compliance with zoning ordinance:

[Here list the action(s) the property owner must take to bring the property into compliance and the dates by which action must be taken.]

The Town/City of _____ reserves all rights to proceed for injunctive/declaratory relief, assessment of fine, forfeitures, and/or civil penalties, or other relief as allowed by law. To the extent that , this decision constitutes a decision of an administrative official which is appealable to the Zoning Board of Adjustment, the owner may do so in accordance with the requirements of State law and Zoning Board of Adjustment rules of procedure (insert deadline for appeal, e.g., 30 days from notice).

Add signature line(s)

FORM #4: "LAST CHANCE" LETTER FROM MUNICIPAL ATTORNEY TO PROPERTY OWNER

[On municipal attorney's letterhead]

Dear _____:

This office represents the Town of _____. The Selectmen have [or Code Enforcement Officer has] referred to this office the matter of the junkyard that you appear to be maintaining on your property. The Selectmen/CEO have/has sent me copies of the correspondence which they sent to you on _____, and the Notice(s) of Violation served on you on _____, copies of which are enclosed with this letter.

Please be advised that the Selectmen/CEO have authorized and directed me to institute appropriate legal compliance action in accordance with State law if this matter is not resolved. Therefore, unless conditions constituting the junkyard are remedied, or unless a satisfactory schedule for remediation is established, enforcement action will be filed in the immediate future. In addition to declaratory and injunctive relief, the Town will seek to have the Court impose the monetary penalties established by law and will also seek to be reimbursed for legal costs incurred in securing compliance with the law.

This situation obviously poses significant risks for you and your cooperation in resolving this situation can result in substantial benefits to you. If you wish to discuss compliance, please contact my office no later than _____ . If you have information that you believe suggests that you are not in violation of the State junkyard law [or Town Zoning Ordinance], please contact me within the same timeframe.

Once again, you are advised that the deadline for response to this letter is _____ and, therefore, legal action will be instituted to compel compliance immediately after that date if I have not received a satisfactory response to this correspondence.

If you wish to be represented by an attorney in this matter, please have that attorney contact me immediately, and do not wait until the deadlines set forth above.

Thank you for your anticipated cooperation.

Attorney for the Town/City of _____

FORM #5: COMPLIANCE AGREEMENT
[When Litigation Has Not Been Instituted]

COMPLIANCE AGREEMENT

In consideration of the terms and conditions set forth in this agreement, [identify all property owners by full name and address] (hereinafter "OWNER") and the Town of _____, a New Hampshire Municipal Corporation, whose address and place of business is _____ (hereinafter "TOWN") agree:

1. This agreement shall be deemed an agreement to resolve current disputes without an admission or waiver by either party as to whether the conditions that existed upon _____'s property (hereinafter the "PROPERTY") constituted violations of the TOWN Zoning Ordinance [and/or RSA 236].

2. OWNER agrees that the zoning ordinance does not permit a junkyard on the PROPERTY and states that OWNER does not intend to operate a junkyard as defined in the TOWN Zoning Ordinance or in RSA 236:112.

3. The TOWN agrees that it will not constitute a violation of its current Zoning Ordinance for OWNER to maintain, as part of OWNER'S automotive sales and service business at the property, a reasonable inventory of vehicles which are not registered in operable, roadworthy condition subject to the following requirements:

> A. The number of such vehicles shall not exceed the number upon which OWNER is actively working plus one additional vehicle to be held for future use, so that the total number of vehicles shall not exceed ___.
>
> B. Any outside location in which such working inventory vehicles are stored shall not exceed an area ___ feet by ___ feet and shall be in the area designated on a site plan, as approved by the TOWN and on file in the Town Office. Such storage area shall conform to the requirements of the ____ Zoning Ordinance for off-street parking, including grading, surface, drainage and maintenance. OWNER may change the location and shall notify the TOWN of any change, but shall not increase the size of the area without approval under Section 3, C of this Agreement.
>
> C. If OWNER's business conditions warrant, OWNER may request that the TOWN agree to increase the number of working inventory vehicles. OWNER shall submit substantiation to demonstrate that business conditions actually warrant such an increase.

4. The working inventory of vehicles listed in paragraph 3 shall include automobiles, trucks, trailers, flat beds, construction equipment and any other type of vehicle. All other vehicle parts or non-vehicular materials of any kind shall be

removed from the PROPERTY or stored within a building on the PROPERTY or within an enclosed conventional, weatherproof storage trailer.

5. All other vehicles located outside of a building on the PROPERTY, including, without limitation, automobiles, trucks, trailers, flat beds and construction equipment of any kind, shall be roadworthy (i.e., capable of passing inspection) or in such condition as to be roadworthy with only minor repairs (e.g., replacement of headlights or flat tires, and not one needing significant work). The intent of this paragraph is to limit any such vehicles to those which are actively being serviced or which are part of the inventory of vehicles to be sold as vehicles in operable, roadworthy condition.

6. The TOWN understands that it may take a reasonable period of time to bring the PROPERTY into conformity with the conditions set forth herein. The parties therefore agree that OWNER shall do so as expeditiously as possible and, to the extent that action cannot be taken immediately, OWNER may do so over a period of time extending to not later than _____. As an express condition of the TOWN's agreement to defer the deadline for compliance, OWNER shall submit periodic progress reports to _____ indicating the action taken to conform, not later than the first day of each month commencing _____. The deadline for compliance shall not be extended unless OWNER's periodic reports demonstrate *bona fide* continuing efforts over this period to bring the PROPERTY into compliance.

7. If a party believes that the other party has violated the terms of this agreement, it may seek to enforce this stipulation in the same manner that it would a decree of the court. This Agreement shall not bar the Town from enforcing its Zoning Ordinance nor shall it bar _____ from contesting any such claimed violation based upon other conditions on the property.

Add signature lines and acknowledgments as appropriate.

FORM #6: "KITCHEN SINK" PLEADING
(JUNKYARD STATUTE, ZONING & HEALTH OFFICER COMPLAINTS)

STATE OF NEW HAMPSHIRE

MERRIMACK, SS SUPERIOR COURT

Town of Poker Flatts, NH

v.

J.Y. Dogg

PETITION FOR DECLARATORY JUDGMENT, PERMANENT INJUNCTION, ABATEMENT OF NUISANCES, AND ASSESSMENT OF CIVIL FINES FOR ZONING VIOLATIONS

NOW COMES the Town of Poker Flatts, a New Hampshire municipal corporation in Merrimack County, New Hampshire, whose address is Town Office, Post Office Box XYZ, Poker Flatts, NH 03xyz, and complains against J.Y. Dogg, of Autograveyard Road, in said Poker Flatts, whose mailing address is P.O. Box abc, Poker Flatts, NH 03xyz and says in support thereof as follows:

1. The Town of Poker Flatts is a municipal corporation with the power to enforce State laws and Town ordinances and regulations, including the provisions of RSA 147 pertaining to health and sanitation and public nuisances, RSA 154 pertaining to fire hazards, and RSA 236:111, *et seq*., as well as the Poker Flatts Zoning Ordinance.

2. According to Town records, Defendant J.Y. Dogg is the owner of record of property located in the Town of Poker Flatts on Autograveyard Road, identified on the Town of Poker Flatts Tax Map as map 13, lot 13 (the "Property"). Defendant acquired the Property by deed dated April 1, 1984, and has owned the property at all relevant times since its acquisition.

3. This action is intended to require Defendants to address and remedy health, sanitation, fire hazard and junk yard conditions on the Property, and the usage of the property in a manner contrary to the requirements of Article III, Section VII of the Poker Flatts Zoning Ordinance, which prohibits the use of land for a motor vehicle junkyard or dump or for the storage of abandoned vehicles or discarded materials of any kind in a manner that is disorderly, unsightly, noxious or detrimental to the public or prejudicial to the general welfare.

4. The Superior Court has jurisdiction to hear this matter within its general equity jurisdiction and, as to zoning enforcement, pursuant to RSA 676:17, and as to motor vehicle junkyard statutes, pursuant to RSA 236:128.

Venue is in this Court, as the Property and the Plaintiff and Defendant are located in Merrimack County.

5. On October 28, 2010, the Poker Flatts Health Officer, Pete Boxer, in the company of Poker Flatts Police Officers, visited the Property and observed a burned out structure which appeared to be unsafe. The property was heavily littered with refuse, including garbage, discarded beverage containers, lumber, and other debris. Mr. Dogg advised the Health Officer that he resided in a travel trailer and that his means of waste disposal was a bucket which he emptied into a pit on the Property.

6. On March 15, 2011, after receiving permission from Defendant, the Poker Flatts Board of Selectmen again visited the property and observed similar conditions to those observed by Health Officer Boxer in October 2010. In addition, the Selectmen observed inoperable and unregistered vehicles and vehicle parts, including tires stored on the premises so as to constitute a junk yard as defined in RSA 236:112. Refuse and debris were scattered over much of the Property, and it appeared that there were gasoline and propane containers, and motor vehicle parts and engines left unattended and open to the elements in several locations on the property. In addition, there were numerous buckets and other containers holding unknown materials.

7. At no time has Defendant applied for or obtained a junkyard license from the Town of Poker Flatts as required to operate a junkyard in accordance with RSA 236:111*, et seq*.

8. The Poker Flatts Health Officer has determined that the improper disposal of human waste, the garbage and refuse scattered throughout the Property, and the remains of the burned-out structure, constitute a continuing nuisance which is injurious to the occupants of the Property and also constitute a hazard to the general public. Defendant was advised of these findings by letter dated October 31, 2010, and was provided a 6-month period in which to bring the Property into compliance.

9. The Poker Flatts Board of Selectmen determined that the foregoing conditions on the property constituted violations of Article III, Section VII of the Poker Flatts Zoning Ordinance and so advised Defendant by Notice of Zoning Violation dated March 17, 2011 (copy affixed hereto as Exhibit #1). That letter provided Defendant the opportunity to avoid legal action by submitting a plan to bring the Property into compliance not later than May 31, 2011. The Plan was to have been submitted by April 15, 2011.

10. Said notice of zoning violation also advised Defendant that he was operating a junkyard without a license in violation of state law and that such operation was a nuisance as stated in RSA 231:119. Said letter directed Defendant to abate the nuisance by ceasing operation of the junkyard forthwith.

11. As of the date of this Petition, Defendant has not complied with either the Health Officer's letter or the Notice of Zoning Violation of the Board of Selectmen, nor has he submitted the response which was required by April 15, 2011, as stated in paragraph 9 of this petition. Defendant also has continued operation of the junkyard so as to constitute a continuing nuisance pursuant to RSA 231:119.

12. As of the date of this Petition, the conditions on the Property continue unabated.

13. The Defendant, as owner and occupant of the Property, has been advised on numerous occasions that these conditions are unsafe and unsanitary, pose dangers to himself and to the public, and violate both the Poker Flatts zoning ordinance and the provisions of RSA 236 governing local control of junkyards. Defendant has refused to take any action to remedy the conditions on the Property.

14. RSA 147:8 prohibits the occupancy of a dwelling unless it has readily-accessible, adequate toilet facilities and an adequate and proper means of disposing of waste water and sewage. Pursuant to RSA 147:10, the Poker Flatts Health Officer has determined these inadequate facilities to be nuisances.

15. RSA 147:13 prohibits the improper disposal of substances liable to become putrid or offensive or the deposit of refuse or garbage on premises which are not designated disposal facilities. The conditions on the Property violate this statute.

16. The Town of Poker Flatts, by its duly authorized officers, believes that these conditions on the Property constitute dangers to the health and safety of the occupant and to the general public and request the assistance of the Court in issuing appropriate orders to address these conditions.

17. The conditions on the Property also constitute violations of the Poker Flatts Zoning Ordinance, and the Town requests declaratory and injunctive relief to abate the zoning violation, and the assessment of civil penalties in accordance with RSA 676:17.

WHEREFORE, the Town of Poker Flatts respectfully requests that the Honorable Court:

A. Issue orders of notice to Defendant;

B. Issue orders declaring that nuisances and statutory violations exist on the Property as stated herein;

C. Find and declare that the conditions on the Property constitute violations of health and sanitation statutes and order the Defendant to abate such conditions at such time and in such manner as the Court may order;

D. Find and declare that the conditions on the Property constitute a junkyard within the meaning of RSA 236:112, and that Defendant has not obtained a license therefor, and order, pursuant to RSA 236:128, that Defendant cease and desist operating a junkyard on the Property;

E. Find and declare that Defendant has violated the Poker Flatts Zoning Ordinance and assess civil fines from the date of the Notice of Zoning Violation as provided by RSA 676:17;

F. Find and declare that Defendant has violated RSA 236:111, et seq., and impose the penalty of a violation as set forth in RSA 236:127 and affirm the imposition of civil penalties of $50 per day for each day of violation pursuant to RSA 236:128;

G. Award the Town its costs, including attorney's fees, in securing relief in this action; and

H. Grant such other and further relief as may be just and appropriate.

Respectfully submitted,
The Town of Poker Flatts, New Hampshire
By its Selectmen and Health Officer

Dated _____, 2011

_____
Vigil Ant, Selectman, Chair

_____
Ob Server, Selectman

_____
Priscilla (Pris) Teen, Selectman

_____
Peter Boxer, Health Officer

STATE OF NEW HAMPSHIRE
MERRIMACK COUNTY

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Vigil Ant, Ob Server, and Priscilla Teen (the Board of Selectmen) and Peter Boxer, Health Officer of the Town of Poker Flatts on behalf of the Town.

_____
Notary Public/Justice of the Peace
My Commission expires_____

Attorney for the Town of Poker Flatts

_____
Nichol N. Dimer
111 Sooemforyu Drive
Concord, NH 03301
(603) 555-5555