§ 136. Regulation of automobile junk yards. 1. Legislative intent. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants and the safeguarding of their material rights against unwarrantable invasion and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the state and the general welfare of its citizens. It is further declared that the unrestrained accumulation of junk motor vehicles is a hazard to such health, safety and welfare of citizens of the state necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junk yards as hereinafter defined, is a useful and necessary business and ought to be encouraged when not in conflict with the express purposes of this section.

2. Definitions. For the purposes of this section, "junk yard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal produce is scrap iron, steel or nonferrous scrap for sale for remelting purposes only.

"Municipality" as used in this section shall mean a city of less than one million in population, town or village.

"Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

3. Requirement for operation or maintenance. No person shall operate, establish or maintain a junk yard until he (1) has obtained a license to

operate a junk yard business and (2) has obtained a certificate of approval for the location of such junk yard.

4. Application for license and certificate of approval. Application for the license and the certificate of approved location shall be made in writing to the governing board of the municipality where it is proposed to locate the junk yard, and, in municipalities having a zoning ordinance or local law and a zoning board, the application shall be accompanied by a certificate from the zoning board that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of such zoning ordinance or local law. The application shall contain a description of the land to be included within the junk yard.

5. Hearing. A hearing on the application shall be held within the municipality not less than two nor more than four weeks from the date of the receipt of the application by the legislative body. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in a newspaper having a circulation within the municipality, which publication shall be not less than seven days before the date of the hearing.

6. License requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain the junk yard. In considering such application, it shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the proposed junk yard, to any record of convictions for any type of larceny or receiving of stolen goods, and to any other matter within the purposes of this section.

7. Location requirements. At the time and place set for hearing, the governing board shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junk yard. In passing upon same, it shall take into

account, after proof of legal ownership or right to such use of the property for the license period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

8. Aesthetic considerations. At the hearing regarding location of the junk yard, the governing board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the governing board may consider collectively the type of road servicing the junk yard or from which the junk yard may be seen, the natural or artificial barriers protecting the junk yard from view, the proximity of the proposed junk yard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junk yard.

9. Grant or denial of application; appeal. After hearing the governing board shall, within two weeks, make a finding as to whether or not the application should be granted, giving notice of their finding to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following April first. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed thereafter upon payment of the annual license fee without hearing, provided all provisions of this chapter are complied with during the license period, the junk yard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The determination of the governing board may be reviewed under article seventy-eight of the civil practice law and rules.

10. License fees. The annual license fee shall be twenty-five dollars

to be paid at the time the application is made and annually thereafter in the event of renewal. In event the application is not granted, the fee shall be returned to the applicant. A municipality, in addition to the license fee, may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the license conditional upon payment of same.

11. Fencing. Before use, a new junk yard shall be completely surrounded with a fence at least eight feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than fifty feet from a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts and all burning of same within the vicinity of the junk yard shall be accomplished within the enclosure.

Where the topography, natural growth of timber or other considerations accomplish the purposes of this chapter in whole or in part, the fencing requirements hereunder may be reduced by the legislative body, upon granting the license, provided, however, that such natural barrier conforms with the purposes of this chapter.

12. Effect of local ordinances or local laws. This section shall not be construed to affect or supersede zoning ordinances or local laws or any other ordinances or local laws for the control of junk yards now in effect or hereafter enacted in any municipality within the proper exercise of the police power of such a municipality and shall not be deemed to apply to any municipality which has any ordinance or local law or regulation to license or regulate junk yards.

13. Established junk yards. For the purposes of this section the location of junk yards already established shall be considered approved

by the governing board of the municipality where located and the owner thereof deemed suitable for the issuance of a license. Within sixty days from the passage of this section, however, the owner shall furnish the governing board the information as to location which is required in an application, together with the license fee, and the governing board shall issue him a license valid until the next April first, at which time such owner may apply for renewal as herein provided. Such owner shall comply with all other provisions of this section including the fencing requirements set forth in subdivision eleven of this section.

14. Notwithstanding any of the foregoing provisions of this section, no junk yard, hereafter established, shall be licensed to operate of such yard or any part thereof shall be within five hundred feet of a church, school, hospital, public building or place of public assembly.

15. Violators of any of the portions of this section shall be guilty of an offense punishable by a fine not exceeding one hundred dollars and each week that such violation is carried on or continues shall constitute a separate violation.