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How to Deal with Accumulated Junk Problems

Bringing
Knowledge
to Life!

This publication is designed to help communities address complaints about accumulated junk within their jurisdictions. The issue of junk in the landscape was ranked as the second most severe problem in northeastern Michigan in a recent land use survey.¹ This issue has also been identified among the top problems in many of the public opinion surveys done in northwestern Michigan.²

There are several reasons for prohibiting the accumulation of junk and regulating where it is stored. Many types of junk rusting iron, oils, grease, paint from junk and synthetic materials may cause pollution that can damage groundwater (the water from wells). Piles of junk harbor vermin and hold stagnant water for insect breeding.

Junk is unsightly and sends a message to others that the people in an area do not care about their homes or community.

The junk problem (or the perception of a problem with junk) will not be solved simply by passing an ordinance. It will require a coordinated effort on a number of fronts.

"Thirty seven million acres is all the Michigan we will ever have."

Former Governor
William G. Milliken

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¹ Sarah Genschaw; *Perspectives on Land Use; A Survey of Land Use Decision-Makers in Northeast Michigan* (East Lansing; Michigan State University Extension, Alpena County, 2000), pp.?

² Those surveys are: *Antrim County Full- and Part- Time Citizen Opinion Survey* (Michigan State University for the Antrim County Planning Commission/Coordinator Office, summer 1991); *Survey of Grand Traverse County* (Anderson, Niebuhr and Associates, Inc., for Grand Traverse County Planning Department, December 1991); *A Survey of Residents Concerning Issues Relating to Long-Range Planning in Leelanau County* (Growth Management Plan Working Paper #2, Anderson Niebuhr and Associates, Inc., for Leelanau County Planning Department, May 29, 1990); *Manistee County Landowner Survey*; (Manistee County Supporting Studies and Analysis for the Land Use Plan, August 1997, Business and Industrial Development Institute, West Shore Community College for the Manistee County Planning Department, Fall 1996).

A community can undertake five activities to help reduce the problems associated with accumulated junk:

1. Identify the problem and what the community will support.
2. Institute a municipality cleanup program.
3. Adopt junkyard provisions in a zoning ordinance.
4. Adopt a junk ordinance.

What Is Junk?

Junk can be called many things: trash, garbage, waste, rubbish, litter, refuse and so on. The issue to remember can be summed up by the old adage “one man’s junk is another’s treasure.” This is true, and it makes it hard to determine if an unsightly pile is junk or someone’s valuable collection of parts. Many of our world’s great museums have junk as their main attraction. When people go to view the antiquities, do you think that they are saying, “Hey did you see that great junk over there from Egypt?” “No, but did you check out the Greek junk exhibit, yet? Now that is junk, if I ever saw junk.” Your neighbor’s 1956 Corvette in his or her driveway could be seen either as junk or as a classic car, depending on what stage of renovation it is in or who the neighbors are.

Putting it another way, junk is a resource out of place. One might want to think of junk as any man-made material found in a quantity and location that causes distress to surrounding neighbors or the community at-large. Junk, then, is not just a physical problem it is also an issue of perception.

For example, often in northern Michigan new residents from urban areas see the ever increasing accumulation of junk as blight and as a growing problem threatening property values, businesses and the very environment they left the cities to find. Others seek relief from regulation and do not perceive a problem with junk accumulation.

Junk is a problem in those areas where visible junk storage on one’s property is not the norm. As a community becomes successful in cleaning up junk accumulation, it is not unusual for the number of complaints about junk to increase. Junk accumulation is no longer “normal,” and people’s expectations are now higher. So even though there may be less junk accumulation, the local government official may have more complaints to deal with.

5. Adopt a civil infraction enforcement ordinance.

ACTIVITY ONE:

Problem Identification

The solutions to a junk problem for a particular community will not be the same as those in another community. Several issues need to be discussed: What constitutes “junk”? (See “What is Junk?” sidebar.) How much junk should people be allowed to retain, and should that volume be more or less depending on the use of the property? How much junk should a business be allowed to retain? What type of cleanup day or solid waste collection should exist?

The first step is to resolve the answers to the above questions and others like them. This should be done through a public process involving as many people in the municipality as possible. There are a number of ways to do this:

- A public opinion survey.
- A mailed questionnaire.
- A community meeting or forum.

Example

Norman Township will be used here to show how one township worked on this problem. Norman Township was used because of the relative success of its efforts and its handling of community problems along the way. Norman is a rural township with a small unincorporated town (Wellston) in Manistee County. Fifty percent of the township is public land in the Manistee National Forest.

Norman Township used a questionnaire that was mailed to residents with the township newsletter. Township officials used the results to shape their program.

An outside facilitator can be obtained through your county Michigan State University Extension office to help run such a meeting, design a survey or provide other similar services.

Regardless of the method used, the important point is that the community must come to a common agreement. The process of reaching that

agreement is important. It helps educate the public on the issue. It also should be done to ensure local elected officials that they have support for the program and ordinances that will be put into place. In some communities, there will be those who refuse to comply and may attempt to organize some form of protest. The early work to ensure public support is an effective way to neutralize those people's efforts.

A community's problem with junk did not occur over night. Whatever program is put in place, it will not result in a quick fix. It is within the memory of generations alive today when it was acceptable to bury or burn one's trash by the house. Later it was acceptable to use a pit-style dump, often operated by the local government. Both these methods of solid waste disposal were low-cost or no-cost solutions to the solid waste problem. Since World War II, an increasing number of chemicals and materials have been used that are toxic or hazardous when discarded on or in the land or burned. As a result, solid waste is now directed toward landfills – expensively engineered lined facilities for proper disposal of the chemicals and materials we use today. Now the cost is much higher, and these engineered landfills may no longer be located nearby. Often the cost and inconvenient distance motivate some to discard trash another way, such as on vacant land or in their yards.

ACTIVITY TWO: Cleanup Program

Before adopting an ordinance on junk and starting to contact landowners to clean up their property, a community should first consider a non-regulatory approach to the problem. This could be considered a second step. Many successful community cleanup efforts have begun with a cleanup day – prior to enforcement activities.

A cleanup day can be once (spring) or twice (spring and fall) a year. It is a widely publicized day to collect any quantity of material, including large items that often end up as accumulated junk left on land. Residents bring their waste to the appointed

place at the designated time. Further organization can include crews to clean up junk from private lands. Clean up of public forest lands is also possible. This should be organized with the local Forest Division office of the Michigan Department of Natural Resources or the local ranger station of the U. S. Forest Service. Crews can also be used to help the poor, elderly or disabled to clean up their land, also. This would be done with the landowner's permission and can be an attractive alternative to having the situation become an enforcement issue. Another approach is a mobile cleanup day. Rather than waiting at a central location, the solid waste collection trucks provide curbside collection.

EXAMPLE Collection Service

In Norman Township, the results of the questionnaire led the township board to set up a location in the township where a solid waste truck would park from 9a.m. to noon each Saturday. Residents would bring solid waste to the garbage truck. Also in the spring of each year a cleanup day was held when any material and any quantity would be collected. Garbage trucks and large roll-off containers were provided for residents' use. The township organized volunteers to clean up piles of trash that had accumulated on public lands (forests). Volunteers also would help poor, elderly and disabled residents clean up their property.

The idea was to make it easy and simple for everyone to comply with the coming regulations concerning junk accumulation.

The third step will be for the municipality to explore the costs of each so the level of service and its cost is known and can be part of the community discussion (step one).

The fourth step is to explore the various options to pay for the service to be considered. Sometimes a municipality can sign a three-year contract that protects against cost increases.

Regardless, solid waste service with the private sector should always be done through a written, signed contract that has been reviewed by the municipality's attorney.

Financing can be done a number of ways. A municipality should go through a thought process to

select a finance system. Some options will be better suited than others in various communities. Any of the following options, or combinations of these options, should be considered:

Solid Waste Collection

Several types of solid waste services are available. Before selecting which will be used in your community, make sure the particular solid waste service complies with your county's adopted Solid Waste Management Plan. The county plan may not include some of the alternatives listed here.

Any one or a combination of these could be put together for a municipality's solid waste program. The solid waste program can be considered a part of a junk removal program.

- Municipal curbside collection of solid waste on a weekly or every-other-week basis. This is where the garbage truck drives a route and stops at each home to pick up waste. The municipality purchases its own garbage truck, and the municipal custodian drives the garbage route.
- Municipal contracted curbside collection of solid waste on a weekly or every-other-week basis. The municipality advertises for bids and selects the best bid from a private company to provide the service.
- Franchise curbside collection of solid waste. The municipality adopts a franchise ordinance and licenses one private company the right to collect solid waste in the municipality. This company might be selected on the basis of low or best bid, but under a franchise the homeowner pays for the service directly to the private company. The government service is to achieve efficiency and avoid duplication by having one company provide the service and obtain the best price for its residents through a bid process.
- Municipal-operated transfer station. A central location is set up to store solid waste. Residents bring their waste to the central location. The municipality then takes the material or contracts (best bid) with a private company to transport the solid waste from the transfer station to a landfill.
- Municipal-sponsored central collection service. The municipality contracts (best bid) with a private company to park a garbage truck at a central location on a regular basis. Residents bring their waste on the scheduled day and hours.

Each of these alternatives, or a combination of alternatives, will have various costs from the scheduled parking of a garbage truck (lowest cost) to the regular curbside collection service and cleanup day (most expensive).

EXAMPLE

Paying for the Service

Norman Township has used several approaches through the years but has settled on a township wide special assessment.

Township officials did their homework and figured out the cost for the selected service. The township board went to voters and passed a three-year millage. Then halfway through the second year, costs went up dramatically without warning. The voted millage was no longer enough to cover the costs. When using a voted millage, one can only go back to the voters to ask for more money (politically unpopular) or reduce service (placing the township in the position of collecting a voted millage and providing less service, which is also politically unpopular).

Norman Township was also struggling with the idea that, when using a voted millage, there would be some large landowners who pay lots of tax but generate little solid waste and vice versa. Thus the cost of the solid waste service provided in no way reflected the true cost of that service.

Therefore, Norman Township chose a special assessment funding system because the special assessment system allows the amount of the assessment to be set each year on the basis of known costs.

- Fee for service (collected through separate billing or added to bills that are already being mailed out, such as water/sewer bills). This might be a direct billing system (the garbage truck driver keeps track of the volume of waste collected at each house, that information is passed on to the municipality, and a charge is billed to the homeowner [or added to the water/sewer bill]). This has people paying for the volume of waste they discard.

- Paid for from municipal general fund (or another other fund) if there are sufficient revenues to do so.
- Extra voted millage. (The millage system of financing the service might be used because large landowners – possibly reflecting the landowners’ ability to pay – will pay the largest amount for the service.)
- Municipality-wide special assessment. Special assessment is a common and old method of road funding. A special assessment can be used for public safety and public welfare, which includes solid waste management. The special assessment system allows the amount of the assessment to be set each year on the basis of known costs. Special assessments can be set up for the entire municipality, for a smaller area (the defined area that receives the service), for just parcels with homes or businesses, and so on.

The major advantage of a finance system that ties the users’ cost to the volume they discard is that it provides an incentive to throw away less solid waste. This finance system should be considered when there is a reliable, convenient recycling system in place. Then the public can save solid waste costs by recycling. Paying more to discard more can be counterproductive if there is not a recycling system in place. Then the incentive works toward more junk accumulation and might not be a good idea.

Use of public participation is an effective way to decide how to provide each of these services:

- The type of junk collection and/or solid waste service.
- How it will be paid for.
- How the cost is passed on to the user.
- The schedule and location(s) for the above.

At this point the municipality is ready to seek bids for the desired service.

Seeking bids, selecting the bid or municipal service, and signing the contract for service are step five. *Be sure to sign a contract with the solid waste contractor.*

EXAMPLE

Collection Times & Recycling

Norman Township wanted to have a built-in incentive to conserve and recycle by having residents charged according to the volume of solid waste discarded. But at this time the township chose not to do so because its primary goal was to reduce the amount of trash accumulating on the land and in public forests.

Saturday morning was chosen for the parked garbage truck because the area is predominantly a resort-tourist community. Many people are in the area only on weekends. A spring cleanup day was selected in recognition of the area’s culture with a tradition of spring cleaning.

Step six is to publicize the service. The publicity should not just be about the coming cleanup day and solid waste service. It should also indicate that junk accumulation enforcement will be starting after the cleanup day, which is the opportunity to get rid of accumulated junk before enforcement starts. This is also the time to organize volunteer crews for manning the cleanup day site and cleaning crews on public lands and on selected private property.

EXAMPLE

Cleanup Day Publicity & Help

Cleanup day notice was given to all taxpayers by mail. Volunteers with tractors, trucks and trailers were invited to work at the cleanup day location and formed teams to pick up junk on public lands.

The Norman Township Fire Department and Ambulance Service volunteers got permission from landowners to go on to private property to pick up and haul large items to the transfer station in return for a small donation to the fire/ambulance departments. Area restaurant and stores provided food and soft drinks for the volunteers. For the next two years, this process was repeated.

ACTIVITY THREE:
Amend Zoning to Include
Junkyard Provisions

It is not appropriate or realistic to outlaw accumulation of all junk. Businesses must have what some would consider to be junk as a source of material to repair, build and provide its services. One can not get rid of cars from the landscape unless there is a junkyard where they can go. Farm operations need places to keep various farm implements and to have storage of materials as a source of material to repair and build machinery. Consider an approach that hides junk by screening or requiring it to be kept in a building. Also, a zoning ordinance is the traditional means used to segregate such businesses to areas where the community deems they are appropriate.

To have an effective, enforceable junk accumulation ordinance, there must be a way to distinguish between junk in one's yard and a legitimate junkyard business. Zoning, in the example provided in this pamphlet, is used to make that distinction. The legitimate junkyard must meet the criterion of having a zoning permit or is recognized as a pre-existing land use. If it does not, then it is junk in one's yard, which may be subject to enforcement action.

The accumulation of junk on property has been viewed as a threat to property values in an area. Zoning is one of the tools to protect property rights while at the same time protecting community rights. Zoning is a major part of a well-planned program to address the issue of junk accumulation.

Step seven is to amend the zoning ordinance to include certain junk regulations in it.

- **If zoning exists:** If this program is being done in a village, city, or township with their own existing zoning, then the junk provisions must be in the local government's zoning ordinance pursuant to the Michigan Zoning Enabling

Act.³ A step-by-step checklist of procedure to amend the zoning ordinance: Michigan State University Extension's *Land Use Series* "Checklist # 4 For Adoption of a Zoning Ordinance Amendment (including some PUDs) in Michigan"⁴ is available from www.msue.msu.edu/lu.

- **Township with county zoning:** If this program is being done in a township that relies on county zoning, then the township must work with the county planning commission so the junk provisions are placed in the county's zoning ordinance pursuant to the Michigan Zoning Enabling Act.⁵ A step-by-step checklist of procedure to amend the zoning ordinance: Michigan State University Extension's *Land Use Series* "Checklist # 4 For Adoption of a Zoning Ordinance Amendment (including some PUDs) in Michigan"⁶ is available from www.msue.msu.edu/lu. The township should still adopt the junk accumulation ordinance presented in the next section.
- **County with county zoning:** If this program is being done by a county with county zoning, then the junk provisions must be in the county's zoning ordinance pursuant to the

³P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). (Prior to July 1, 2006 the following respective citations should be used: P.A. 207 of 1921, as amended, being M.C.L. 125.581 *et seq.*; P.A. 184 of 1943, as amended, being M.C.L. 125.273 *et seq.*)

⁴Prior to July 1, 2006 the following respective checklist should be consulted: *Land Use Series* "Check List # M2 Adoption of a Village or City Zoning Ordinance in Michigan"; *Land Use Series* "Check List # T2 Adoption of a Township Zoning Ordinance in Michigan".

⁵P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). (Prior to July 1, 2006 the following citation should be used: P.A. 183 of 1943, as amended, being M.C.L. 125.203 *et seq.*)

⁶Prior to July 1, 2006 the following checklist should be consulted: *Land Use Series* "Check List # C2 Adoption of a County Zoning Ordinance in Michigan".

Michigan Zoning Enabling Act.⁷ A step-by-step checklist of procedure to amend the zoning ordinance: Michigan State University Extension's *Land Use Series* "Checklist # 4 For Adoption of a Zoning Ordinance Amendment (including some PUDs) in Michigan"⁸ is available from www.msue.msu.edu/lu. However, the sample junk accumulation ordinance presented in the next section should be adopted by each township in the county – not adopted as a county ordinance.

- **Zoning does not exist:** If this program is being done in a township, village or city where zoning does not exist, then the sample zoning amendments presented here are not applicable. The junk accumulation ordinance in the next part of this bulletin should be modified before adoption.

There are many different ways for a zoning ordinance to deal with the issue of junk accumulation. The sample provided here is just one. It is written with the following assumptions:

1. The municipality already has site plan review in its zoning ordinance.
2. The section numbering system follows the standard system of codification presented in Michigan State University Extension's *Organization and Codification of a Zoning Ordinance*, available from www.msue.msu.edu/lu.
3. The municipality's attorney will review any proposed amendments before they are adopted.

Below are the sample zoning amendments with commentary.

Add the following definition to Section 503 (the section of the zoning ordinance for definitions

of words). The definition of "junk," here is the same as the definition of "junk" in the sample junk accumulation ordinance below.

JUNK means:

- a. Old scrap ferrous or nonferrous material, rubber, cloth, paper, rubbish, refuse, litter;
- b. Materials from demolition, waste building materials; and
- c. Junked, abandoned, scrap, dismantled or wrecked (including parts of, or items held for salvaging parts) automobiles, farm equipment, boats, trailers, mobile homes, appliances and all other machines.

But shall not include:

- a. Items being held for a customer while parts are being sought for its repair;
- b. Items that are classic or antique kept and collected for their antique or collectable value; and
- c. Items and junk kept at a licensed Type I, II or III landfill for purposes of disposal of solid waste, incineration, recycling and resource recovery.

Add to Section 1020 (a part of the general provisions of the zoning ordinance dealing with environmental issues) the following:

102. Environmental, Solid Waste.

1020. Waste Accumulation and Outside Storage.

- A. It shall be unlawful for any person to accumulate junk on any land except in a permitted junkyard or licensed sanitary landfill or as allowed by ordinance.

Add a section to Article 16 (the part of the zoning ordinance for special use permit specific standards). The sample uses the *North American Industrial Classification System* titles (formerly *Standard Industrial Classification*). If the zoning ordinance being amended does not, then the following might be shortened to "junkyards.":

1612. Junkyards

For Recyclable Material Wholesalers [42193], Motor Vehicle Parts (Used) Wholesalers [421140] and Materials Recovery Facilities [562920] (junkyards):

- A. Has a Michigan sales tax license.
- B. Has records of sales and other transactions which are required by, and whose business falls under the jurisdiction of, P.A. 350 of 1917, as amended (the Second Hand Junk Dealers Act, M.C.L. 445.401 *et seq.*);
- C. Shall be designed to comply with one of the following:

⁷P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). (Prior to July 1, 2006 the following citation should be used: P.A. 183 of 1943, as amended, being M.C.L. 125.203 *et seq.*)

⁸Prior to July 1, 2006 the following checklist should be consulted: *Land Use Series* "Check List # C2 Adoption of a County Zoning Ordinance in Michigan".

1. Shall be set back from parcel boundaries at least ____ [select distance, for example, 300] feet. Shall be set back ____ [select distance, for example, 300] feet from a road right-of-way or ____ [select distance, for example, 333] feet from the centerline of a road, whichever is greater,
2. Set back the distance required by the respective zoning district and shall be screened from view of a road and from adjacent parcels by means of an

opaque fence, vegetation, earth berm, or another form of screening, or a combination of the above,

3. Set back the distance required by the respective zoning district and shall not be visible from a road or from adjacent parcels;
- D. Shall be designed and operated so that noise, under normal operational circumstances, shall not be over ____ [fill in number such as 60 decibels (about the same as people talking in a room)] decibels at the boundary of the parcel and at the nearest road;
- E. Shall not be operated so that burning or incineration of junk or any other material results in smoke; other emissions and effluent shall meet or exceed all applicable state and federal air pollution, surface and groundwater quality standards;
- F. Shall comply with Public Act 219 of 1966, as amended (the Control of Junkyards Adjacent to Highways Act, M.C.L. 252.201 *et seq.*); Public Act 350 of 1917, as amended (the Second Hand Junk Dealers Act, M.C.L. 445.401 *et seq.*); the Solid Waste Management Act; and, if applicable, Public Act 12 of 1929, as amended (township licensing of junkyards, M.C.L. 445.451 *et seq.*);
- G. Shall not operate a landfill, as defined in the Solid Waste Management Act, as an accessory function to a junkyard;
- H. Shall be more than ____ [fill in distance such as 1,000] feet from a school, campground or park; and
- I. Shall be restricted to operation during the hours of ____ to ____, ____ day through ____ day.

Private Property Rights and NIMBY

During the process of implementing a junk accumulation cleanup program, two issues will be raised by some:

1. NIMBY (Not In My Back Yard) syndrome: The NIMBY syndrome mainly involves large junk storage areas and is a reaction of those nearby who do not want the junkyard business near them.
2. Private property rights movement: The private property movement can be oversimplified by those expressing the belief "this is my property and I will do with it what I please, no matter what the consequences are to my neighbors or the community." Some will claim their land is "federally patented" and, thus, not subject to local or state laws (such as property tax, junk regulations). These claims are made from time to time in various parts of the state but have never prevailed in our courts. The belief is not accurate and the claims not true (Michigan Attorney General Opinion No. 6810, July 6, 1994; 23 Mich 443-444; Stryker v. Goodnow, United States Supreme Court, 123 US 527, 8 S Ct 203, 31 L Ed 194 [1887].).

These are both issues that need to be taken into consideration when trying to find a common solution for the junk problem. It is possible for these issues to result in an organized effort to unseat the municipal elected officials in connection with the junk problem.

One of the continuing dilemmas with the junk issue is how you protect the community from the negative effects of junk while at the same time protect the personal property rights of the minority property owners.

Add to each land use district's list of possible special uses the following. The sample uses the *North American Industrial Classification System* titles (formerly *Standard Industrial Classification*). If the zoning ordinance being amended does not, then the following might be shortened to "junkyards."

- X. Recyclable Material Wholesalers [42193], Motor Vehicle Parts (Used) Wholesalers [421140] and Materials Recovery Facilities [562920] (junkyards).

ACTIVITY FOUR:

Adopt a Junk Ordinance

Step eight is to adopt a junk accumulation ordinance.

The following is a sample junk accumulation ordinance. Its usefulness as a sample ordinance is limited to cities, villages and townships. County government in Michigan does not have the general police power to adopt such an ordinance.⁹ Local governments, including counties, have only the powers conferred upon them by the Michigan Constitution or state statutes.¹⁰ Counties may only “pass regulations and ordinances relating to county affairs....”¹¹ Cities, villages and townships have broader police powers, giving them authority to adopt more types of ordinances.¹² The following sample ordinance must be adopted and enforced by a township, city or village.

The sample provided here is written with the following assumptions:

1. The municipality’s attorney will review any proposed ordinances before they are adopted.
2. The municipality has a zoning ordinance with site plan review. (If there is not any zoning, then the following parts of the sample junk accumulation ordinance should be deleted:

Section 1.02[C],
Section 4.01[A],
Section 4.04[A][2] and
Section 4.04[A][3].

Also, Section 4.02 should be modified.

⁹Michigan Attorney General Opinion no. 6665, November 15, 1990; Michigan Attorney General Opinion no. 4696, p. 197, 200, November 25, 1970; Michigan Attorney General Opinion no. 4471, p. 639, March 15, 1946.

¹⁰Alan v. Wayne County, 388 Mich 210, 245; 200 NW2d 628 (1972).

¹¹County Boards of Supervisors; M.C.L. 46.11.

¹²Detroit Edison Co. v. Township of Richmond, 150 MichApp 40, 47; 388 NW2d 296 (1986); People v. Strobridge, 127 MichApp 705, 708-709; 339 NW2d 531 (1983); Michigan Attorney General Opinion no. 6139, p. 90, March 30, 1983.

JUNK ACCUMULATION ORDINANCE

ARTICLE I - GENERAL PROVISIONS

Section 1.01 - Short Title

This Ordinance shall be known and may be cited as the "_____[name of municipality] Junk Accumulation Ordinance of _____[date]", and shall be known in the short form as the "Junk Ordinance".

Section 1.02 - Purposes

The purpose of this ordinance is to regulate and control the storage and disposal of junk within the _____[name of municipality], in order to promote the public health, safety, morals and welfare; to protect land values; provide for safety for residents in the area from dangerous junk; and to protect aesthetics. This ordinance is specifically designed to:

- A. Define certain terms used herein.
- B. Regulate the volume and conditions under which a person may store junk on one's own land.
- C. Regulate and coordinate, with the zoning ordinance, the use and operation of junkyards.
- D. Provide for enforcement and a system of due process for removal of junk from one's land.
- E. Provide for other miscellaneous provisions.

Section 1.03 - Legal Basis [pick one]

[For a township] This Ordinance is enacted pursuant to Michigan Public Act 246 of 1945, as amended, being Michigan Compiled Law 41.181 *et seq.*

[For a general law village] This Ordinance is enacted pursuant to Michigan Public Act 3 of 1895, as amended, being Michigan Compiled Law 67.1 *et seq.*

[For a home rule village] This Ordinance is enacted pursuant to Michigan Public Act 278 of 1909, as amended, being Michigan Compiled Law 78.1 *et seq.*

[For a home rule city] This Ordinance is enacted pursuant to Michigan Public Act 279 of 1909, as amended, being Michigan Compiled Law 117.3 *et seq.*

ARTICLE II - DEFINITIONS

Section 2.01 - Purpose

For purposes of this Ordinance certain terms are herewith defined. When not inconsistent with the context, the present tense includes the future, words used in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

Section 2.02 - Undefined Words

Any word not defined herein shall be interpreted within its common and approved usage.

Section 2.03 - Definitions

FARM means a business enterprise engaged in agricultural production (and otherwise known as farms, ranches, dairies, nurseries, orchards) of crops, livestock and trees and:

- a. Includes forty (40) or more acres of land in one ownership which is primarily devoted to agricultural use, or
- b. Has five (5) or more acres of land in one ownership, but less than forty (40) acres, devoted primarily to agricultural use, which has produced a gross annual income from agriculture of two hundred dollars (\$200.00) per year or more per acre of cleared and tillable land, or
- c. Has been designated by the Michigan Department of Agriculture as a specialty farm in one ownership which has produced a gross annual income from an agricultural use of two thousand dollars (\$2,000.00) or more.

JUNK means:

- a. Old scrap ferrous or nonferrous materials, rubber, cloth, paper, rubbish, refuse, litter;
- b. Materials from demolition, waste building materials;
- c. And junked, abandoned, scrap, dismantled or wrecked (including parts of, or items held for salvaging parts) automobiles, farm equipment, boats, trailers, mobile homes, appliances and all other machines.

But shall not include:

- a. Items being held for a customer while parts are being sought for its repair,
- b. Items that are classic or antique kept and collected for their antique or collectable value, and
- c. Items and junk kept at a licensed Type I, II or III landfill for purposes of disposal of solid waste, incineration, recycling and resource recovery.

JUNKYARD means a business enterprise, or a part of a business enterprise, engaged wholly, or in part, in the purchasing, handling, storage, resale, recycling, conversion or recovery of junk, and is a business which is included in the *North American Industrial Classification System* titles *Recyclable Material Wholesalers [42193]*, *Motor Vehicle Parts (Used) Wholesalers [421140]* and *Materials Recovery Facilities [562920]* (formerly the *Standard Industrial Classification Manual*, classification 5093 and some enterprises in classification 5931), whether a part of a licensed landfill

operation or not; but shall not include any part of a landfill as defined in the Solid Waste Management Act.

PARCEL means any tract or contiguous tracts of land in the same ownership, a condominium unit of the surface of land and associated limited commons, whether one or more platted lots or parts of lots, as owned by the same person.

PERSON means a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

ROAD means a public or private road, highway, street, or right-of-way, which affords the means of ingress or egress to abutting property and the means of travel past a parcel of land.

SOLID WASTE MANAGEMENT ACT means Article II, Chapter 3, Part 115 of P.A. 451 of 1994, as amended (the Solid Waste Management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.11501 *et seq.*)

[Annotation: M.C.L. 324.11501 *et seq.* is formerly P.A. 641 of 1978, as amended (the Solid Waste Management Act, M.C.L. 299.401 *et seq.*)]

ARTICLE III - JUNK ACCUMULATION

Section 3.01 - On One's Own Land

It shall be unlawful for a person to store or accumulate junk on land other than that occupied by a licensed, permitted junkyard, except in the following manner:

- A. So that no more than _____ [select quantity such as two] large items of junk, or the equivalent in volume, -- abandoned, scrap, dismantled or wrecked (including parts of) automobiles, farm equipment, trailers, mobile homes, and all other machines etc. -- are on the parcel;
- B. So that junk is consolidated on one part of the parcel;
- C. So that the junk is not visible from a road or from adjacent parcels or so that the junk is inside an enclosed building; and
- D. So that it is not a nuisance.

Section 3.02 - Farms

Section 3.01 of this ordinance shall not apply to farms, provided the storage of junk on a farm meets the following standards:

- A. So that the junk is not visible from a road or from adjacent parcels or so that the junk is inside an enclosed building;
- B. All junk from the operation of the farm is being kept on the premises for possible future use of the farm;
- C. The depositing of the junk is not a violation of the Solid Waste Management Act or constitutes fill in violation of any other state or local law; and

- D. So that it is not a nuisance.

ARTICLE IV - JUNKYARDS

Section 4.01 - Junkyard Conformance to Zoning and Municipal Regulation.

Junkyards shall not accept business or do business unless they are:

- A. Permitted under a zoning ordinance in effect for the area by use permit, special use permit, planned unit development, or certified as a nonconforming use, and
- B. Licensed by a township under authority of P.A. 12 of 1929, as amended (M.C.L. 445.451 *et seq.*), if applicable, and
- C. Shall meet each of the following conditions:
 - 1. Have a Michigan sales tax license;
 - 2. Have records of sales and other transactions which are required by and whose business falls under the jurisdiction of P.A. 350 of 1917, as amended (the Second Hand Junk Dealers Act, M.C.L. 445.401 *et seq.*).

Section 4.02 - Landfills

For purposes of this ordinance, and for purposes of coordinating this ordinance with any zoning ordinances of jurisdiction, the operation of a junkyard shall be considered an accessory use to a landfill, operating under the jurisdiction of the Solid Waste Management Act. Nothing in this ordinance shall require any additional licensing, registration, or permits other than required by the Solid Waste Management Act and the adopted county solid waste plan.

Section 4.04 - Standards

A junkyard shall be constructed, designed and operated according to the following standards:

- A. Shall be designed to comply with one of the following:
 - 1. Shall be set back from parcel boundaries at least ____ [select distance, for example 300] feet, shall be set back ____ [select distance, for example 300] feet from a road right-of-way or ____ [select distance, for example 333] feet from the centerline of a road, whichever is greater; or
 - 2. Set back the distance required by the zoning ordinance and shall be screened from view of a road and from adjacent parcels by means of an opaque fence, vegetation, earth berm, or another form of screening, or a combination of the above; or

- 3. Set back the distance required by the zoning ordinance and shall not be visible from a road or from adjacent parcels.

- B. Shall be designed and operated so that noise, under normal operational circumstances, shall not be over ____ [fill in number such as 60 decibels (about the same as people talking in a room)] decibels at the boundary of the parcel and at the nearest road.
- C. Shall not be operated so that burning or incineration of junk or any other material results in smoke; other emissions and effluent shall meet or exceed all applicable state and federal air pollution, surface and groundwater quality standards.
- D. Shall comply with Public Act 219 of 1966, as amended (the Control of Junkyards Adjacent to Highways Act, M.C.L. 252.201 *et seq.*); Public Act 350 of 1917, as amended (the Second Hand Junk Dealers Act, M.C.L. 445.401 *et seq.*); the Solid Waste Management Act; and, if applicable, Public Act 12 of 1929, as amended (township licensing of junkyards, M.C.L. 445.451 *et seq.*), if applicable.
- E. Shall not operate a landfill, as defined in the Solid Waste Management Act,.
- F. Shall be more than ____ [fill in distance such as 1,000] feet from a school, campground or park.
- G. Shall be restricted to operation during the hours of ____ to ____, ____ day through ____ day.

ARTICLE V - GRANDFATHERING

Section 5.01 - Inventory

Upon the enactment of this Ordinance, ____ [specify the office responsible] shall cause to be made an inventory of all junkyards presently in business in the ____ [name of municipality]. Such inventory shall include a site plan of each junkyard.

Section 5.02 - Continuance

Any junkyard found to be in business in ____ [name of municipality] at the time of enactment of this ordinance shall be able to continue in business as a junkyard on the parcel of land, or portion of the parcel of land, where it is presently located except as noted below in sections 5.03 and 5.04 of this ordinance.

Section 5.03 - Abandonment, Relocation, Enlargement

A junkyard in business under Section 5.02 of this Ordinance, which

- A. Ceases to operate for one year or more;
- B. Enlarges so as to occupy more land than what was used at the time of enactment of

this ordinance as shown on the inventory site plans made pursuant to Section 5.01 of this ordinance; or

- C. Relocates to different land than what was used at the time of enactment of this ordinance, as shown on the inventory site plans made pursuant to Section 5.01 of this ordinance;

shall be required to comply with all aspects of this ordinance.

Section 5.04 - Required Improvement to Existing Junkyards.

Any junkyard in business at the time of enactment of this ordinance shall, by ____ [fill in a date, for example 2 years after this ordinance is adopted], cause to have the junkyard screened from view from a road and from adjacent parcels by means of an opaque fence, vegetation, earth berm, or another form of screening, or a combination of the above so it shall not be visible from a road or from adjacent parcels.

ARTICLE VI - ENFORCEMENT, PENALTIES, SAVINGS CLAUSE

Section 6.01 - [Option #1] Enforcement Procedure

The ordinance enforcement officer shall be responsible to enforce this ordinance. Anyone, including the ordinance enforcement officer, may file a complaint concerning an alleged violation of this ordinance. Upon receipt of a complaint, the following optional procedure for enforcement may be used:

- A. The ordinance enforcement officer will determine whether a violation exists. If a violation does not exist, the matter shall be dropped.
- B. If a violation is thought to exist, then:
 - 1. As a first priority, the person who deposited the junk shall be contacted for further enforcement actions.
 - 2. As a second priority, the person who, by evidence found in the junk, is determined to have owned, or formerly owned the junk, shall be contacted for further enforcement actions.
 - 3. As a third priority, if one can not determine who deposited or owned the junk, the person who is the owner of the land, as shown on the latest tax roll where the junk is found, shall be contacted for further enforcement actions.
- C. The person shall be contacted in an attempt to obtain voluntary compliance with this ordinance. If the violation is corrected, the matter shall be dropped.

- D. If a violation continues to exist and voluntary compliance is not likely, the ordinance enforcement officer may, at his option, notify the person that a violation exists. Said notice shall

- 1. Explain the violation and cite the appropriate section of this ordinance which is being violated;
- 2. Explain how the violation may be corrected;
- 3. Provide for a period of time in which the violation shall be corrected;
- 4. Be delivered to the person by first class certified mail, with a return receipt, or by personal delivery by a police officer with an affidavit of service.

- E. After the provided period of time, it shall be determined if a violation still exists. If it is found the violation no longer exists, the matter shall be dropped.

- F. If the violation is still thought to exist, the ordinance enforcement officer shall prepare a citation (ticket) for a civil infraction.

Section 6.02 - [Option #2] Civil Infraction

A. Nuisance *Per Se*: Any violation of this is hereby declared to be a nuisance *per se*.

B. Authorized Local Official: The ____ [insert title of official who is the Ordinance Enforcement Officer]¹³ is hereby designated as the authorized local official to issue municipal civil infraction citations.

C. Violations; Civil Infractions: Any person, including, but not limited to, an individual, partnership, corporation, limited liability company, or other incorporated or unincorporated, voluntary association, who violates any provision of this Ordinance shall be guilty of a civil infraction. Violation of this Ordinance and its penalties shall be judicially enforced through the ____ [insert the number of the respective district court] Judicial District Court.

Enforcement for violations of this Ordinance shall be as follows:

D. First Violation Notice: Unless immediate action is necessary upon the determination by the Township Enforcement Officer that there is a danger to the public health, safety or welfare, the person violating

¹³Often the ordinance enforcement officer is the zoning administrator. Other times it is another employee of the municipality. Sometimes it might be the elected constable, marshal or similar position. One should consider **not** placing the responsibility with an elected official (supervisor, mayor, president, clerk, etc.). It is difficult to say "no," often necessary in enforcing an ordinance, while at the same time trying to win over someone's vote when that individual is running for office.

this Ordinance shall be served personally or through first class mail with a notice of violation. That notice shall require that the violation be corrected within thirty (30) days of the notice;

E. Citation: Upon failure to correct the violation or in cases when immediate action is necessary, a person violating this Ordinance shall be issued a citation requiring his or her appearance in the ____ [insert number of the respective District Court] Judicial District Court.

1. A person who violates this Ordinance shall be guilty of a civil infraction and shall be fined not less than \$150.00 nor more than \$500.00 plus costs.
2. A person who violates this Ordinance and has been previously found responsible or admitted responsibility for a violation of this Ordinance in a civil infraction proceeding within one (1) year immediately preceding the issuance of the second citation, shall be fined not less than \$300.00 nor more than \$500.00 plus costs.
3. A person who violates this Ordinance and has been found responsible or admitted responsibility for violation of this Ordinance in a civil infraction proceeding on at least two prior occasions within two (2) years immediately preceding the issuance of the third or later citation, shall be fined \$500.00 plus costs.

F. Violations; Civil Action: The legislative body, the Zoning Administrator, the Board of Appeals, the Attorney for the municipality, or any owner or owners of real estate within the zoning district in which such building, structure, or land is situated, may institute a nuisance, injunction, mandamus, abatement or any other appropriate action or actions, proceeding or proceedings, to prevent, enjoin, abate or remove any building or structure or use which has been erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Ordinance.

G. Cumulative Remedies: The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law. The issuance of a municipal civil infraction citation and a finding or admission of responsibility for violation of this Ordinance in a civil infraction proceeding shall not bar a civil action seeking equitable relief beyond the jurisdiction of the ____ [insert number of the respective District Court] Judicial District Court under Section 4 hereof, arising from the same violation.

Section 6.03 - Saving Clause

The provisions of this ordinance are hereby declared to be severable, and if any clause, sentence, word, section or provision is declared void or unenforceable, for any reason by a court of competent

jurisdiction, the remaining portions of said ordinance shall remain in force.

Section 6.04 - Effective Date

This ordinance shall take effect sixty(60) days after adoption by ____ [insert name of elected body of the municipality]. All ordinances or parts of ordinances in conflict with any of the provisions of this ordinance are hereby repealed.

ACTIVITY FIVE:

Adopt a Civil Infraction Enforcement Ordinance

Once the zoning ordinance is amended, the junk accumulation ordinance is adopted and the cleanup day has passed, there may still be a need for enforcement. Thus step nine is to follow through with enforcement as needed.

If not already done, step 10 is to adopt a civil infraction enforcement ordinance. Sample civil infraction enforcement ordinances are available from the Michigan Townships Association¹⁴ and the Michigan Municipal League.¹⁵

A violation of an ordinance such as a junk ordinance may only be treated as a civil infraction if the ordinance makes it one. The sample above does that.

One of the major advantages of the civil infraction method of enforcement is that the municipality has the ability to obtain a lien against the property for any unpaid damages and fees. This means the court can authorize a municipality to clean the property or correct the violation and to recover the costs of doing so through a property lien.

A second advantage of civil infraction enforcement is the ability to obtain an order from the district court enforcing the directive to clean up or comply.

¹⁴Michigan Townships Association, 512 Westshire Drive, P.O. Box 80078, Lansing, MI 48908-0078. Phone: (517)231-6467; fax: (517)231-8908; www.mta-townships.org.

¹⁵Michigan Municipal League, 1675 Green Road, P.O. Box 1487, Ann Arbor, MI 48106. Phone: (734)662-3246; fax: (734)662-8083; www.mml.org/.

A third advantage of civil infraction is that this approach removes the case from criminal proceedings. With criminal prosecution, one must prove the violation “beyond a reasonable doubt”. When a civil infraction approach is used the municipality must show by “a preponderance of evidence” that the violation took place.

A civil infraction is handled similarly to a traffic ticket. That process is similar to criminal prosecution, takes place in district court and has a more active role for the enforcement officer. The municipality appoints or hires an enforcement officer. Often, but not always, that individual is the zoning administrator.

The enforcement officer – the “authorized local official” – issues the ticket. If the violator pleads “responsible” or “responsible with an explanation” before the district court magistrate, the court imposes a sentence immediately. If the violator pleads “not responsible”, either an informal or formal hearing will be scheduled by the court. The municipality and its attorney (if the court knows who the attorney is) will be notified of the hearing.

At the hearing, the court will hear testimony from the enforcement officer and review the photos, letters, and other exhibits prepared by the enforcement officer. The violator will also be given an opportunity to testify and offer whatever evidence he or she may have in defense. At the conclusion of the hearing, the judge will announce a decision.

The court may craft a final order that speaks specifically to the defendant’s actions and orders the correction of any violations that are found to exist. This order is backed by the contempt power of the court, and if the defendant fails to comply, the court may authorize the municipality itself to fix or correct the violation and place a lien against the property to recover the cost.

EXAMPLE Enforcement

In Norman Township, officials did not just start enforcing after the ordinance was adopted. The township supervisor met with a property owner who had a very large collection of old autos. His property was also identified as a major problem on the basis of complaints received. The purpose of the meeting was to propose that if the property owner brought his land into compliance with zoning requirements for a junkyard (buffering, screening, etc.), then the township supervisor promised to help him get more junk cars and make arrangements for cars he didn’t need and others in the community to be purchased for scrap. The landowner agreed.

The supervisor then contracted with a vender to pick up the cars and dispose of autos throughout the township. This was done without cost to those with junk cars. The vender needed a minimum number of automobiles before he would come into a community for this purpose. The vendor also needed a temporary location to set up his operation. Many of those collected cars went to the property owner who brought his junkyard into compliance with the township zoning. The property owner whose junkyard was now in compliance became the location for disposal of junk motor vehicles after the vendor was done and had left the area.

Using this method, early public involvement, and the cleanup day before enforcement started, 95 percent of the problem was solved. The remaining 5 percent received violation notices, about 3 percent were written tickets, and an even smaller number actually went to court.

To manage an enforcement effort, a municipality might consider creating a list of junk accumulation problems, then prioritize the list with worst problems listed first and start enforcement work on only the first two. Start work on the third one on the list only after one of the first has been resolved, and so on.

In this manner, the municipality is not overwhelmed with too many cases going on at a time.

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