

AN ORDINANCE OF THE CITY OF PATTISON, WALLER COUNTY, TEXAS, REQUIRING A PERMIT FOR OPERATING A LOT OR PRIVATE STORAGE LOT OR STORE MOTOR VEHICLES OR MOTOR VEHICLE PARTS, RECYCLE MOTOR VEHICLES, OPERATE A RECYCLING FACILITY, OPERATE A USED VEHICLE LOT, BUY OR SELL USED VEHICLE PARTS, OPERATE A VEHICLE IMPOUND FACILITY, OPERATE A VEHICLE REPAIR SHOP, OPERATE A VEHICLE GARAGE, OPERATE AN ENVIRONMENTAL WASTE FACILITY, OPERATE A HAZARDOUS WASTE FACILITY, OPERATE A LANDFILL, OPERATE A CONSTRUCTION MATERIALS-ASPHALT-GRAVEL-CONCRETE- DIRT FACILITY, OPERATE A SURPLUS MERCHANDISE SHOP, OPERATE A BODY SHOP. OPERATE A PARTS LOT, OPERATE A RECLAMATION STORAGE LOT FACILITY, OPERATE A SECURED STORAGE YARD, OPERATE A PARKING LOT, OPERATE A GRAVEL PIT WITHIN THE CITY, PROVIDING FOR DEFINITIONS; PROVIDING FOR A TERM OF ONE YEAR FOR SAID LICENSE AND PERMIT; AND FOR A FEE FOR THE ISSUANCE THEREOF; PROVIDING FOR AFFIRMATIVE DEFENSES; PROVIDING A PENALTY OF UP TO \$1,000.00 FOR VIOLATION AND CONTAINING A SAVINGS CLAUSE; PROVIDING FOR POSTING AND PUBLISHING AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PATTISON, TEXAS:

I.

DEFINITIONS

1. Unless it appears from the context that a different meaning is intended, the words defined in this Ordinance shall have the meaning ascribed to them by this section:
2. JUNK includes those articles which may be reasonably classified as junk in the usual trade meaning of that term, to wit: the purchase, storage or sale of scrap iron, brass, copper, lead, zinc, tinfoil, aluminum, metal alloys; serviceable items such as wrecked, worn-out or nonoperative vehicles, automobiles, trucks, trailers; plumbing, electrical or gas fixtures or appliances purchased, stored or handled for the purpose of dismantling and selling usable parts therefrom or selling the remainder thereof; and other commodities not ordinarily usable in their existing condition such as scraps, cloth, rags, rubber, boxes or cartons.
3. JUNK DEALER includes any person engaged in the collection, handling, storing or selling of any of the articles defined as junk.

4. JUNKYARD means any and all areas which are used for collection, handling, selling or storage of junk.
5. SOLID FENCE OR WALL means a fence or wall which is constructed and maintained at accepted commercial fence or wall standards. Materials shall be uniform height and surface quality and shall consist of masonry, stone, or commercially available lumber designed for fences or walls. A chain link fence with strips or slats is not a solid fence.
6. PRIVATE STORAGE LOT shall mean a storage facility which accepts a motor vehicle which has been towed or delivered pursuant to this Ordinance.
7. LOT shall mean a Private Storage Lot, or facility where motor vehicle or motor vehicle parts are stored, or motor vehicles are recycled, vehicles are impounded, vehicle repair shop, vehicle garage, environmental waste facility, hazardous waste facility, landfill, surplus merchandise shop, body shop, parts lot, reclamation storage lot, secured storage yard, parking lot, gravel pit.
8. OPERATOR OR PRIVATE STORAGE LOT OPERATOR shall mean any person, partnership or corporation that operates a Lot or Private Storage Lot or junkyard or facility regulated by this Ordinance.
9. HAZARDOUS WASTE shall mean waste as defined by federal and state law, including VT.C.A. Health And Safety Code, Chapter 361 and Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sections 9601 through 9675 ("CERCLA"), now existing or hereinafter amended.
10. SHERIFF OF WALLER COUNTY, TEXAS shall include the Sheriff, any Waller County Constable, police department, or licensed peace officer.
11. APPLICATION
 - a. Every person desiring to operate Lot or Private Storage Lot or engage in the STORAGE LOT BUSINESS in the City or store motor vehicles or motor vehicle parts, recycle motor vehicles, operate a recycling facility, operate a used vehicle lot, buy or sell used vehicle parts, operate a vehicle impound facility, operate a vehicle repair shop, operate a vehicle garage, operate an environmental waste facility, operate a hazardous waste facility, operate a landfill, operate a construction materials - asphalt-gravel-concrete-dirt-storage facilities, operate a surplus merchandise shop, operate a body shop, operate a parts lot, operate a reclamation storage lot facility, operate a parking lot, operate a gravel pit, shall complete an application in writing on a form provided for that purpose to the City Secretary, for a permit to operate a Lot or Private Storage Lot or engage in the storage lot business and for a permit for each Lot or Private Storage Lot proposed

to be operated. For each Lot or private Storage Lot for which a permit is sought, the applicant must submit name of Owner, name under which Lot or Private Storage Lot is to be operated, address and telephone number of Owner. Every application when filed shall be sworn to by the applicant and accompanied by a PERMIT fee for each Lot or Private Storage Lot proposed to be operated, and this fee shall not be returned to the applicant.

- b. Every application shall also submit evidence that he is holder of a license for or has an agreement with the owner of the real property to operate a Lot or Private Storage Lot or store motor vehicles or motor vehicle parts, recycle motor vehicles, operate a recycling facility, operate a used vehicle lot, buy or sell used vehicle parts, operate a vehicle impound facility, operate a vehicle repair shop, operate a vehicle garage, operate an environmental waste facility, operate a hazardous waste facility, operate a landfill, operate a surplus merchandise shop, operate a body shop, operate a parts lot, operate a reclamation storage lot facility, operate a parking lot, operate a gravel pit to each storage lot listed on the application."
- c. The applicant shall also satisfy the requirements set out in Section III.

III.

- 1. No person may operate a Lot, or Storage Lot facility or store motor vehicles or motor vehicle parts, recycle motor vehicles, operate a recycling facility, operate a used vehicle lot, buy or sell used vehicle parts, operate a vehicle impound facility, operate a vehicle repair shop, operate a vehicle garage, operate an environmental waste facility, operate a hazardous waste facility, operate a landfill, operate a construction materials - asphalt-gravel-concrete-dirt-storage facilities, operate a surplus merchandise shop, operate a body shop, operate a parts lot, operate a reclamation storage lot facility, operate a Secured Storage Yard, operate a parking lot, operate a gravel pit, unless a current authorization has been issued by the City for the property to be used as a Lot or Private Storage Lot for such purpose.
- 2. AUTHORIZATION FOR USE - PERMIT REQUIRED - No person may store or permit any motor vehicle or vehicle parts to be on his property when the motor vehicle was towed without the owner's consent unless a current authorization has been issued by the City for the property to be used as a Lot or Private Storage Lot.
- 3. APPLICATION:
 - (a) Each person who desires authorization to operate a Lot or Private Storage Lot shall file an application with the City Secretary on a form provided by the City. On the application, the applicant shall set forth:

- (1) The name, address, and telephone number of the applicant; if the applicant is an individual, the application shall so state. If the applicant is a partnership, the name, address, and telephone number for each partner shall be set out. If the applicant is a corporation, the applicant shall set forth:
 - (a) The name and address of the corporation and state of incorporation;
 - (b) The names, addresses, and telephone numbers of all the principal Officers and Directors;
 - (c) The name and address of each person owning a controlling interest in the corporation. If no single person owns a controlling interest in the corporation, the applicant shall list the names of each person who owns five (5%) per cent or more of the interest in the corporation. If the controlling interest is held by an entity or entities, and not by one or more individuals, the applicant shall list each individual who owns five (5) per cent or more of the interest in any such entity or entities;
- (2) The street address and the full property description of the Lot or Private Storage Lot;
- (3) The number of the telephone located at the Lot or Private Storage Lot;
- (4) The name under which business is conducted at the Lot or Private Storage Lot;
- (5) The number of the license issued by the City to operate as a Lot or Private Storage Lot.
- (6) The date of birth, place of birth, sex, race and each address where the applicant has resided in the five (5) years preceding the application;
- (7) Whether any applicant has been convicted of any criminal offense in this state or any other state or country within five (5) years immediately preceding his application, or has spent any time in jail or prison within five (5) years due to a conviction; provided, however, convictions for any traffic offenses which are classified as no greater than a Class C misdemeanor under the laws of Texas are not required to be listed on the application. If any such person has been convicted of, the date of the conviction, and the place, court and case number of the case. A signed authorization for the Waller County, Texas Sheriff's Department to investigate as to whether

the person has committed any criminal offense shall be submitted by each applicant;

- (8) Each person listed in the application shall submit himself to be fingerprinted at the Waller County, Texas Sheriff's Department, or to the police department of any other city or town if such department will forward the fingerprints to the Waller County, Texas Sheriff's Department;
 - (9) An application under this section shall be signed by the applicant. If a partnership, it shall be signed by each partner. If a corporation, it shall be signed by the president and attested by the secretary. In all cases, the person signing shall execute an affidavit, on the application form, that the statements contained in such application are true and correct;
- (b) The applicant shall sign an agreement on a form provided by the City Secretary in which the applicant shall be informed that it is the intention of the City Council to fully comply with all requirements of due process as provided in the United States and Texas Constitutions. The applicant shall also be informed in the agreement that it is the intention of the City Council to fully abide by the decisions that have been rendered and which may be rendered by the courts of the United States and of the State of Texas defining the rights of due process of those persons whose vehicles are towed without the owner's consent. The applicant shall agree in this agreement that if granted authorization to operate a Lot or Private Storage Lot, he will notify the owner and lienholder of each vehicle owner whose vehicle is stored at his Lot or Private Storage Lot if the vehicle was towed without the owner's consent. said owner and lienholder will be notified by certified mail, return receipt requested, of the storage of the vehicle at his Lot or Private Storage Lot within three (3) days of delivery to that Lot or Private Storage Lot. The applicant shall also provide in the agreement that the Lot or Private Storage Lot will make no demand against any person for payment for the towing, handling, storage or preservation of vehicles where the judge of a court of competent jurisdiction has found no probable cause for the towing.
- (c) Further, the applicant shall agree that the Lot or Private Storage Lot will comply with all amendments or additions to the Ordinances regulating Lots or Private Storage Lots as may be adopted by the City Council in the future, and any requirements regarding the storage, handling or release of vehicles that have been towed without the owner's consent which may be imposed by any Ordinance or court of competent jurisdiction.
- (d) If any future requirements set by any court of competent jurisdiction impose a greater burden on the applicant's business, the applicant may surrender his authorization to operate as a Lot or Private Storage Lot to the City and the City

will not refund the fee which was paid for such authorization.

5. The Lot or Private Storage Lot operator telephone number will have a local telephone number and available space within the City for properly accommodating, storing, and protecting all disabled motor vehicles to be towed or otherwise removed from the place where they are disabled.

6. Lots, Private Storage Lots, junk yards may be inspected by the Waller County Sheriff's Department or his designee or office of the Mayor or City Official at any time during normal business hours.

7. SCREENING REQUIREMENTS

a. Solid Fence or Wall Required;

b. Lots, Private Storage Lots, Secured Storage Yards, or all junkyards shall be screened by a solid fence or wall. The solid fence or wall shall not be less than eight feet in height, and shall be situated between the junkyard and the following:

(1) Any Lot, Private Storage Lot, parcel or tract of land situated adjacent to or directly across a public street or alley from such Lot, Private Storage Lot, or junkyard or secured storage yards which is used for residential, church, school, public playground or public park purposes;

(2) Any roadway designated as an expressway or major arterial in the Pattison or the City's Metropolitan Area Roadway Plan (PMARP) now existing or hereafter adopted, or the successor plan thereto, but only if the Lot or Private Storage Lot or junkyard is visible from any point within the right-of-way of the expressway or major arterial;

- c. Lots, Private Storage Lots, Junkyards, or Secured Storage Yards must be maintained by the permit holder inside the City limits and enclosed by a fence at least EIGHT (8') foot high,
- d. Said fence completely blocking the Lot, Private Storage Lot, Junkyard, or Secured Storage Yard from view, on all sides, said Lot, Private Storage Lot, Junkyard, or Secured Storage Yard shall be maintained and the fence constructed to provide rodent, snake, and insect control to prevent rodent or snake habitation, insect infestation, and hold a minimum of five (5) vehicles and a maximum of ten (10) vehicles, and provide off-street parking for at least two (2) vehicles;
- e. Said office at the Lot, Private Storage Lot, Junkyard or Secured Storage Yard shall be constantly manned by personnel, and served by the telephone of the operator and always available to the public to obtain return of their stored vehicle;
- f. The person or entity seeking to erect a solid fence or wall under the requirements of this Ordinance must first obtain a permit from the City Building Official. The application for such permit shall be made on forms provided by the Building Official which may include, among other things, the name of the owner of the property, the address of the property, a schematic diagram showing the location and length of the proposed solid fence or wall and such other information as the Building Official may deem necessary;
- g. Nothing in this section shall be construed as extending the time for compliance with this Ordinance;
- h. The Owner of a Lot, Private Storage Lot, Secured Storage Yard, or Junkyard,

which requires a solid fence or wall under this article but which already has such a solid fence or wall at the time it is annexed into the City may apply to the Building Official for a certificate of compliance without having to obtain the fence permit described in this Ordinance, subject to compliance with other provisions of Section III and this Ordinance.

6. There shall be a \$1,000.00 permit fee for the holder of a Lot or Private Storage Lot permit. The permit shall expire annually on the anniversary date of issuance and shall be issued by the City Secretary.
7. Except as otherwise authorized in this ordinance no person operating a Lot, or Private Storage Lot shall receive any motor vehicle without the consent of the vehicle owner to any location other than to a Lot or Private Storage Lot holding a current permit issued by the City to operate as a Lot or Private Storage Lot located within the same service area as the location from which the motor vehicle was towed from, unless the vehicle is towed to and accepted by a Lot or Private Storage Lot operated by the City, or operated pursuant to a contract with the City. Provided, however, it shall be an affirmative defense to prosecution under this section that the vehicle was towed to some other location pursuant to a contract between the owner of the vehicle and the storage lot facility or upon the written instructions of a member of an investigative Division of the Waller County Sheriff's Department. No member of an investigative division of the Waller County Sheriff's Department shall authorize the towing of any motor vehicle to any Lot or Private Storage Lot other than one located within the City, unless a person holding the rank of sergeant or above in the Waller County Sheriff's Department has authorized the towing of

vehicles to another Lot or Private Storage Lot after finding that such action would facilitate the operations of a specific criminal investigation.

8. When a wrecker driver leaves a motor vehicle which was towed without the consent of the vehicle owner to a Lot or Private Storage Lot, he shall deliver a copy of the wrecker ticket or wrecker slip to the Lot or Private Storage Lot and shall obtain the signature of the Lot or Private Storage Lot Operator or his agent or employee, showing that the motor vehicle was delivered to the Lot or Private Storage Lot.
9. The Operator and/or wrecker ticket or wrecker slip shall note all apparent exterior and interior damage to the towed vehicle.
10. No wrecker driver shall leave a motor vehicle at any storage lot unless and until such vehicle is placed inside the fenced area of the Lot or Private Storage Lot.
11. No person shall tow, carry or transport any motor vehicle from private property unless the towing has been authorized by the vehicle owner or by the person who has the right of possession to the property from which the vehicle is being removed, or his agent.
12. The person having possession of the property from which one or more motor vehicles are to be towed may designate one or more wrecker drivers to be his agents for removal of vehicles, but such designations must be in writing and signed by the person having the right of possession of the property. Copies of such a designation shall be retained by the person in possession of the property and by each wrecker driver towing such vehicles from the property, and by the Operator
13. WRECKER TICKET.
 - (a) No person shall tow, carry or transport any motor vehicle from private property

without consent of the vehicle owner unless a wrecker ticket has been completed for such vehicle.

- (b) The wrecker ticket shall contain the following information:
- (1) A complete description of the vehicle to be towed, including the license plate number and the vehicle identification number;
 - (2) Any visible damage to the inside or outside of the vehicle;
 - (3) Any personal property contained within the vehicle which is visible from outside that vehicle;
 - (4) Any visible missing parts or paraphernalia;
 - (5) The location from which the vehicle is being towed;
 - (6) The date and time the vehicle is towed;
 - (7) The location to which the vehicle is being towed;
 - (8) The towing fee;
 - (9) The permit number of the wrecker being used for the tow;
 - (10) The signature of the person who has the right of possession of the property from which the motor vehicle is being removed, his agent, or the name of the person who authorized the tow when the vehicle was towed pursuant to authorization given in accordance with this Ordinance;
 - (11) The signature and wrecker license number of the wrecker driver.

14. RECORD KEEPING GENERALLY. Each Operator shall keep a record book, in which he shall make accurate daily entries of any articles received by him in the course of his business, with a description of such articles. He shall affix a number to each article so received by him, and shall make an entry of such number in his record book. He shall also

make a record in such book of the disposition made by him of such article and, if sold, he shall state to whom sold and the price received therefor. The record books require to be kept by this section shall at all times be open to the inspection of the Waller County Sheriff's Department, the Office of the Mayor or any other representative of the City, and it shall be the duty of the person required to keep such record books to exhibit them to any such officer or representative for inspection whenever demanded.

15. DAILY REPORT. It shall be the duty of every person engaged in the purchase or sale of junk to furnish a daily report before 12:00 noon to the Waller County Sheriff's Department, on blanks to be approved by the City of Pattison, which report shall constitute an accurate copy of the record required to be kept by the Storage Lot Operator showing all transactions since the last report; however, no report need be made on Sunday, and the daily report made on Monday shall cover all transactions occurring since the making of the last report.
16. RESTRICTIONS AS TO PURCHASES MADE WITHIN 48 HOURS. No junk shall be sold or removed from the place of business of any junk dealer within 48 hours after the same has been purchased or acquired. All junk received shall be kept separate and apart from all other articles so that the same may be fully identified, for a full 48 hours after the same is received; provided, that this provision shall not apply to scrap iron, old tin, rags and bones.
17. PURCHASES FROM INTOXICATED PERSONS OR MINORS. No junk dealer shall receive or purchase junk from any intoxicated person, nor shall such dealer purchase junk from any person under the age of 18 years, without the written consent of the parent or

guardian of such minor. Such written consent shall be preserved by such junk dealer for a period of not less than six months thereafter for public inspection, and when any such purchase is made from any minor with such consent a notation of the same shall be made in the book or register required to be kept by such dealer.

18. OBSTRUCTION OF TRAFFIC WHEN LOADING OR UNLOADING MERCHANDISE. It shall be unlawful for any junk dealer or representative thereof to load or unload articles in such a manner as to obstruct the movement of traffic on a public street or thoroughfare.

19. Any wrecked, worn-out, or nonoperative vehicles, automobiles, trucks, trailers, shall have all fluids, including gasoline and oil, drained from the vehicle upon delivery to a Lot or Private Storage Lot.

20. BOND REQUIREMENTS; PURCHASES OF LOST OR STOLEN PROPERTY.

a. No Operator within the City shall engage in business unless he has made and executed a bond in the sum of \$10,000.00, with two or more good and sufficient sureties, or with a surety company authorized to do business in this State. Such bond shall be approved by the City Attorney as to form and by the City Secretary as to the sufficiency thereof, and shall be made payable to the City of Pattison; conditioned that such Operator will strictly and faithfully keep and observe the provisions of the chapter and any other ordinances of the City regulating the business of Operator that may be passed by the City Council.

b. If any article or thing found in the possession of any Operator is identified and claimed as lost or stolen property, and the claimant or owner makes affidavit as to

its ownership and such Operator refuses to deliver such property to the claimant or owner, suit may be brought in any court of competent jurisdiction by such claimant or owner against such Operator for the property, or for the value of the same upon his required bond. Where any suit is maintained by some person other than the City, the City shall not be responsible for the court costs or any other matter therein involved.

IV.

1. Nothing in this Ordinance shall be construed as requiring the erection of any said fence or wall which is otherwise prohibited by any other statute, ordinance or other law.
2. Lot or Private Storage Lot or Junkyards or other facilities regulated by this Ordinance which are in operation on the date this provision becomes effective are subject to the screening requirements upon the occurrence of the earliest of the following terms:
 - a. The date on which ownership of the Lot, Private Storage Lot, junkyard or other facilities regulated by this Ordinance or the underlying real property changes;
 - b. The date on which the lease for the Lot, Private Storage Lot, junkyard or other facilities regulated by this Ordinance or the underlying real property expires; or
 - c. January 1, 2004.

IV.

AFFIRMATIVE DEFENSES TO PROSECUTION

1. It shall be an affirmative defense to prosecution under any provision of this Ordinance that the owner of the motor vehicle being towed, carried or otherwise transported by the

wrecker, authorized the storage of his vehicle.

2. It shall also be an affirmative defense to prosecution under any provision of this Ordinance, that the motor vehicle being towed, carried or otherwise transported by the wrecker was originally picked up or loaded onto the wrecker at a specific location outside the City, at the request of the Waller County Sheriff's Department.
3. Additionally, it shall be an affirmative defense to prosecution under this Ordinance that the motor vehicle was being towed by the auto wrecker pursuant to a request by the lienholder of the motor vehicle; that the towing was incidental to a lawful repossession of the motor vehicle; that the wrecker driver has complied with the requirements of this Ordinance which would be applicable if the lienholder were the vehicle owner of the motor vehicle being towed, and the wrecker driver otherwise complied with the requirements of this Ordinance.

V.

The Operator shall not allow the Lot:

1. To contain hazardous waste or materials unless a permit or license is secured from an appropriate federal or state agency, it being the intention of the City Council to prohibit hazardous waste or materials to be stored on the Lot;
2. To operate the Lot resulting in a nuisance;
3. To operate the Lot between the hours of 9:00 o'clock PM and 6:00 o'clock AM.

VI.

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00 upon conviction of such violation;

provided however if such person convicted of an offense under this Ordinance which offense is also a violation of the penal laws of the State of Texas, such person shall be subject to the penalties set out in the penal laws of the State of Texas for the offense.

VII.

This Ordinance shall take effect from and after the date of its passage, and all Ordinances or portion of Ordinances heretofore passed in conflict with the terms hereof are specifically repealed.

VIII.

If any provision, section, subsection, sentence, clause, phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion thereof or provision, or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof and all provisions of this Ordinance are declared to be severable for that purpose.

IX.

The City Secretary is instructed to post and publish notice of this Ordinance as required by law, by publishing only the descriptive caption.

X.

The fact that operation of Lots and Private Storage Lots represents a danger and hazard to the citizens of the City and causes an emergency, requiring the reading of an ordinance at more than one meeting to be dispensed with, therefore this Ordinance shall be passed and approved on

the date of its introduction and shall be enforceable from the date of its publication and posting as required by law.

PASSED AND APPROVED this 29th day of July, 2003.

THE CITY OF PATTISON, TEXAS,

By: Bill Matthews

BILL MATTHEWS

Mayor

ATTEST:

By: Lynda Fairchild

LYNDA FAIRCHILD,

City Secretary

ALDERMEN VOTING:

LYNN T. BELL YES

ROY TAYLOR YES

KATHRYN WILSON YES

PAT BUFKIN YES

LARRY SABRSULA YES