

AN ORDINANCE ESTABLISHING
RULES FOR JUNKYARDS
AND AUTOMOTIVE WRECKING AND
SALVAGE YARDS

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ARTICLE 1 - DEFINITIONS

1.01 Definitions

In these Rules:

1.01.01 "Applicant" means any person who is preparing or has filed an application for a license pursuant to these rules.

1.01.02 "Automotive Wrecking and Salvage Yard" means any person or business that stores three or more wrecked vehicles outdoors for the purpose of dismantling or otherwise wrecking the vehicles to remove parts for sale for the use in an automotive repair or rebuilding business.

1.01.03 "Commissioners Court" means Hays County Commissioners Court.

1.01.04 "Completed Renewal Application" means an application that contains all of the information and documents required by Article 6.04 through 6.07 of these rules.

1.01.05 "County" means Hays County Government or its authorized agents.

1.01.06 "Director" means the Director of the Hays County Environmental Health Department or his authorized agents.

1.01.07 "Interested Party" means any person who may be affected by the issuance of a license pursuant to these rules and would include not only owners in fee simple, life tenants, lessees for years, lienholders, easement holders, and residents of a proposed yard, but also any person with these interests in land situated within one thousand (1,000) feet of a proposed yard.

1.01.08 "Junk" means copper, brass, iron, steel, rope, rags, batteries, tires, 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.

1.01.09 "Junkyard" means 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.

1.01.10 "Person" means any natural person, trust, estate, partnership, limited partnership, association, company or corporation.

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1.01.11 "Proposed Yard" means the land to be occupied by a junkyard or automotive wrecking and salvage yard if a license is granted pursuant to these rules.

1.01.12 "Recycling Business" means a business enterprise that is primarily engaged in the business of:

1.01.12.01 converting ferrous or nonferrous metals or other materials into raw material products having prepared grades and having an existing or potential economic value;

1.01.12.02 using raw material products or that kind in the production of new products; or

1.01.12.03 obtaining or storing ferrous or nonferrous metals or other materials for a purpose described by paragraph 1.01.12.02 of this subdivision.

1.01.13 "Wrecked Vehicle" means a discarded, abandoned, junked, wrecked, or worn-out automotive vehicle, including an automobile, truck, tractor-trailer, or bus, that is not in a condition to be lawfully operated on a public road.

ARTICLE 2 - ESTABLISHMENT AND GENERAL PROVISIONS

2.01 Authority

These rules are adopted by the Commissioners Court acting in its capacity as the governing body of Hays County. Hays County adopts these rules under the authority of the Junkyards and Automotive Wrecking and Salvage Yards - Screening from View, Licensing, Injunctive Relief and Penalties Act, TEX. REV. CIV. STAT. ANN. Art 2372dd-1 (Vernon Supp. 1988).

2.02 Purpose

The purpose of these rules is to protect the public health, safety, and welfare by requiring junkyards and automotive wrecking and salvage yards to be licensed by Hays County.

2.03 Area of Jurisdiction

2.03.01 These rules shall apply to all areas of Hays County except for the area within the boundaries of the incorporated cities and towns of Hays County.

2.03.02 These rules shall also apply to those incorporated cities or towns or villages that have adopted these rules and executed cooperative agreements with Hays County for their enforcement.

2.04 Effective Date

These rules shall become effective upon adoption by the Commissioners Court.

2.05 Construction, Precedents, and Interpretation

2.05.01 These rules shall be construed liberally to accomplish their purpose.

2.05.02 The Commissioners Court shall resolve any question regarding any interpretation of these rules.

2.05.03 In the event of any conflict between the rules and a State Law, a rule adopted under a State Law, or a Municipal Ordinance, the stricter of the two provisions prevails.

2.05.04 The masculine, feminine, and neuter genders shall be construed to include the other genders as required. The singular and plural shall be construed to include the other numbers as required.

2.06 Severability

If any provision of these rules or the application thereof to any person or circumstances is held invalid, the validity of the remainder of these rules and the application thereof to other persons and circumstances shall not be affected.

ARTICLE 3 - ADMINISTRATIVE PROVISIONS

3.01 Exemptions from Compliance with the Rules

3.01.01 These rules do not apply to the following:

3.01.01.01 a recycling business;

3.01.01.02 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, unless the city or town has adopted these rules; or

3.01.01.03 A junkyard or an automotive wrecking and salvage yard that legally began operation before the date upon which these rules are adopted by the Commissioners Court.

3.01.02 A person desiring an exemption from compliance with any requirement of these rules shall file a written request with the Director stating the nature of the exemption requested, the reason that justifies granting the exemption, and any additional information that the Commissioners Court requests. The Director shall notify the Commissioners Court of all requests for exemption within fourteen (14) days of the date on which the request is filed. Within forty-five (45) days after the filing of a request, the Commissioners Court shall review the request and notify the person, in writing, of their decision. If the request is denied, the Commissioners Court shall include the reasons for denial in the notice. If the Commissioners court does not give notice of their decision within forty-five (45) days of receipt of the request, the exemption is automatically granted.

3.02 Notice Procedures

3.02.01 In any notice of a hearing pursuant to Article 8 of these rules, the Director shall state the nature of the approval sought, the date, time, and place of the hearing any additional information the Director may consider necessary, and the rights of interested parties to be heard on the questions of approval and conditions to be imposed.

3.02.02 At least ten days prior to the date set for any hearing pursuant to Article 8 of these rules, the Director shall mail notice of the hearing by first class mail, postage pre-paid to the applicant, to the owners of the proposed yard and to the schools, churches, and interested parties included in the lists of these groups attached to the application for the license pursuant to Article 6.01.07 of these rules.

3.02.03 The Director shall post a notice of hearing pursuant to Article 8 of the rules in compliance with the Open Meetings Act, TEX. REV. CIV. STAT. ANN. Art. 6252-17 (Vernon Supp. 1988) on the site of the proposed yard or expansion or change of location of a licensed junkyard or automotive wrecking and salvage yard in a place that is visible from the adjacent roads or highways. This notice of hearing must be posted at least ten (10) days before the date set for the hearing.

3.02.04 Any notice required to be given pursuant to these rules, other than a notice of hearing pursuant to

Article 8 of these rules, shall be considered given by depositing same in the U.S. Mail, postage pre-paid, addressed in accordance with the information given by an applicant.

3.03 Fees

To defray the reasonable costs of administering these rules, the Director shall require a fee of \$25.00 to be paid. Such fee shall be paid with the filing of an application for a license and with the filing of an application for renewal of a license. The license shall cover a period of one year from the day on which the license is approved. The fee for issuing a duplicate license for one which is lost, destroyed or mutilated shall be \$5.00.

ARTICLE 4 - DUTIES AND POWERS

4.01 Duties and Powers

The Director is required by the Commissioners Court to perform the following duties:

4.01.01 To enforce these rules and to make appropriate recommendations to proper County authorities when instances of non-compliance with these rules have been determined.

4.01.02 To make annual reports to the Commissioners Court on all actions, including legal actions, taken concerning these rules and to provide the Commissioners Court any other information concerning these rules and their implementation which may be requested by the Commissioners Court.

4.02 Applications and Fees

The Director shall accept all applications and collect all fees necessary to meet the requirements of these rules. All fees collected shall be deposited in the general fund of the County.

ARTICLE 5 - REQUIREMENTS FOR OPERATIONS

5.01 Commencement of Operations

A person shall not operate a junkyard or automotive wrecking and salvage yard within Hays County, unless that person has a valid, subsisting license obtained pursuant to these rules.

5.03 Transfer of Licenses

A person shall give notice stating the name, mailing address, residential street address, and business address of all transferees and any change in the name of the operation to the Director before a person may transfer a license to another person. A person shall not transfer a license from one location to another without the prior approval of the Commissioners Court after notice and public hearing in compliance with Article 8 of these rules. Any license transferred from one location to another location without such prior approval of the Commissioners Court is no longer a valid license as of the date of transfer.

5.04 Compliance with conditions

A person granted a license shall comply with all conditions placed on the location of the junkyard or automotive wrecking and salvage yard by the Commissioners Court pursuant to Article 8.04 of these rules.

ARTICLE 6 - LICENSE APPLICATION PROCEDURE

6.01 Information Required for License

Applications for licenses to operate junkyards or automotive wrecking and salvage yards or expand or change locations shall be made in writing to the Director on a form prescribed by him and shall, along with such other information he may require, contain the following information:

6.01.01 the name, mailing address, residential street address, and business street address of the applicant;

6.01.02 the name of the proposed operation;

6.01.03 the street address of the proposed yard and the page and volume number of the Real Property Records of Hays County, Texas, where the most recent deed to the property on which the proposed yard will be located was recorded;

6.01.04 the exact legal description of the proposed yard;

6.01.05 if the applicant is a partnership, the name, mailing address, residential street address, and business street address for each member of the partnership;

6.01.06 if the applicant is a corporation, the name, mailing address, residential street address, and business street address, of each officer and director of the corporation and the name and address for service of process on the registered agent of the corporation; and

6.01.07 the names and mailing address of all schools, churches and interested parties and of all other persons that the applicant knows, or reasonably should know, want notice of the hearing on the application for the license.

6.02 Supporting Documents Required for License

The applicant shall attach the following documents to its application:

6.02.01 if an assumed name is used, a date-stamped copy of the Certificate of Assumed Name;

6.02.02 if the applicant is a general partnership, a copy of the fully executed partnership agreement;

6.02.03 if the applicant is a limited partnership, a date-stamped copy of the Certificate of Limited Partnership;

6.02.04 if the applicant is a corporation, a date-stamped copy of the Articles of Incorporation filed with the Secretary of State and a certified copy of the corporate resolution authorizing the corporation to file an application pursuant to these rules and designating the officer authorized to execute the application; and

6.02.05 if the applicant is not the owner in fee simple of the proposed yard, a properly executed power of attorney or other written evidence of the agency agreement between the applicant and the owner.

6.03 Acknowledgment Required for License

The application shall contain the following statements:

"Applicant grants County the authority to place notices pursuant to Article 3.02.03 on the site of proposed yard. All of the information contained in the application is true and correct to the best of the applicant's knowledge and belief. Applicant acknowledges that the license applied for shall be subject to all provisions of the codes and ordinances of Hays County relating to junkyards and automotive wrecking and salvage yards and shall be subject to all provisions of the codes and statutes of the State of Texas."

6.04 Information Required for Renewal Application

Applications for renewal licenses shall be made in writing to the Director on a form prescribed by him and shall, along with such other information as he may require, contain the following information:

6.04.01 the name, mailing address, residential street address, and business street address of the applicant;

6.04.02 the name of the operation;

6.04.03 the street address of the proposed yard and the page and volume number of the Real Property Records of Hays County, Texas, where the most recent deed to the property on which the proposed yard will be located was recorded;

6.04.04 the exact legal description of the proposed yard;

6.04.05 if the applicant is a partnership, the name, mailing address, residential street address, and business street address for each member of the partnership; and

6.04.06 if the applicant is a corporation, the name, mailing address, residential street address, and business street address of each officer and director of the corporation and the name and address for service of process on the registered agent of the corporation.

6.05 Supporting Documents Required for Renewal Application

Unless the applicant has attached the following documents to a prior application and there have been no amendments or changes to the documents since attached to the prior application, the applicant shall attach the following documents to its application:

6.05.01 if an assumed name is used, a date-stamped copy of the Certificate of Assumed Name;

6.05.02 if the applicant is a general partnership, a copy of the fully executed partnership agreement;

6.05.03 if the applicant is a limited partnership, a date-stamped copy of the Certificate of Limited Partnership;

6.05.04 if the applicant is a corporation, a date-stamped copy of the Articles of Incorporation filed with the Secretary of State and a certified copy of the corporate

resolution authorizing the corporation to file an application pursuant to these rules and designating the officer authorized to execute the application; and

6.05.05 if the applicant is not the owner in fee simple of the proposed yard, a properly executed power of attorney or other written evidence of the agency agreement between the applicant and owner.

6.06 Acknowledgment Required for Renewal License

The application shall contain the following statements;

"The location in the renewal application is the same land area and geographic location as that approved by the Commissioners Court in the initial application."

"The license has never been revoked and is not suspended or expired on the date of application."

"The junkyard or automotive wrecking and salvage yard is in operation on the date of application for renewal."

"All of the information contained in the application is true and correct to the best of the applicants knowledge and belief."

"Applicant acknowledges that the license applied for shall be subject to all provisions of the codes and ordinances of Hays County relating to junkyards and automotive wrecking and salvage yards and shall be subject to all provisions of the codes and statutes of the State of Texas."

6.07 Sworn Signature Required

Application for license and renewal license shall be signed and sworn to by the applicant (if the applicant is a partnership, by a general partner on behalf of the partnership and, if the applicant is a corporation, by the officer of the corporations designated to execute the application on behalf of the corporation) before a notary public or other official authorized to administer oath.

ARTICLE 7 - ISSUANCE OF LICENSES

7.01 Initial Licenses

Initial licenses may be issued by County upon receipt of the prescribed fee and a completed application only if the

Commissioners Court has approved the location of the junkyard or automotive wrecking and salvage yard.

7.02 Licenses for Increase in Land Area or Change of Location

Licenses for an increase in land area of the location or for changes in location may be issued by County upon receipt of the prescribed fee and a completed application only if the Commissioners court has approved the location of the additional area to be used for the increase in land area or the new location of the junkyard or automotive wrecking and salvage yard.

7.03 Issuance of Licenses

Under the conditions established in these rules, the Director shall issue licenses to all applicants whose applications have been approved by the Commissioners Court in compliance with Article 8 of these rules. All licenses shall include the certification of the Hays County Clerk, or his authorized agent, that the license has been approved by the Commissioners Court and the date of approval. All licenses shall be originally signed by the Director or his authorized agent.

7.04 Annual Renewal of Initial Licenses

After the initial license has been issued by the County, the Director shall renew the license within thirty (30) days after receipt of the prescribed fee and a completed renewal application, provided that the location in the renewal application is the same land area and geographic location as that approved by the Commissioners Court in the initial application; the license has never been revoked and is not suspended or expired on the date of application; and the junkyard or automotive wrecking and salvage yard is in operation on the date of application for renewal.

ARTICLE 8 - PROCEDURE FOR COMMISSIONERS COURT APPROVAL

8.01 Public Hearing

Prior to approval of any application for a license pursuant to these rules, the Commissioners Court shall hold a public hearing on the question of approval of the application and conditions to be imposed on the location. At this public hearing, interested parties shall have the right to be heard on the questions of approval and conditions to be imposed. The public hearing shall be held within forty-five (45) days

of receipt of an application in compliance with Article 6.01 through 6.03 and 6.07 of the rules.

8.02 Notice of Hearing

The County shall give notice of the hearing on the application as prescribed in Article 3.02.

8.03 Criteria for Approval

The Commissioners Court may deny approval of any application for any license sought pursuant to these rules for the following reasons:

8.03.01 the location of the proposed yard would be detrimental to the public health, safety or welfare;

8.03.02 the location of the proposed yard would create a hazard to the environment;

8.03.03 the location of the nearest boundary of the proposed yard would be within one thousand (1,000) feet of the nearest property line of property 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 nearest boundary of a residential subdivision for which County has approved a surveyor's plat;

8.03.04 the location of the proposed yard would be incompatible with the surrounding development;

8.03.05 the location of the proposed yard would be detrimental to the economic welfare of Hays County;

8.03.06 the location of the proposed yard would be within one thousand, five hundred (1,500) feet of a lake, river, tributary or pond; or

8.03.07 the location of the proposed yard would be within the one hundred (100) year flood plain.

8.03.08 the applicant has not complied with the Article 6 of these rules.

8.04 Conditions on Approval

In granting approval of any application for a license to establish or expand or change location of any junkyard or automotive wrecking and salvage yard within Hays County, the Commissioners Court may impose conditions on the location at

which a junkyard or automotive wrecking and salvage yard may operate.

8.05 Time for Approval

The Commissioners Court shall decide whether to grant or deny approval of an application within sixty (60) days of the public hearing on that application and, if this decision is not made within sixty (60) days, the application shall be deemed to have been approved by the Commissioners Court.

ARTICLE 9 - GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE

9.01 Suspension of License

If a junkyard or automotive wrecking and salvage yard is not screened in compliance with TEX. REV. CIV. STAT. ANN. Art. 2372dd-1, Section 3, (Vernon Supp. 1988), or in compliance with whichever is applicable, the Director may suspend the license for that junkyard or automotive wrecking and salvage yard. The suspension shall continue until the junkyard or automotive wrecking and salvage yard is being operated in compliance with the applicable article.

9.02 Notice of Suspension

If the Director suspends the license of a junkyard or automotive wrecking and salvage yard, the Director shall give notice of the suspension to the applicant for the suspended license.

9.03 Revocation of License

9.03.01 If the license of a junkyard or automotive wrecking and salvage yard has been suspended for more than fourteen (14) days and the operation of the junkyard automotive wrecking and salvage yard has not been brought into compliance with the applicable article, the license shall automatically be revoked and no valid or subsisting license shall exist for that junkyard or automotive wrecking and salvage yard.

9.03.02 If the applicant has provided any information in the application which is not true and correct, then the license may be revoked by the Director and, if revoked, no valid or subsisting license shall exist for that junkyard or automotive wrecking and salvage yard.

9.04 Notice of Revocation

If the license of a junkyard or automotive wrecking and salvage yard is revoked pursuant to these rules, the Director shall give notice of that revocation to the applicant for the revoked license.

9.05 Hearing on Suspension and Revocation

The applicant or current holder of a suspended or revoked license may have a hearing by the Commissioners Court on the suspension or revocation of the license if a request for such a hearing is made in writing to the Hays County Judge within thirty (30) days of receipt of the notice of suspension or revocation. The hearing will be set as soon as practicable, but in any event no later than thirty (30) days after receipt of the request for the hearing.

ARTICLE 10 - ENFORCEMENT

10.01 Inspection

The Director may routinely inspect junkyards and automotive wrecking and salvage yards to assure continued compliance with the rules.

10.02 Criminal {TEX. REV. CIV. STAT. ANN. Art. 2372dd-1, S 7, (Vernon Supp. 1988)}.

10.02.01 A person who violated Article 5 of these rules commits an offense. An offense under the Article is a Class "C" Misdemeanor. A separate offense occurs under the Article on each day on which all of the elements of the offense exists.

10.02.02 Jurisdiction for prosecution of suit under this Article is in the Justice of the Peace Courts.

10.02.03 Venue for prosecution of a suit under this Article is a Justice of the Peace precinct in which the violation is alleged to have occurred.

10.03 Civil {TEX. REV. CIV. STAT. ANN. Art. 2372dd-1, S6, (Vernon Supp. 1988)}.

10.03.01 Whenever it appears that a violation of any of these rules has occurred or is occurring, any person is entitled to bring a suit in District Court for injunctive relief against the person who committed, is committing, or is threatening to commit the violation.

10.03.02 Such civil suits, excluding criminal prosecutions, may not be instituted by the County unless the Commissioners Court has authorized the institution of the suit.