

COMMISSIONERS' COURT OF ELLIS COUNTY
AMENDED OUTDOOR BUSINESS ORDER NO. 215.06

AN AMENDED ORDER REGARDING SCREENING OF CERTAIN OUTDOOR
BUSINESSES AND LICENSING AND REGULATION OF
AUTOMOTIVE IMPOUND, SALVAGE AND/OR WRECKING YARDS
AND JUNKYARDS
WITHIN THE UNINCORPORATED PORTIONS OF ELLIS COUNTY, TEXAS

On this the 26 day of June, 2006, the Commissioners' Court of Ellis County, Texas, convened in a regular session of said court, at 101 West Main Street (2nd Floor), Waxahachie, Texas, with the following members present, to wit:

County Judge:

Judge Chad Adams

Commissioners:

Dennis Robinson, Commissioner, Pct. 1

Larry Jones, Commissioner, Pct. 2

Heath Sims, Commissioner, Pct. 3

Ron Brown, Commissioner, Pct. 4

and among other proceedings, pursuant to §396.042 and §396.043 of the Texas Transportation Code, the following amended order was passed after publication of notice of such proposed amended order in the *Waxahachie Daily Light*, a newspaper of general circulation in Ellis County, and once a week for the three weeks immediately preceding the week of the public hearing, said publication being first made on the 5 day of June, 2006, and after notice was posted in a public place for the posting of notices for ten (10) days immediately preceding the date of the hearing and after a public hearing was held on the 26 day of June, 2006, at which interested members of the public were given opportunity to appear and testify before the Court about the general subject to be covered by the proposed ordinance:

WHEREAS, the State of Texas has enacted legislation relating to the screening of certain outdoor businesses and relating to the licensing and regulation of automotive impound, salvage and/or wrecking yards and junkyards; and

WHEREAS, §234.002(a) of the Texas Local Government Code states that the Commissioners' Court may establish visual aesthetic standards for all automotive impound, salvage and/or wrecking yards, junkyards, recycling businesses, flea markets, demolition businesses and outdoor resale businesses in the unincorporated area of Ellis County; and,

WHEREAS, §396.021 and §396.022 of the Texas Transportation Code provide minimum standards for the screening requirements and location of all automotive impound, salvage and/or wrecking yards and junkyards; and

WHEREAS, §234.002(b) of the Texas Local Government Code provides the Commissioners' Court may not include in an order a screening requirement for an automotive impound, salvage and/or wrecking yard or junkyard that is less restrictive than the screening requirement provided under Chapter 396 of the Texas Transportation Code; and,

WHEREAS, §396.023 of the Texas Transportation Code provides that a person who operates an automotive impound, salvage and/or wrecking yard or junkyard must comply with the screening requirements of an applicable local ordinance adopted by a political subdivision; and,

WHEREAS, §396.044 of the Texas Transportation Code provides that in the event a provision of Chapter 396 of the Texas Transportation Code is in conflict with a provision of a local ordinance, the stricter of the two provisions prevails; and,

WHEREAS, §396.024 and §396.045 of the Texas Transportation Code provide criminal penalties for all persons who knowingly violate an order issued pursuant to Chapter 396 of the Texas Transportation Code; and

WHEREAS, §396.002 of the Texas Transportation Code provides civil injunctive relief to all parties injured by persons who knowingly violate an order issued pursuant to Chapter 396 of the Texas Transportation Code; and,

WHEREAS, §234.004 of the Texas Local Government Code provides additional civil penalties for all persons who knowingly violate an order issued pursuant to Chapter 234 of the Texas Local Government Code; and,

WHEREAS, §396.041 of the Texas Transportation Code states that to protect the public health, safety and/or welfare, the Commissioners' Court may require all automotive impound, salvage and/or wrecking yards and junkyards which came into operation on or after June 1, 1987 to be licensed by Ellis County; and

WHEREAS, the Commissioners' Court entered Order No. 8299 regarding automotive impound, salvage and/or wrecking yards and junkyards on June 11, 1988; and,

WHEREAS, the Commissioners' Court of Ellis County, Texas, finds that to protect the public health, safety and/or welfare, a substantial need exists to amend and supercede the currently effective Minute Order No. 8299 regarding automotive impound, salvage and/or wrecking yards and junkyards within the unincorporated areas of Ellis County; and

WHEREAS, it is the intent of the Commissioners' Court that this Amended Order will amend and supercede such Order No. 8299.

THEREFORE, pursuant to the authority granted by Chapter 396 of the Texas Transportation Code and Chapter 234 of the Texas Local Government Code, BE IT ENACTED BY THE COMMISSIONERS' COURT OF ELLIS COUNTY, TEXAS:

AMENDED ORDER OF THE COMMISSIONERS' COURT

SECTION 1 PURPOSE AND INTENT

(a) *Purpose.* The purpose of this order is to establish visual aesthetic standards for all automotive impound, salvage and/or wrecking yards, junkyards, recycling businesses, flea markets, demolition businesses and outdoor resale businesses in the unincorporated area of Ellis County and to require all automotive impound, salvage and/or wrecking yards and junkyards which came into operation on or after June 1, 1987 to be licensed by Ellis County. To protect the public health, safety and/or welfare, the provisions herein are to be strictly enforced.

(b) *Statutory authority.* The intent of the Ellis County Commissioners' Court is that the regulations of this amended Order are promulgated pursuant to Chapter 396 of the Texas Transportation Code, Chapter 234 of the Texas Local Government Code and all amendments and/or successions thereto, as they apply to automotive impound, salvage and/or wrecking yards, junkyards, recycling businesses, flea markets, demolition businesses and outdoor resale businesses.

SECTION 2 DEFINITIONS

The following terms used in this amended order shall have the meanings hereinafter defined:

(a) "Automotive impound, salvage and/or wrecking yard" means an outdoor place located wholly or partly in Ellis County where a person or business stores three or more wrecked vehicles and/or impounded vehicles for a period of no less than twenty-four (24) hours for the purpose of:

1. selling the vehicles whole;
2. dismantling or wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business; or,
3. impounding the vehicles for a commercial purpose.

(b) "Demolition business" means a business located wholly or partly in Ellis County that demolishes structures, including houses and other buildings, in order to salvage building materials and that stores those materials before disposing of them.

(c) "Flea market" means an outdoor market for selling second hand articles or antiques located wholly or partly in Ellis County.

(d) "Impounded vehicle" means an automotive vehicle (including but not limited to a standard passenger vehicle, truck, bus, or tractor-trailer) that is either wrecked as defined in Section 2, subsection (j) of this Order or that is in a condition to be lawfully operated on a public road that is stored at an automotive impound, salvage and/or wrecking yard for a commercial purpose.

(e) "Junk" includes but is not limited to copper, brass, iron, steel, rope, rags, batteries, tires, appliances, furniture, trailers and/or other material that has been discarded or sold at a nominal price by a previous owner of the material. The term does not include a wrecked vehicle.

(f) "Junkyard" means a place located wholly or partly in Ellis County where a business that owns junk, and is operated to store, buy or sell junk, keeps all or part of the junk outdoors until the business disposes of the junk.

(g) "Outdoor resale business" means a business located wholly or partly in Ellis County that sells used merchandise, other than automobiles, logging equipment, or other agricultural equipment, and stores or displays the merchandise outdoors.

(h) "Recycling business" means a business located wholly or partly in Ellis County primarily engaged in the business of:

- a. converting ferrous or nonferrous metals or other materials into raw material products having prepared grades and having an existing or potential economic value;
- b. using raw material products of that kind in the production of new products; or
- c. obtaining or storing ferrous or nonferrous metals or other materials for a purpose described by paragraph (a) or paragraph (b).

(i) "Solid barrier fence" means a fence which is opaque and cannot be visibly penetrated at any point by the human eye.

(j) "Wrecked vehicle" means a discarded, junked, damaged, or worn-out motor-driven vehicle (including but not limited to a standard passenger vehicle, truck, bus, tractor-trailer, motor home, travel trailer or any other portable home designed to driven or hauled on public roadways) that is not in a condition to be lawfully operated on a public road. This definition includes any motor-driven vehicle which fails to display an unexpired license registration tag, current inspection sticker and any other item required of a vehicle to be lawfully operated on a public road.

SECTION 3 SCREENING REQUIREMENTS

(a) Section 3 does not apply to:

(1) a person or business who operates an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business that is located entirely in a municipality and is regulated by the municipality; and,

(2) farm machinery owned or operated by the person on whose property the machinery is located and kept on that property for purposes other than sale.

(b) A person or business who operates an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business in the unincorporated area of Ellis County shall:

(1) permanently screen the entire property on which an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business is located (including all junk and/or wrecked vehicles as these terms are defined in this Order), with a solid barrier fence that is the higher of:

- (i) at least eight feet high when measured from the highest point of right of way adjacent to the property; or,
- (ii) at least eight feet high when measured from the ground at the base of the solid barrier fence at the highest point along the fence line.

(2) permanently place the solid barrier fence at a location which is at least 50 feet from the right of way of a public street, state or federal highway, or residence.

(c) The solid barrier fence as described in Section 3, subsection (b), may not have any sign appear on its surface other than a sign indicating the business name. The solid barrier fence may be composed of either treated wood, brick or metal, but the fence must be all of the same composition. If metal, the solid barrier fence must be uniformly painted a natural earth tone color. The solid barrier fence must be flush with the ground at all points along the base and have a level top extending the entire length of the fence.

(d) A person or business who operates an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business may not accumulate or stack materials to the lesser of:

- (1) a height more than seven feet above ground level when measured from the ground at the base of the solid barrier fence at the highest point along the fence line; and,
- (2) a height which may be seen by an individual driving or riding in an automotive vehicle (including but not limited to a standard passenger vehicle or pick-up truck) when viewed from the highest point of the right of way of any roadway adjacent to the property.

(e) A person or business who operates an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business on the effective date of this Order will have twelve (12) months in which to comply with the screening requirements prescribed in Section 3.

(f) In the event a provision of this Order is in conflict with a provision of Chapter 396 of the Texas Transportation Code, Chapter 234 of the Texas Local Government Code, or any other state or federal law or rule derived therefrom, the strictest provision shall prevail.

SECTION 4 LICENSING AND REGULATION

(a) Section 4 does not apply to:

(1) a person or business who operates a demolition business, flea market, outdoor resale business, or recycling business as those terms are defined in Section 2 herein; and,

(2) a person or business who operates an automotive impound, salvage and/or wrecking yard or junkyard that is located entirely in a municipality and regulated by the municipality; and,

(3) a person or business who operates an automotive impound, salvage and/or wrecking yard or junkyard in operation before June 1, 1987.

(b) A person or business who operates an automotive impound, salvage and/or wrecking yard or junkyard on the effective date of this Order and who does not have a current unexpired license pursuant to previous Order No. 8299 must apply with the Ellis County Department of Development, currently located at 1201 N. Hwy 77, Waxahachie, Texas 75165, for a one-year license and pay an annual fee of \$25.00 within sixty (60) days from the effective date of this Order.

(c) A person or business who seeks to commence with the operation of a new automotive impound, salvage and/or wrecking yard or junkyard after the effective date of this Order must:

(1) apply with the Ellis County Department of Development to obtain a one-year license and submit the following:

(i) a sworn application form prepared by the Ellis County Department of Development;

(ii) proof of a current and valid certificate issued by the Texas Department of Transportation permitting the person or business to operate an automotive impound, salvage and/or wrecking yard or junkyard;

(iii) a statement indicating the environmental plan to be implemented by the automotive impound, salvage and/or wrecking yard or junkyard in accordance with the United States Environmental Protection Agency; and,

(iv) an application fee of \$25.00.

(2) immediately comply with the requirements stated within Section 3 of this Order before the commencement of the operation of the automotive impound, salvage and/or wrecking yard or junkyard.

(d) A valid license will only be issued for the operation of a new automotive impound, salvage and/or wrecking yard or junkyard at a location conditionally approved by the Ellis County Department of Development, and final approval for all applications which have previously received conditional approval by the Ellis County Department of Development will be subject to the discretion of the Ellis County Commissioners' Court.

(e) A person or business who operates a licensed automotive impound, salvage and/or wrecking yard or junkyard must apply with the Ellis County Department of Development to renew all one-year licenses and pay an annual fee of \$25.00 at least thirty (30) days before the expiration of the license:

(1) a valid license renewal will only be issued for the continued operation of an automotive impound, salvage and/or wrecking yard or junkyard after inspection by the Ellis County Department of Development to ensure compliance with the requirements prescribed in Section 3; and,

(2) final approval for all renewal applications conditionally approved by the Ellis County Department of Development will be subject to the discretion of the Ellis County Commissioners' Court.

(f) In the event a person or business who operates an automotive impound, salvage and/or wrecking yard or junkyard fails to timely apply to obtain a license renewal and/or fails to obtain a license renewal after the inspection of the Ellis County Department of Development, the person or business must apply for a new license pursuant to the procedure prescribed in Section 4, subsection (c) and (d), as though no license had ever been issued, in addition to other penalties prescribed in this Order.

(g) In the event a person or business who operates an automotive impound, salvage and/or wrecking yard or junkyard fails to or ceases to comply with the requirements of Section 3 of this Order; the Ellis County Commissioners' Court shall have the authority to revoke the license issued to the person or business and the person or business must apply for a new license pursuant to the procedure prescribed in Section 4, subsection (c) and (d), as though no license had ever been issued, in addition to other penalties prescribed in this Order.

(h) Fees received by the Ellis County Department of Development shall be deposited in the general fund of Ellis County.

SECTION 5 CRIMINAL PENALTIES

(a) A person who knowingly or intentionally operates an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or

recycling business in a manner which is in violation of Section 3 of this Order commits an offense:

(1) an offense under Section 5, subsection (a), is a Class C Misdemeanor, punishable by a fine of not less than \$100 and not more than \$500; and,

(2) a separate offense occurs each day a violation continues under Section 5, subsection (a).

(b) A person who knowingly or intentionally operates an automotive impound, salvage and/or wrecking yard or junkyard without a current unexpired license in a manner which is in violation of Section 4 of this Order commits an offense:

(1) an offense under Section 5, subsection (b), is a Class C Misdemeanor, punishable by a fine of not less than \$100 and not more than \$500; and,

(2) a separate offense occurs each day a violation continues under Section 5, subsection (b).

SECTION 6 CIVIL ENFORCEMENT

(a) Ellis County may take appropriate action to seek entry upon land to either construct a solid barrier fence as described in Section 3 or to remove the impounded vehicles, wrecked vehicles and/or junk as defined in Section 2 at the expense of the person or business operating an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business in violation of Section 3 and/or Section 4 of this Order.

(b) In addition to or in the alternative of the remedies prescribed in Section 6, subsection (a), Ellis County may take appropriate civil action to seek:

(1) an injunction to prohibit a violation or threatened violation of Section 3 and/or Section 4 of this Order; and,

(2) monetary damages incurred by Ellis County for expenses related to the construction of a solid barrier fence or the removal of impounded vehicles, wrecked vehicles and/or junk as described in Section 6, subsection (a); and

(3) monetary damages incurred by Ellis County for reasonable and necessary attorney's fees and expenses and costs of court; and,

(4) a monetary civil penalty against the person or business operating an automotive impound, salvage and/or wrecking yard, junkyard, demolition business, flea market, outdoor resale business, or recycling business in violation of Section 3 of this Order:

(i) a civil penalty pursuant to Section 6, subsection (a), paragraph (3) may not exceed \$50 per day for the first ten (10) days of the violation, \$100 per day for the next ten (10) days, \$250 per day for the next ten (10) days, and \$1,000 for each day thereafter; and,

(ii) in determining the amount of the civil penalty awarded pursuant to Section 6, subsection (a), paragraph (3), the Court shall consider the seriousness of the violation; and,

(iii) any civil penalty recovered under Section 6, subsection (a), paragraph (3), shall be deposited in the general fund of Ellis County.

(c) The appropriate jurisdiction and venue for any proceeding under Section 6 of this Order shall be Ellis County, Texas.

(d) Each day a person or business violates Section 3 and/or Section 4 of this Order constitutes the accrual of a separate and distinct cause of action.

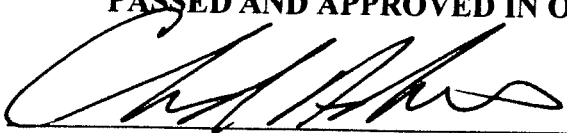
SECTION 7 SEVERABILITY

If any section, article, paragraph, sentence, clause, phrase or word in this amended order, or application thereto, or any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this amended order; and the Commissioners' Court hereby declares it would have passed such remaining portions of the amended order despite such invalidity, which remaining portions shall remain in force and effect.

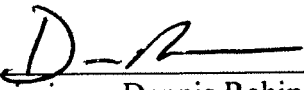
SECTION 8 EFFECTIVE DATE

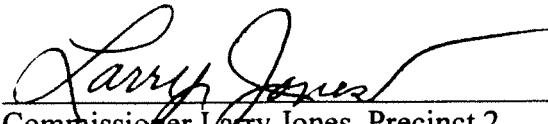
This amended order shall become effective from and after the date of its passage, and it is accordingly so ordained.

PASSED AND APPROVED IN OPEN COURT on this the 26 day of June, 2006.

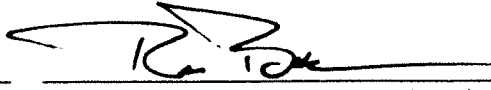


Chad Adams, County Judge


Commissioner Dennis Robinson, Precinct 1


Commissioner Larry Jones, Precinct 2


Commissioner Heath Sims, Precinct 3


Commissioner Ron Brown, Precinct 4

Attest:


Cindy Polley, County Clerk