

**FOURTH REVISED ORDER REGULATING AUTOMOTIVE WRECKING &
SALVAGE YARDS, RECYCLING BUSINESSES, AND JUNKYARDS**

At a meeting of the Smith County Commissioners Court held at the Smith County Courthouse, Tyler, Texas, at which a quorum was present, the following Order was adopted:

WHEREAS, the Smith County Commissioners Court adopted an order on April 24, 1995 to require licensing of all automotive wrecking and salvage yards and junkyards operating after June 1, 1987, and to require screening of all junkyards and automotive wrecking and salvage yards; and

WHEREAS, the Smith County Commissioners Court revised that order on August 11, 1997;

WHEREAS, the Smith County Commissioners Court revised that order again on February 12, 2001;

WHEREAS, the Smith County Commissioners Court revised that order again on March 25, 2002;

WHEREAS, the Smith County Commissioners Court finds that this order is in need of revision;

WHEREAS, the Commissioners Court of Smith County finds, in its judgment, that the indiscriminate location and operation of junkyards, automotive wrecking and salvage yards, and recycling businesses affects the safety and welfare of the general public, tends to reduce the value of private property, creates fire hazards, and is detrimental to the economic welfare of the County by producing urban blight adverse to the maintenance and improvement of the quality of life; and

WHEREAS, the Commissioners Court of Smith County did conduct a public hearing, as specified in Texas Transportation Code, section 396.042; and

WHEREAS, the Commissioners Court of Smith County has the authority to adopt this order under Texas Transportation Code, section 396.041 and Local Government Code, section 234.002.

NOW, THEREFORE, BE IT ORDERED by the Commissioners Court of Smith County, Texas, that:

SECTION ONE: DEFINITIONS

- a) "Automotive wrecking and salvage yard" means the working or storage area of any person or business that stores three (3) or more wrecked vehicles outdoors for

the purpose of dismantling or wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business.

- b) "Junk" means copper, brass, iron, steel, rope, rags, batteries, tires, including farm equipment, or other material (other than a wrecked vehicle) that has been discarded or sold at a nominal price by a previous owner of the material.
- c) "Junkyard" means the working and storage area of a business enterprise that owns and is operated to store, buy, or sell junk, all or part of which is kept outdoors, until disposed of.
- d) "Recycling business" means a business that is primarily engaged in the business of:
 - (1.) converting ferrous or nonferrous metals, glass or other materials into raw material products having prepared grades and having an existing or potential economic value;
 - (2.) using raw material products of that kind in the production of new products; or
 - (3.) obtaining or storing ferrous or nonferrous metals, glass, or other materials for a purpose described by d(1) or d(2) hereof.
- e) "Wrecked vehicle" means a discarded, abandoned, junked, wrecked or wornout automotive vehicle, including an automobile, truck, tractor-trailer or bus, that is not in a condition to be lawfully operated on a public road, including but not limited to county roads and rights-of-way.
- f) "Road" means all state highways, county roads, right-of-ways, public roads, or public access roads not subject to Tex.Rev.Civ.Stat.Ann.,art. 4477-9a, Sec. 408 (Vernon Supp. 1995).
- g) "Enlargement" means any increase in the actual size of the working and storage area of a junkyard or automotive wrecking and salvage yard.
- h) "Commencement of operations" means three (3) or more wrecked vehicles stored outdoors for the purpose of dismantling or wrecking to remove parts for sale or for use in an automotive repair or rebuilding business by any person or business or a business enterprise that owns and is operated to store, buy, or sell junk, all or part of which is kept outdoors, until disposed of.

- i) "License" means permit to operate authorized by the Commissioners Court for junkyards or automotive wrecking and salvage yards that began operation of business after April 24, 1995, or all existing junkyards or automotive wrecking and salvage yards that have enlarged by any amount the actual size of the working and storage area of a junkyard or automotive wrecking and salvage yard after April 24, 1995.
- j) "Provisional license" means a permit to operate authorized by the Commissioners Court for all junkyards or automotive wrecking and salvage yards which began the operations of business after June 1, 1987, but prior to April 24, 1995.

SECTION TWO: ADMINISTRATION

The procedures described in this order shall be administrated by a regular salaried County official or employee, as designated by the Commissioners Court.

Soil samples may be required at any time at owner's expense if sample analysis fails to meet state and federal guidelines.

SECTION THREE: LICENSE AND PROVISIONAL LICENSE REQUIREMENTS

A. License Requirements

1. A License, issued by a County official or employee, as designated by the Commissioners Court is required for:
 - a). all junkyards or automotive wrecking and salvage yards that began business operations after April 24, 1995; and
 - b). all junkyards or automotive wrecking and salvage yards that enlarged by any amount the size of the working or storage area of the junkyard or automotive wrecking and salvage yard.
2. A license shall be in effect for one (1) year.
3. The Commissioners Court shall consider an application for a license for a junkyard or automotive wrecking and salvage yard in the manner authorized by Texas Transportation Code, section 396.041. For new junkyards or automotive wrecking and salvage yards beginning commencement of operations or the enlargement of an existing junkyard or automotive wrecking and salvage yard since the effective date of the order that was adopted by Commissioners Court on April 24, 1995, a license may be approved and issued only after the visual aesthetic standards under Section Four and the following location requirements are satisfied.

4. The location requirements for license issuance are:

- a) the location of the junkyard or automotive wrecking and salvage yard shall not be detrimental to the public health, safety or welfare;
- b) the location of the junkyard or automotive wrecking and salvage yard shall not create a hazard to the environment.
- c) the location of the junkyard or automotive wrecking and salvage yard shall be at least three hundred (300) feet from the property line of a lot on which there is a church, a school, a park, a hospital, a nursing home, or a residence (single family home, duplex, apartment, townhouse or mobile home), or the property line of a residential subdivision:
- d) the location of the junkyard or automotive wrecking and salvage yard shall not be within one thousand (1000) feet of any downstream lake, river, creek, tributary or pond;
- e) the location of the junkyard or automotive wrecking and salvage yard shall not be within one hundred (100) year flood plain.
- f) the location of the junkyard or automotive wrecking and salvage yard shall not be within fifty (50) feet of the right-of-way of a public street, state highway, or residence.
- g) all distances in the foregoing location requirements are minimum standards. Compliance with those minimum standards does not guarantee a letter of intent or a license will be issued. Issuance of a letter of intent or a license is conditioned upon the operation of the junkyard or automotive wrecking and salvage yard ONLY at a location approved by the Commissioners Court.

B. Provisional License Requirements

1. Provisional License, issued by a County official or employee, as designated by the Commissioners Court is required for:

All junkyards or automotive wrecking and salvage yards that began business operations after June 1, 1987 but prior to April 24, 1995.

2. A provisional license shall be in effect for one (1) year.
3. The Commissioners Court shall consider an application for a provisional license after the visual aesthetic standards under Section Four and the following location requirements are satisfied:
 - a) the location of the junkyard or automotive wrecking and salvage yard shall not be detrimental to the public health, safety or welfare;
 - b) the location of the junkyard or automotive wrecking and salvage yard shall not create a hazard to the environment.
 - c) the location of the junkyard or automotive wrecking and salvage yard shall not be within fifty (50) feet of the right-of-way of a public street, state highway, or residence.

SECTION FOUR: VISUAL AESTHETIC STANDARDS

- A. All junkyards, recycling business, and automotive wrecking and salvage yards shall be screened by solid barrier fencing so that the screen is at least eight feet in height alongside that portion of the junkyard, recycling business, or automotive wrecking and salvage yard that faces a public road or family residence.
- B. The fencing shall be constructed of wood, masonry, corrugated sheet metal, chain link or combination of these materials. The fence must be painted an earth tone color and may not have any sign appear on its surface other than a sign indicating the business name.
- C. A chain link fence must be galvanized and have wood, vinyl, or metal slats or strips of a earth tone color that run through all links of the fence. A properly constructed and maintained chain link fence with slats or strips complies with section A.
- D. A business subject to a screening requirement under Subchapter E of Chapter 391, Chapter 396, or Chapter 397 of the Texas Transportation Code, that was in compliance with that screening requirement on August 26, 1991, shall be exempt from a screening requirement adopted under this order.
- E. The operator of the junkyard, recycling business, or automotive wrecking and salvage yard may allow access to the designated County official or employee for on-site inspections of screening requirements as a result of a complaint or routine inspections to be conducted during reasonable business hours.

- F. A business, in operation and in compliance with the screening standards established under the SECOND REVISED ORDER NO. 04-95-005 REGULATING AUTOMOTIVE WRECKING & SALVAGE YARDS AND JUNKYARDS as of April 30, 2002, is presumed to be in compliance with the visual aesthetic standards of this order so long as the compliance is continuously maintained and meets the minimum criteria of Transportation Code 396, Subchapter B and there is no enlargement of the business.
- G. A business in operation as of the effective date of this order, which is not otherwise in compliance with this section, shall have a period of 180 days to comply with the visual aesthetic standards established by this section.

SECTION FIVE: PROCEDURES FOR APPLICATIONS FOR LICENSE, PROVISIONAL LICENSE AND RENEWAL LICENSE

A. License Application Procedures

- (1) A written application for license should and is encouraged to be made to the County official or employee designated by the Commissioners Court prior to commencement of construction for a proposed business for junkyards or automotive wrecking and salvage yards. Recycling business are not required to get a license.
- (2) A written application for license shall be made to the County official or employee designated by the Commissioners Court prior to the commencement of operations for a newly established junkyard or automotive wrecking and salvage yard. THERE SHALL BE NO COMMENCEMENT OF OPERATIONS BEFORE APPROVAL OF APPLICATION FOR LICENSE BY THE SMITH COUNTY COMMISSIONERS COURT.
- (3) A written application for license shall be made to the County official or employee designated by the Commissioners Court prior to the enlargement of any existing automotive wrecking and salvage yard. THERE SHALL BE NO ENLARGEMENT BEFORE APPROVAL OF APPLICATION FOR LICENSE BY THE SMITH COUNTY COMMISSIONERS COURT.
- (4) The application for a license must include the following:
 - (a) a plat prepared by a registered professional engineer which describes the physical layout of the facility and the area encompassed within one thousand (1000) feet of the facility perimeter including the following:
 - (1) all buildings, septic tanks, fences, material stacks and their location within the junkyard or automotive wrecking and salvage yard; and

- (2) all downstream lakes, rivers, creeks, tributaries and ponds on or within one thousand (1000) feet of the junkyard or automotive wrecking and salvage yard, and the one hundred (100) year flood plain with the junkyard or automotive wrecking and salvage yard; and
 - (3) all commercial and industrial buildings, residential subdivisions, fences, railroads, private roads and prominent natural objects within three hundred (300) feet of the perimeter of the junkyard or automotive wrecking and salvage yard.
- (5) Upon receipt, the application for a license will be forwarded to the County official or employee designated by the Commissioners Court for review and recommendations. The application and recommendations will then be forwarded to the Commissioners Court for review and notice to be posted for a fourteen (14) day period prior to a public hearing to be held by the Commissioners Court.
- (6) After filing the application for a license and paying the license fee to the County official or employee designated by the Smith County Commissioners Court, each applicant for a license shall place signs (at least 24 inches x 36 inches in size) which provide notification and information stating "AUTOMOTIVE WRECKING AND SALVAGE YARD APPLICATION PENDING." All lettering on the signs must be at least 1 and ½ inches x 2 inches in size for each letter on the sign. It shall be the duty of each applicant to erect one sign on each public road or highway frontage to the property so as to be clearly visible from the public road or highway. If the property does not have a public road or highway frontage, then signs shall be placed upon the closest available right-of-way and upon the property. Said signs shall be erected within three (3) days after the filing of the application and shall remain up until the Commissioners Court has approved or denied the application.

The signs will be provided to the applicant at the time of filing the application by the County official or employee designated by the Commissioners Court. A deposit of fifty dollars (\$50.00) will be required for each sign. This deposit will be refunded to the applicant upon the return of each sign, in good condition, to the County official or employee designated by the Commissioners Court.

- (7) After approval by the Commissioners Court, a letter of intent to issue a license will be provided to the applicant. Upon completion of construction and/or enlargement in accordance with the requirements of this order and following a final inspection, a license for operation will be issued.

- (8) An annual fee of twenty-five dollars (\$25.00) shall be paid at the time of application for the license or renewal of the license.

B. Provisional License Procedures

- (1) A written application for provisional license shall be made to the County official or employee designated by the Commissioners Court for all junkyards and automotive wrecking and salvage yards that had commenced operations after June 1, 1987 but prior to April 24, 1995.

- (2) The application for a provisional license must include:

A plat which describes the physical layout of the facility and the area encompassed within fifty (50) feet of the facility perimeter, including the following:

- (a) all buildings, septic tanks, fences, material stacks and their location within the junkyard or automotive wrecking and salvage yard; and
 - (b) all commercial and industrial buildings, residential subdivisions, fences, railroads, private roads, and prominent natural objects with fifty (50) feet of the perimeter of the junkyard or automotive wrecking and salvage yard.
- (3) Upon receipt, the application for a provisional license will be forwarded to the County official or employee designated by the Commissioners Court for review and recommendations. The application will then be forwarded to the Commissioners Court for review and final action.
 - (4) An annual fee of twenty-five (\$25.00) shall be paid at the time of application for the provisional license.
 - (5) After approval by the Commissioners Court, a license for operation will be issued.

(C). Renewal License Procedures

- (1) Every licensee and provisional licensee shall make an application for renewal annually. A renewal license or renewal provisional license may be granted only after satisfaction of the following requirements.

- (a) payment of a fee of twenty-five dollars (\$25.00); and
- (b) provisional of an affidavit indicating that the junkyard or automotive wrecking and salvage yard has not enlarged its site/location

(c) review and an on-site inspection of business made by County official or employee designated by the Commissioners Court.

(2) After review and recommendations made by the County official or employee designated by the Smith County Commissioners Court, the application for renewal will be forwarded to the Commissioners Court for review and final action.

(3) after approval by the Commissioners Court, a renewal license or renewal provisional license will be issued.

SECTION SIX: DENIAL OF APPLICATION OR RENEWAL

A. The Commissioners Court may deny an application for a license or provisional license or renewal of such license issued under this order if:

- (1) any visual aesthetic standards under Section Four are violated; or
- (2) said automotive wrecking and salvage yard or junkyard operators do not permit on-site inspections by a designated County official or employee; or
- (3) location requirements have not been complied with; or
- (4) contents of the license, provisional license or renewal application have been falsified; or
- (5) any other provision of this order has not been complied with;

B. In the event that an application for a license or provisional license is denied or denied renewal, written notice shall be given to the licensee or provisional licensee or its designated agent by certified mail. The notice shall include the following:

- (1) specific instances of the reasons for denial or instances of the alleged violations which caused the denial; and
- (2) licensee's right to request a hearing before the Commissioners Court and such request must be submitted to the County Judge in writing within ten (10) days of receipt of the notice; and

- (3) the Commissioners Court discretion to grant or deny a hearing if the request for hearing is for a denial of application for license or provisional license.

SECTION SEVEN: REVOCATION OR SUSPENSION OF LICENSE OR PROVISIONAL LICENSE

- A. The Commissioners Court, after hearing, may revoke or suspend a license or provisional license granted under this order if any visual aesthetic standards under Section Four are violated.
- B. In the event that a license or a provisional license is subject to revocation or suspension, written notice shall be given to the licensee or provisional licensee or its designated agent by certified mail. The notice shall include the following:
 - (1) the date and time of the hearing
 - (2) specific instances of alleged violations which will be considered by the Commissioner's Court in determining whether to revoke or suspend the license or provisional license;
 - (3) the licensee's right to a hearing on revocation or suspension of the license or provisional license.

SECTION EIGHT: HEARINGS

- A. At a hearing, the licensee or applicant may be represented at his own expense and shall be given the opportunity to present evidence.
- B. The Court shall notify the requesting party of the date and time of the hearing.
- C. Hearing upon Denial of Application or Renewal
 1. The hearing shall be held no later than thirty (30) days after the date of the denial of application or renewal
 2. The Commissioners Court shall determine whether or not to uphold denial of an application for license or provisional license or application for renewal, which decision shall be final
- D. At a hearing to determine whether a license or provisional license should be revoked or suspended, the Commissioner's Court shall determine if alleged violations warrant revocation or suspension of a license or provisional license, which decision shall be final. If a suspension is ordered, the Commissioner's

Court shall determine the length of the suspension based upon the nature of the violations.

SECTION NINE: EXEMPTIONS

- A. The County licensing provisions described in this order do not apply to the following:
1. a recycling business; or
 2. a junkyard or an automotive wrecking and salvage yard that is located entirely within an incorporated city or town and that is subject to regulation in any manner by the city or town; or
 3. a vehicle storage facility as defined by, and that is subject to, Chapters 797, Tex.Rev.Civ.Stat. 6687-9a and Chapter 79, Texas Administrative Code; or
 4. a junkyard or an automotive wrecking and salvage yard that began operation prior to June 1, 1987.
- B. The County screening requirements described in this order do not apply to the following:
1. a vehicle storage facility as defined by, and that is subject to, Chapters 797, Texas Revised Civil Statutes 6687-9a and Chapter 79, Texas Administrative Code; or
 2. a junkyard or an automotive wrecking and salvage yard that is located entirely within an incorporated city or town and that is subject to regulation in any manner by the city or town.

SECTION TEN: INJUNCTION

Any person is entitled to appropriate injunctive relief to prevent a violation or threatened violation of Texas Transportation Code, Chapter 396 or Section Three of this order from continuing or occurring.

SECTION ELEVEN: PENALTIES


- A. A person who intentionally or knowingly violates Section Three, License and Provisional License Requirements commits an offense. An offense under this order is a Class C misdemeanor punishable by a fine of not less

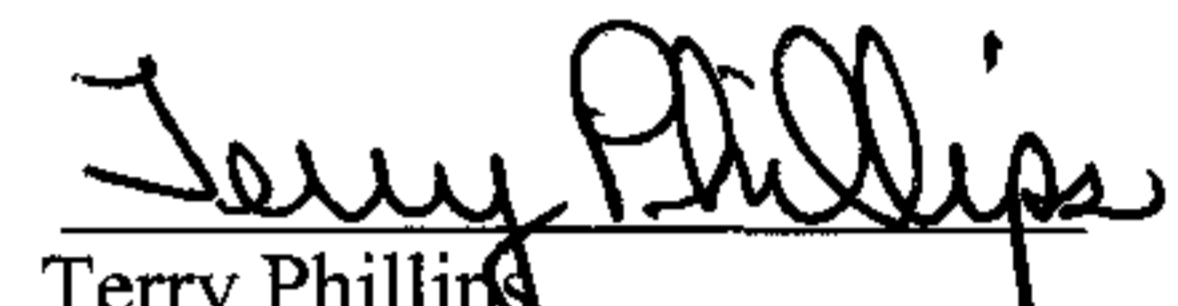
than \$100 and not more than \$500. A separate offense occurs each day on which all of the elements of the offense exist.


- B. A person who violates a visual aesthetic standard established under Section Four is subject to a civil penalty. The civil penalty shall be up to \$50 for each day for the first 10 days, \$100 each day for the next 20 days, and \$500 each day thereafter. The court shall consider the seriousness of the offense in determining the amount of the penalty awarded.

ADOPTED ON THIS 5th DAY OF October, 2009.


Joel Baker, County Judge


Jeff Warr
Commissioner, Pct. 1


Terry Phillips
Commissioner, Pct. 3


Bill McGinnis
Commissioner, Pct. 2

Absent
JoAnn Hampton
Commissioner, Pct. 4