

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED

~~County~~
~~City~~ of Caroga
~~Town~~
~~Village~~

JUN 15 2009

Local Law No. 2 of the year 2009

MISCELLANEOUS
& STATE RECORDS

A local law Entitled - "Town of Caroga Minimum Conditions for
(Insert Title)
Maintenance of Structures, Equipment,
and Exterior Property."

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of Caroga as follows:
~~Town~~
~~Village~~

Town of Caroga Minimum Conditions for Maintenance of Structures, Equipment and Exterior Property to be enacted by the Town Board of the Town of Caroga as follows:

ARTICLE A: INTRODUCTION

Section 1: Authority

This local Law is adopted pursuant to the authority the Town of Caroga in Section 10 of the Municipal Home Rule Law and in Section 103 (15) and 130 (6) of the Town Law.

Section 2: Title

The Local Law shall be known as the "Town of Caroga Minimum Conditions for Maintenance of Structures, Equipment, and Exterior Property."

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 3: Purpose

The purpose of this Local Law is, through regulation intended to provide clarification, definitions and methods for notice of violations and penalties for violations of the Minimum Conditions for the Property Maintenance as set forth in the Property Maintenance Code of New York State and the Town of Caroga Minimum Conditions for Maintenance of Structures, Equipment, and Exterior Property.

The Town Board hereby declares that a clean, wholesome and attractive environment is of vital importance to the continued general welfare of its citizens, and that regulation of the deposit, accumulation or maintenance of junk regardless of quality is hereby prohibited anywhere within sight of persons lawfully traveling public highways, trails, waterways or within sight of neighboring property. By adoption of this law the town declares its intent to protect the community from potential hazards to property and persons; protect and preserve our lakes, water, resources, wildlife and woodlands and to promote a reasonable quality of environment and aesthetics and to prohibit actions and conduct that tend to depreciate not only the property on which it is located but also the property of other persons in the neighborhood, the community generally and to further the goals of the comprehensive plan.

Section 4. Applicability

The provisions of this law shall apply in addition to the provisions of any other local law or ordinance adopted by the municipality. Where there is a conflict the more restrictive provision shall apply.

Section 5. Definitions

General – As set forth in Chapter 2, Sections 201-202 of the Property Maintenance Code of New York State.

Abandoned: The relinquishment of property as a cessation of the use of the property, by the owner or lessee without any intention of transferring rights of the property to any other, owner or of resuming the use of the property. This does not apply to real estate.

Boat: A small vessel propelled by oars, paddles, sails, by power * or other means of propulsion*.

Clutter: A number of things scattered in disorder and or things that impede movement.

Construction Equipment: Machinery including but not limited to; backhoe, bulldozer, tractors etc. actively used in construction and excavation.

Debris: Bits and pieces of rubbish, the remains of something broken down or destroyed.

Enforcement Officer: The person(s) appointed by the governing board to enforce the provisions of this law.

Farm Equipment: Machinery including tractors actively used in agricultural crop production and raising livestock.

Inoperative: With regard to Motor Vehicles as set forth in Section 302.8 of the Property Maintenance Code of New York State unlicensed, abandoned, wrecked, stored, discarded, dismantled or not in condition for legal use upon public highways, trails or waterways.

Junk: Items, whether or not having any value, includes the following examples but is not limited to: Any scrap, waste, reclaimable material or debris, whether or not stored, for sale or in the process of being dismantled, destroyed, processed, salvaged, stored, bailed, disposed of, or for other use or disposition such as inoperative boats, inoperable motor vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, machinery, brush, lumber, garbage and solid waste.

Junk Appliance: Any household appliance, including but not limited to, a stove, washing machine, dryer, dishwasher, freezer refrigerator, air conditioner, water heater, computer or television, which is stored outside of any residence or structure.

Junk Furniture: Abandoned, discarded, or irreparably damaged furniture including, but not limited to, sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs, and chest of drawers.

Junk Mobile Home: Any enclosed dwelling built upon a chassis, motor vehicle, or trailer used or designed to be used for either permanent or temporary living or sleeping purposes, including motor homes, truck campers, camping trailers, campers, travel trailers, pop-up trailers, tent trailers, and overnight trailers. To qualify as a junk mobile home, the dwelling must meet two out of three of the following conditions for six months or more:

- (1) The electrical service is disconnected or terminated.
- (2) It is abandoned as a dwelling unit.
- (3) It is no longer habitable for residential occupancy.

Junk Motor Vehicle: Any motor vehicle or junk motor boats, or used parts or waste materials from motor vehicles or boats which, taken together, equal in bulk one or more such vehicle or boat, which is:

- (1) Unlicensed or unregistered; or
- (2) Abandoned, wrecked (stored), discarded, dismantled, or partly dismantled; or
- (3) Vehicle is in such a condition that it is economically infeasible to restore the vehicle to an operating condition. "Economically infeasible" means the cost of restoring the vehicle to an operating condition exceeds the market value of the vehicle.
- (4) Not in condition for legal use upon the public highways, waterways or trails.
- (5) Non-motorized boat not used after extended period of time.

The fact that a motor vehicle does not display a current motor vehicle registration or license plate or current valid motor vehicle inspection sticker shall be presumptive evidence that such motor vehicle is not in condition for legal use upon the highways.

With respect to any motor vehicle not required to be licensed or a motor vehicle not usually used on public highways, the fact that such motor vehicle is not in condition to be moved under its own power shall be presumptive evidence that such motor vehicle is a junk motor vehicle unless refuted by verifiable and credible proof.

Motor Vehicles as set forth in Section 302.8 of the Property Maintenance Code of New York State shall be further defined to include and is not limited to the following: All vehicles propelled or drawn by power originally intended for use on public highways, trails, and waterways including but not limited to automobiles, buses, trailers, trucks, tractors, motor homes, motorcycles, and mini-bicycles, boats, personal water craft, all-terrain vehicles, snowmobiles, camping trailers, construction and farm equipment.

Litter: Things laying about in disorder, especially bits of rubbish, to make untidy to scatter about carelessly.

Nuisance: A condition or situation that results in an interference with the enjoyment and use of property.

Off Road Vehicle: Vehicles including dune buggies, all terrain vehicles, snowmobiles, trail bikes, mopeds and motorbikes designed for use on unimproved surfaces.

Outdoor Storage: Storage other than in a completely enclosed structure such as a garage or barn.

Owner of Motor Vehicle: Person, other than a lien holder, having possession or title to a motor vehicle. The term included a person entitled to the use and possession of a motor vehicle subject to a security interest in another person and also includes any lessee or bailer of a motor vehicle having the exclusive use thereof, under a lease or otherwise, for a period of greater than thirty (30) days.

Person: An individual, partnership, association, corporation, or entity of any other kind.

Personal Water Craft (Also known as a Jet Ski): A small craft that employs a jet pump and nozzle for propulsion and direction and is designed to be operated by a person sitting, standing or kneeling on the vessel.

Recreational Vehicle: A vehicle type structure without permanent foundation that can be towed, hauled, or driven and is primarily designed as a temporary living accommodation for recreational and camping purposes. Recreational Vehicles include, but are not limited to travel trailers, truck campers, camping trailers, and self- propelled motor homes.

Scrap: Discarded or rejected materials that result from manufacturing or fabricating operations.

Seasonal Use: A use carried on for only part of the year.

Solid Waste: Unwanted or discarded material including waste material with insufficient liquid content to be free flowing, solid waste may be categorized as Agricultural, Commercial, Industrial, Institutional, Municipal, and Residential.

Unlicensed: Not displaying a current motor, boat or recreational vehicle registration, or license plate shall be presumptive evidence that such motor vehicle, boat, or recreational vehicle is not licensed.

ARTICLE B: PROHIBITED ACTS

It shall be unlawful for any person to store, deposit, place, maintain, or cause, or permit to be stored, deposited, placed or maintained outdoors, any junk, appliance, furniture, mobile home, clutter, litter and debris upon private property within the municipality. It shall be unlawful for any person to use a vehicle, boat, mobile home, trailer, or similar units for the storage of junk on any premises. Any use not specifically permitted is prohibited. It shall be unlawful for any person to use a bus, uninhabited mobile home, truck, truck trailer, horse trailer, semi-trailer, tank truck, or similar vehicles or units for the storage of junk on any premises. Exceptions shall be made for temporary use of such vehicles or units for construction purposes for periods of less than ninety (90) days, or when actively used in construction with active farming or agricultural operations.

Except for the purpose of this Local Law Section 302.8 of the New York State Property Maintenance Code shall be amended to exclude two or more inoperative or unlicensed motor vehicles to none.

ARTICLE C: EXCLUSIONS

Section 1: Vehicles

Article B shall not apply to the storage or placement on the premises of the following operable vehicles:

- (1) Seasonal - Off road vehicles, boats, recreational vehicles and or construction machinery and equipment if kept in a location not visible from any road, street, highway or trails when feasible.
- (2) Auto or trucks taken off the road for a season.
- (3) Farm machinery, including tractors, when such machinery and equipment is actively used on site for agricultural purposes. Equipment or *machinery kept for the parts shall be kept in a location not visible from any road, street, highway or trails when feasible.
- (4) Plow vehicles – self-propelled vehicles to be used on property of the owner solely for plowing and removal of snow.
- (5) When such machinery and equipment is used on a work site
- (6) Machinery and equipment is used for parts shall be kept in a location not visible from any road, street, highway or trails when feasible.

Section 2: Seasonal Vehicle Permit

Upon written application, permits shall be issued by the Town Enforcement official.

- (1) The vehicle shall be owned by one of the inhabitants of the property.
- (2) The vehicle being stored shall have a current registration and inspection sticker permanently attached to the windshield.
- (3) The permit shall be issued for not more than 180 days.
- (4) The permit shall not be issued if the property has a “for sale” permit issued for another vehicle.

Section 3: Vehicles For Sale Permits

Upon written application, permits shall be issued by the Town Enforcement official for the open storage of one vehicle for the purpose of offering for sale of a vehicle that is currently not registered or licensed or inspected under New York State law subject to the following conditions:

- (1) The vehicle shall be owned by the inhabitants of the property where the vehicle is being offered.
- (2) The vehicle shall be setback from the road so as not to create a visibility hazard.
- (3) The permit shall be issued for not more than 45 days.
- (4) A copy of the permit shall be affixed to the interior of the windshield in order that the permit information is visible from the street.
- (5) The permit shall not be issued if the property has a "for sale" permit issued for another vehicle.

ARTICLE D: ADMINISTRATION

Section 1: General

Shall follow the administration and enforcement procedures set forth in the Uniform Fire Prevention and Building Code of New York State.

Section 2: Enforcement Officer

This law may be enforced by the building inspector, the zoning enforcement officer, or by any peace and or police officer of the municipality. Said persons shall have the authority to enforce the provisions of this chapter within the municipality as necessary for said enforcement. The enforcement officer shall make periodic inspections of the municipality to ensure that the requirements of this law are met.

Section 3: Complaints

Any person may file a complaint with the enforcement officer that a violation of this law. The enforcement officer shall properly record and investigate any such complaint. The enforcement officer may also investigate any violation that he or she has reason to believe has occurred or is occurring.

Section 4: Notice to Comply

Following an investigation of the property the enforcement officer is authorized to prepare a written "Notice to Comply". The written notice to comply may be served by personal service or through certified mail return receipt requested to the last known address of the property owner. When service is made by certified mail return receipt requested, service shall be deemed complete upon delivery of the notice.

The written notice to comply shall contain the following information:

- (1) The name of the owner and or occupant of the real property upon which the nuisance vehicle or violation is located.
- (2) The location of the premises involved in the violation.
- (3) A statement of the fact, which it is alleged, violates this law.
- (4) A demand that violation or nuisance be removed or placed so as to be in compliance with the law within seven (7) days after the service or mailing of the notice.
- (5) With regard to vehicles notice shall be given that if the vehicle is not removed within the seven (7) day period, the town may remove such vehicle(s) in violation.

- (6) A statement that a failure to comply with the demand may result in prosecution.
- (7) A reference to the law.

Section 5: Penalties and Remedies

Any person who violates any of the provisions of the New York State Property Maintenance Code or the Town of Caroga Minimum Conditions for Maintenance of Structures, Equipment, and Exterior Property shall be guilty of a violation and shall be punishable as follows:

1. a. For a first offense by a minimum fine of \$250. *
- b. For a second offense by a minimum fine of \$350.
- c. For a third or subsequent offense by a minimum fine of \$700 or by imprisonment for a period not to exceed 15 days or by both such fine and imprisonment.
Each day that a violation continues after seven (7) days from service of the notification to remove the item shall constitute a separate offense and shall be punishable as herein provided.
2. In the event of failure to remove a junk vehicle after the seven (7) day notification to remove, the Enforcing Officer is authorized to cause the removal of said vehicle or vehicles and all costs thereof including storage, shall be at the sole expense of the property owner and/or owner of the junk vehicle. Said vehicle or vehicles, if unclaimed after seven (7) days, shall be deemed abandoned and may be sold or otherwise disposed of in accordance with Section 1224 of the Vehicle and Traffic Law of the State of New York or other applicable provisions of law.

Section 6: Additional Provisions

In addition to the provisions of section 5, upon the failure of an owner, tenant, or occupant with notice to correct a violation, other than a junk motor vehicle, of the Town of Caroga, the governing board may hold a public hearing to determine whether the violation constitutes a public nuisance requiring abatement by the municipality. The public hearing shall be held upon notice posted conspicuously on the subject property. The notice shall also be sent to the last known address of the property owner, as it appears on the current assessment records of the municipality, by certified mail, return receipt requested or served on the owner by personal service. Posting and service of such notice shall not be less than fifteen (15) calendar days, exclusive of the date of service, prior to the date of the public hearing. The notice shall 1) identify the premises as the same that appears on the current assessment role; (2) contains a statement of the conditions on the property deemed upon inspection to constitute a public nuisance; (3) contains a demand that the condition or conditions constituting the public nuisance be immediately abated or removed before the date of the hearing specified in the notice; (4) contains a statement that a failure or refusal to comply within the period specified may result in a duly unauthorized officer, agent or employee of the municipality entering upon the property and abating or removing the public nuisance; and (5) contains a statement that the cost and expense of such abatement or removal shall be the responsibility of the owner, tenant or occupant, and, without limitation on the municipality's potential remedies to recoup its expenses, such cost and expense shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.

Where the governing board finds, based on substantial evidence in the public hearing record, that the violation or violations amount to a public nuisance requiring abatement by the municipality, the governing board may cause the abatement or removal of the public nuisance. The abatement or removal may be performed by the municipality or by its designee, or agent, including a private

contractor lawfully engaged and authorized by the municipality. The governing board shall ascertain the cost of removal, and assess such expense against the record owner of the property. The expense so assessed shall constitute a lien in charge on real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other town charges. The foregoing shall not be construed as a limitation on the municipality's remedies to recover its costs.

The removal of any nuisance by the municipality's agents, shall not operate to excuse such owner, tenant or occupant from properly maintaining the premises required by this law. Such owner, tenant, or occupant shall, in addition to the remedies provided herein, be subject to any other penalties provided for by the law.

- (1) Every such person shall be deemed guilty of a separate violation for each week such violation disobedience, omission, neglect, or refusal shall continue.

Section 7: Injunctive Relief

The town board may also maintain an action or proceedings in the name of the town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this law.

ARTICLE E: MISCELLANEOUS

Section 1: Severability

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

Section 2: Prior Existing Violations Junk Storage Law

Grace period: In recognition of the fact that prior existing violations to this law are present a grace period of thirty (30) days shall be given to owner, tenant or occupant to comply with the provisions of this law from that this law becomes effective.

Section 3: Effective Date

This local law shall become effective upon the date it is filed in the Office of the New York Secretary of State and shall supercede Local Law No. 2 of 2005.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2009 of the ~~(County)~~(City)(Town)(Village) of Caroga was duly passed by the Town Board on June 10, 2009, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20 _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____.
(Name of Legislative Body)
(Elective Chief Executive Officer*)
Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Linda Gilbert
Clerk of the ~~2009~~ legislative body, ~~City~~, Town or ~~Village~~ Clerk or officer designated by local legislative body

Date: June 11, 2009

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Fulton

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto

Susan Palmer Johnson
Signature

Town Attorney

Title

~~County~~
~~City~~ of Caroga
Town
~~Village~~

Date: 6-12-09