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Land Use Regulation: Junkyards  
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## Land Use Regulation:

# Junkyards

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This is one in a series of publications designed to acquaint the interested Michigan public with recent concepts in land use guidance and management. The series covers outdoor advertising, junkyards, construction permit qualification systems, historical districts and zoning ordinance administration and implementation.

Some of the junkyard regulations discussed below have been used in only one or two places in the U.S. and others have been used in parts of Michigan. In no case should it be assumed that any of these schemes can be validly applied in any given locality. Cities, towns and villages are specifically delegated the power to enact and enforce zoning or other land use regulations by the state. As a result, state enabling act legislation may be required before any of the following methods of land use guidance and management can be applied. Before adopting one of these measures, local officials should consult with the attorney for their governmental unit.

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## Introduction

Generating large quantities of dust, smoke, and debris and impairing the visual quality of the surrounding environment, junkyards are generally incompatible with other uses of land. However, as one of the country's major waste disposal problems, the junked automobile, along with other types of waste, can be recycled. As a result, junkyards do serve an essential purpose and are legitimate businesses.

Junkyard regulation is usually the responsibility of the local government. There are three basic methods for regulating junkyard operations and for controlling junkyard location within the community: (1) licensing requirements, (2) nuisance actions through the judicial system and (3) zoning ordinances. Licensing is perhaps the most common method of junkyard regulation. Generally, licensing resolutions forbid licenses to junkyards that fail to meet specified requirements. When a junkyard is operated such that public welfare is endangered, residents may start a court action to have the junkyard's operations modified or totally prohibited as a nuisance. Lastly, zoning ordinances restrict junkyard operations to certain municipal districts and, in some cases, ban junkyards from the community altogether. These three methods of regulation may be used singly or together as the following examples illustrate.

### Licensing Regulation of Junkyards

Most communities do require that junkyards obtain licenses and renew them from time to time. Licensing is considered a police power regulation. Consequently, the power of a municipality to license junkyards depends on a delegation of such power from the State.

Some municipalities refuse to grant junkyard licenses unless the operation conforms to particular standards. For example, licenses to operate junkyards have been denied because the proposed location was too near a school,<sup>1,4</sup> because the yard intended to conduct burning operations that would have adversely affected a residential area<sup>2</sup> and even because the proposed junkyard was close enough to

a landscaped industrial plant to detract from its aesthetic appearance.<sup>3</sup> Additionally, municipalities may issue licenses based on the condition that the junkyard licensee continue to comply with report requirements and periodic inspections.

As an illustration of licensing, the Township of Northfield, Michigan passed a resolution which prohibited licenses to any junkyard within 1,000 feet of any church, synagogue, school, public library, hospital, sanitarium or private home. The resolution further forbid the licenses for junkyards within 300 feet of an intersection unless 50 percent of the property fronting on the public highway for one-half a mile on each side of the proposed junkyard were used solely for business purposes.<sup>4</sup> As long as such licensing restrictions are reasonable, they are generally considered valid forms of land use regulation.

### Nuisance Actions To Regulate Junkyards

Because junkyards are legitimate and useful businesses, such operations have never been declared *per se* public nuisances. A "nuisance *per se*" is something that is offensive by nature under all circumstances to such a degree that public health or welfare is threatened. Such *per se* public nuisances are criminal offenses. While somewhat offensive, junkyards generally do not pose serious treats to human health or welfare and are more often regarded as "nuisances in fact". A nuisance in fact refers to an activity which may be a nuisance, depending on the circumstances of location and surroundings. In legal nuisance actions, the court determines whether the facts support a finding of a particular junkyard as a nuisance; if the junkyard is determined to be a nuisance, the court may issue an injunction to halt certain activities.

For instance, a junkyard operation in a residential section of Dayton, Ohio was engaged in the business of storing, stripping and burning automobiles.<sup>5</sup> The area residents did not object to the unsightly presence of the junkyard. Rather, they were upset about the smoke, dirt and odors resulting from the burning automobiles, despite the fact that the junkyard did not burn cars on Mondays as a concession to the

resident's laundry. As a result, the residents instigated a court nuisance action to have the junkyard's burning of automobiles prohibited. In ruling for the private residents and issuing a permanent injunction against automobile burning, the court reasoned that a similar junkyard operation in a manufacturing area would not have been a nuisance; rather it was the residential nature of the area in which the junkyard was located that made the automobile burning a nuisance.

Similar court cases have involved nuisance actions in which junkyards were required to decrease noise, smoke and odors as well as to construct buildings to house salvaged parts.<sup>6</sup> However, actions that have attempted to identify junkyards as public nuisances and to prohibit junkyard operations entirely have generally failed.<sup>7,8</sup> The Indiana Auto Shredders Company is a case in point.<sup>8</sup> The company operated an automobile shredding and metal recycling business in Indianapolis. It had obtained a functional permit, conformed to all the requisite standards and operated well within zoning requirements. Regardless of such precautions, area property owners wanted to have the shredding operation permanently stopped, as a *per se* public nuisance. The court, however, ruled that a legitimate business, such as the Indiana Auto Shredders Company, could not be permanently enjoined without findings of extreme danger to public health, safety and welfare. With no facts to support injury to the public welfare, the court ruled for the shredding company.

## **Zoning Ordinance Regulation of Junkyards**

Municipalities can reasonably restrict junkyard location through zoning. For example, zoning ordinances generally exclude junkyard operations from residential districts.<sup>9</sup> Communities that enact zoning ordinances to restrict junkyard operations have two options with regard to existing junkyards. In some cases, ordinances require that all non-conforming junkyards be phased out over a period of years.<sup>10</sup> Such ordinances are generally considered valid as long as the junkyard owner is not caused undue hardship.

On the other hand, where substantial investments are involved and potential financial losses are severe, junkyards in areas zoned for other purposes are often permitted to continue operating as non-conforming uses.<sup>9,11</sup> For instance, the Romano family had operated a junkyard at the same location in Hempstead, New York for 40 years.<sup>11</sup> Eventually, the Romano's junkyard property was zoned for residential use by the community. More than 18 years after the enactment of this residential zoning classification, the town of Hempstead attempted to terminate the junkyard operation on the property as a non-conforming use. However, the court held that while the town had an interest in preventing non-conforming uses, the local desire for complete uniformity could not overshadow individual hardship. As a result, the Romanos were permitted to continue their operation.

In a few instances, zoning ordinances that ban junkyards from municipalities have been based on aesthetics alone. Oregon City, Oregon, for example, passed a zoning ordinance which excluded junkyards from the city.<sup>12</sup> The ordinance was enacted exclusively for aesthetic objectives. Considered a reasonable means of effecting an attractive community environment, the zoning law was declared valid by the Oregon judicial system. The court further reasoned that while the prevention of junkyards may inhibit economic growth, the Oregon City residents had the right to forego economic growth and the junkyard operators whose businesses were prohibited were not entitled to have their interests weighed more than the predominant interests of others in the community.

## **Comments**

Nuisance actions, licensing requirements and zoning ordinances are all effective and valid means of junkyard regulation. However, in terms of an overall consistent method of land use guidance and management, licensing requirements and zoning ordinances are probably the most practical forms of controlling junkyard operations. Nuisance actions are more useful in terms of alleviating a problem in a particular junkyard in a specific area. The type of

junkyard licensing requirements and zoning restrictions can be varied to suit the desires of the individual community, keeping in mind a few key points.

In the first place, both licensing requirements and zoning restrictions must be reasonable. Zoning ordinances which attempt to exclude junkyards from a specifically zoned district or from an entire municipality will usually fail unless some consideration is given to the financial hardship imposed on the already existing junkyard businesses. In some cases, junkyards are permitted to continue in business as non-conforming uses as long as they don't expand their operations; in other instances they are given a period of years to phase out and relocate. For the most part, junkyard regulations are valid if they are related, in some form, to the public welfare. Ordinances that restrict junkyards to industrial or business zones and licenses that prohibit junkyards from locating near churches and public buildings, for instance, are quite reasonable. Even ordinances that require junkyards within the city to be shielded by an eight-foot solid fence have been determined to bear a legitimate relation to the public welfare.<sup>13</sup>

Secondly, it must be re-emphasized that junkyards are legitimate and essential businesses. Their unattractive qualities may be regulated but the business itself, if lawful, may not be prohibited through a nuisance action.

### Application in Michigan

By statute, junkyards in Michigan must be screened from public view unless they are inside an area zoned for industrial use, not visible from an interstate, primary or secondary highway, or more than 1,000 feet from such a highway.<sup>14</sup> If the yard was in existence on January 1, 1973, the maximum amount of screening that can be required is an 8-foot fence to be paid for by the owner; if established after that date, any reasonable screening can be required.<sup>15</sup> The initial determination of what is "reasonable" is up to the locality, subject, of course, to judicial review.

### Conclusion

Overall, if used wisely, licensing, zoning and even nuisance actions are valid methods of regulating junkyard operation and location. Junkyard operation and locations regulation is naturally an integral part of guiding, managing or controlling municipal land use in accordance with community objectives.

### FOOTNOTES

1. *Miller V. Zoning Board of Appeals* 87 A.2d 808 (1952)
2. *Dorsey Enterprises, Inc. v. Shpak* 147 A.2d 853 (1959)
3. *Delmar v. Planning & Zoning Board* 106 A.2d 604 (1954)
4. *Warholak v. Northfield Township Supervisor* 225 N.W.2d 767 (1975)
5. *Dale v. Bryant* 141 N.E. 2d 504 (1957)
6. *Perry Mount Park Cemetery Association v. Netzel* 264 N.W. 303 (1936)
7. *Township of Garfield v. Young* 82 N.W. 2d 876 (1957)
8. *Harrison v. Indiana Auto Shredders Company* 528 F. 2d 1107 (1976)
9. *City of Franklin v. Gerovac* 197 N.W. 2d 772 (1972)
10. *Town of Schroepfel, Sewego County v. Spector* 251 N.Y.S. 2d 233 (1963)
11. *Town of Hempstead v. Romano* 226 N.Y.S. 2d 291 (1962)
12. *Oregon City v. Hartke* 400 P. 2d 255 (1965)
13. *National Used Car, Inc. v. City of Kalamazoo* 233 N.W. 2d 64 (1975)
14. *P. A. 1966, No. 219, as amended, M.C.L.A. 252.201 et. seq.*
15. *M.C.L.A. 252.204a*