

CHAPTER 93: The Ashe County Ordinance for Control of Junk Materials, Junkyards and Abandoned Motor Vehicles

<u>Section:</u>		general welfare of Ashe County to enact such
93:01	INTENT AND PURPOSE	ordinance; and
93:02	TITLE	
93:03	GEOGRAPHIC COVERAGE	
93:04	DEFINITIONS	
93:05	EXEMPTIONS FROM ORDINANCE	WHEREAS, the Board of Commissioners hereby
93:06	PROCEDURES: REGISTRATION AND PERMITTING	finds and declares that the establishment, use,
	93:06(a): Registration Time Period	and maintenance of junkyards as defined further
	93:06(b): Registration Application	in this ordinance, in the vicinity of the state
	93:06(c): Time Period for Permit of Registered Junkyards	maintained public roads, in residential areas and
	93:06(d): Permit Required for Junkyards	in proximity to public facilities within Ashe
	93:06(e): Permit Application	County should be regulated and controlled;
	93:06(f): Permitting Procedure	
	93:06(g): Permitting Compliance	
93:07	GENERAL STANDARDS	NOW, THEREFORE, BE IT ORDAINED by
	93:07(a): Pre-existing Junkyards	
	93:07(b): New Junkyards	the Ashe County Board of Commissioners.
93:08	MAINTENANCE	
93:09	ENFORCEMENT PROVISIONS	
	93:09(a): Relief	
	93:09(b): Variance	§ 93:01: INTENT
	93:09(c): Decision	
93:10	EFFECTIVE DATE	

WHEREAS, North Carolina General Statute Chapters 153~2 Section(s) 121, 134 and 140 enables the County to enact an ordinance for the control of junkyards and to provide for its administration, and enforcement; and

WHEREAS, the Ashe County Board of Commissioners deems it necessary for the purpose of promoting the health, safety, and

The purpose and objectives for which this Ordinance is adopted and enacted are as follows:

- A. To promote the public health, safety, and general welfare.
- B. To preserve the natural scenic beauty of areas in the vicinity of roads located in unincorporated areas of the county.
- C. To protect the public from health nuisances and safety hazards by controlling vectors,

concentrations of volatile or poisonous materials, and sources of danger to children.

§ 93:02: TITLE

These regulations shall be known and may be cited as the "The Ashe County Ordinance for Control of Junk Materials, Junkyards and Abandoned Motor Vehicles".

§ 93:03: GEOGRAPHIC COVERAGE

These regulations shall be in effect in all unincorporated portions of Ashe County which are not under the jurisdiction portions of any municipal zoning ordinance. Any incorporated municipality may adopt this Ordinance by reference and make the same applicable to all areas within its respective zoning jurisdiction.

This Ordinance shall not apply to any highways or adjacent areas, which are controlled by the North Carolina Junkyard Control Act and which are *actively* regulated pursuant to that Act by the North Carolina Department of Transportation.

§ 93:04: DEFINITIONS

For the purpose of this ordinance, certain words and terms are defined as herein indicated:

Automobile Graveyard - Any tract of land, establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts for profit and shall include any tract of land, establishment or place of business upon which more than six (6) such motor vehicles which cannot be operated under their own power, are not being restored to operable condition, and which are kept or stored for profit for a period of 90 days or more.

Compliance Officer - The County Manager or his designee.

Establishment - Any place, land, building or structure on which or in which there is operated or maintained a business or going concern.

Garage - Any establishment or place of business which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles, and which may store as many as six (6) motor vehicles that are not

capable of being driven under their own power and are not being restored to operable condition, regardless of the length of time that individual motor vehicles are stored or kept at such property. If the garage is listed as a business in the Tax Assessor's Office by January 31st of each year and consists of two (2) acres, six (6) additional motor vehicles as described herein may be allowed.

Health, Nuisance or Safety Hazards - A motor vehicle, new or used machinery, or other new or used materials may be declared a health nuisance or safety hazard when it is found to be:

1. A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests; or
2. A point of collection for pools or ponds of water; or
3. An unsafe concentration of gasoline, oil or other flammable or explosive material; or
4. So located that there is a danger of the vehicle falling or turning over without assistance; or
5. A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside; the over turning of heavy items; or

6. An unsafe concentration of car radiators, batteries, or other materials that pose either a hazard of immediate or long-term environmental degradation.

Junk - Old or scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, refrigerators, stoves, household and commercial appliances or fixtures, indoor furniture, scrapped building materials, discarded machinery, junked motor vehicles, or parts thereof: iron and steel and other scrap ferrous or non-ferrous material and plastics.

Junked Motor Vehicle - A vehicle that does not display a current license plate and that:

1. Is partially dismantled or wrecked; or
2. Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
3. Is more than five (5) years old and appears to be worth less than \$100.00.

Junkyard - Any place which is maintained, operated, or used for a period of ninety (90) days or more for storing, keeping, buying or selling junk, or for maintenance or operation of an

automobile graveyard. A junkyard shall be presumed to have been created when an area of 600 square feet or more of junk are kept or stored at any given place whether for profit or not. Materials enclosed in closed buildings, solid waste containers or rolling stock (i.e. rail cars, trailer, or other containerized body not intended or designed to be self propelled) are excluded.

Junkyard Control Act - N.C. General Statutes 136-141-through 155 (Article 12) which delegate to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

Motor Vehicle - Any vehicle or machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

New Junkyard - Junkyards established after the effective date of this Ordinance or existing junkyards which do not register within the specified time limit in order to meet the designation of pre-existing.

Opaque - A substance that cannot be seen through when viewed perpendicularly at the same elevation.

Pre-Existing Junkyard - Junkyards in existence at the time of effective date of this Ordinance which register within the specified time.

Public Road - Any road or highway which is now or hereafter designated and maintained by the N.C. Department of Transportation as part of the State Highway System.

Recycling Center - A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and moved off site or kept on site in buildings, storage bins, solid waste containers, truck trailers and other rolling stock.

Residence - A house, mobile home, an apartment, a group of homes, or a single room occupied or intended for occupancy as separate living quarters for one or more humans.

School - Any public or private institution for the teaching of children under 18 years of age which

is recognized and approved by the N.C. Board of Education or other appropriate licensing boards.

Service Station - Any establishment which is maintained and operated for the purpose of making retail sales of fuels, lubricants, air, water and other items for the operation and routine maintenance of motor vehicles, and/or for making mechanical repairs, servicing and/or washing of motor vehicles and which is used to store not more than six (6) motor vehicles that are not capable of being restored to operable conditions regardless of the length of time that individual motor vehicles are stored, or kept at such property. If the service station is listed as a business in the Tax Assessor's Office by January 31st of each year and consists of two acres, six (6) additional motor vehicles as described herein may be allowed.

Vegetation - All season or evergreen vegetation shall mean evergreen trees with leaves or foliage at all seasons of the year and shall include, but not be limited to, white pine, southern pine, hemlock and spruce trees.

Unzoned Area - An area where there is no zoning in effect.

Vectors - An organism that carries disease-causing micro-organisms from one host to another (e.g.- rats, mosquitoes, etc.)

Visible - Capable of being seen without visual aid by a person of normal visual acuity.

§ 93:05: EXEMPTIONS FROM ORDINANCE

The following uses and activities are exempted;

- A. Bona fide service stations or garages as defined by this Ordinance are exempted.
- B. Recycling centers using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment.
- C. Salvage material or junk cars in enclosed buildings.

§ 93:06: PROCEDURES: REGISTRATION AND PERMITTING

93:06(a) Registration Time Period

All owners, operators, or maintainers of automobile graveyards or other junkyards

existing at the effective date of this Ordinance shall register same with Ashe County within a period of one hundred eighty (180) days from the effective date of this Ordinance. All existing automobile graveyards or junkyards that have not been registered within one hundred eighty (180) days shall be in violation of the registration provisions of this Ordinance. Unless said junkyards can be documented to the satisfaction of the Compliance Officer as existing prior to the effective date of this Ordinance they shall be considered new junkyards. If so documented said junkyards may be considered existing junkyards, they are required to register and required to comply with a revised compliance schedule listed in Section 93:06(g).

93.06(b) Registration Application

Registration shall be accomplished by completing a registration application and paying a fee as established by the Board of County Commissioners. The Compliance Officer shall provide the necessary forms for the registration application. The registration application shall include but not be limited to the following information: Land Owner's and junkyard operator's name, address and phone numbers for

business and home, state and/or local business registration number or license, the location of the property by township; physical address and property identification number, the total acreage of the property and approximate acreage of the property and acreage involved in the junkyard operation.

One copy of the completed signed registration application shall be submitted to the Compliance Officer.

93:06(c) Time Period for Permit of Registered Junkyards

All existing junkyards at the effective date of this Ordinance, registered in accordance with Subsection 93:06(b), shall be granted a period of 90 days from the effective date of registration to receive a permit. Thereafter same shall be in violation of the permitting provisions of this Ordinance.

93:06(d) Permit Required for Junkyards

No person, firm or business entity shall establish, operate, or maintain a junkyard without obtaining a permit. Any expansion of a

junkyard, whether pre-existing or newly permitted, shall require a permit. The permit shall only be issued upon the persons, firm or business entity seeking the permit submitting a statement that the existing or proposed junkyard does not violate any of the provisions of this Ordinance. The permit shall be valid unless revoked for non-conformance with this Ordinance.

93:06(e) Permit Application

Application for the permit shall be made to the Compliance Officer of the Ordinance, on such forms as the Compliance Officer of the Ordinance shall prescribe along with a non-refundable permit fee as established by the Board of Commissioners. The permit application shall include, but not be limited to the information required for the registration application and a junkyard plan.

The plan shall indicate setbacks, location of public right-of-ways, all existing and proposed structures, bodies of water, water sources, all structures within 500 feet of junkyard, driveways, entrances, fencing, screening, types of fencing, types of screening dimensions of

junkyard, gross acreage, preparer of plans name(s) and address(es) and phone numbers. Plans shall be at a scale no larger than one (1) inch equal four hundred (400) feet. Three (3) copies shall be submitted. Any expansion of a junkyard, whether pre-existing or newly permitted, shall require a permit. Procedures and standards for an expansion permit shall be those required for a new establishment.

93:06(f) Permitting Procedure

The completed permit application and junkyard plan shall be submitted to the Compliance Officer. The Compliance Officer shall have the authority to either approve or deny the permit. A denied permit may be resubmitted within fourteen (14) days from the date of denial without incurring an additional permit fee.

93:06(g) Permitting Compliance

Existing junkyards shall conform to the approved permit and standards of this Ordinance in accordance with the graduated compliance schedule listed as follows. The times listed are from the date of plan approval.

- A. Meet Section 93:07(b)(F) within 1 month
- B. Meet Section 93:07(b)(G) within 3 months
- C. Meet Section 93:07(b)(E) within 36 months
- D. Meet Section 93:07(b)(H) within 36 months
- E. Meet Section 93:07(b)(I) within 36 months
- F. Meet Section 93:07(b)(D) within 36 months

Junkyards discovered after the registration time period of Section 93:06(a), but documented to the satisfaction of the Compliance Officer as being in existence prior to this Ordinance shall conform to applicable portions of this Ordinance. The time period of compliance shall run from the date of discovery. Items A - C shall have the time period listed, but items D, E and F shall have a time period of 12 months.

New junkyards shall conform to the approved permit and standards of this Ordinance prior to the establishment of the use as a junkyard on the property. Failure to meet the requirements of the approved permit and standards of this Ordinance shall be a violation of the compliance provisions of this Ordinance.

§ 93:07: GENERAL STANDARDS

Junkyards in existence on the effective date of this Ordinance shall conform to the requirements of this Ordinance as applicable.

93:07(a) Pre-existing Junkyards

Pre-existing junkyards shall meet the requirements specified in Sub-Section 93:07(b)(D), (E), (F), (H) and (I).

93:07(b) New Junkyards

The following criteria shall be applicable to new junkyards.

All junkyards which are established from and after the effective date of this Ordinance, shall meet the following standards:

A. Not be located closer than five hundred (500) feet to a pre-existing church, school, day care center, nursing home, skilled health care facility, hospital, public recreation facilities or residence (excluding residence of the owner or his agent or employee); and

B. Be situated on a parcel of at least four (4) acres excluding right-of-ways that is undivided

by public road right-of-way or public dedication;
and

C. Any driveway, roadway, or entrance to the proposed junkyard shall not be located closer than thirty (30) feet from any side property line;
and

D. Have a minimum setback for any junked material from the required fence and/or vegetative screening from the front, side and rear property lines excluding road right-of-way of at least twenty (20) feet; and

E. All buildings, (excluding existing buildings and equipment and operations therein) equipment, operation, (except roads) and junk shall not be situated within twenty-five (25) feet of an intermittent or continuously flowing stream as designated on the most recent U.S. Geological Survey maps. Same shall not be closer than one hundred (100) feet to the bank of a river or an intermittent or continuously flowing stream that is located within one-half mile of a river; and

F. All buildings, (except existing building, and equipment and operations therein) equipment, and operations (except roads) shall not be

situated within ten (10) feet of the front, side and rear property lines excluding road right-of-ways and at least thirty (30) feet from the main traveled portion of the public State maintained road or highway; and

G. If the proposed junkyard is to be within five hundred (500) feet of an occupied structure (excluding a residence occupied by the junkyard owner and/or operator), then the junkyard shall be completely enclosed by a fence a minimum of six (6) feet in height by a woven or welded wire (24 gauge minimum) fence, chain link, wooden or solid metal fence. When fencing is required there shall be screening according to Section 93:07(b)(H) below. Screening is not required when natural vegetation is a depth of twenty-five (25) feet and minimum of six (6) feet in height between the junkyard and the occupied structure. Fencing requirements shall not apply if a structure is constructed on land purchased after the junkyard is registered or permitted, if not otherwise applicable; and

H. If proposed or pre-existing junkyard property is visible from the public state maintained road or pre-existing occupied structure within five hundred (500) feet of the proposed or pre-

existing junkyard property, the proposed or pre-existing junkyard owner shall provide an opaque fence along all visible sides of the property or install vegetation that provides a continuous all season opaque screen at least six (6) feet in height within four (4) years of planting or setting said vegetation. Vegetation not less than two (2) feet in height at the time of planting shall be planted. Additional screening may not be required along the road when natural vegetation exists that provides an all season opaque screening. If natural vegetation is reduced below the depth or effectiveness specified the property shall be required to be screened according to the Ordinance. This does not exempt the property from being fenced as specified in Section 93:07(b)(G), except for pre-existing junkyards. Screening requirements shall not apply if the residence or occupied structure is constructed on land purchased after the junkyard is registered or permitted, if not otherwise applicable. Where due to distance, topography or other site considerations the Compliance Officer determines from field investigation that the height screening required would not screen the junkyard, said screening may not be required along the applicable property lines. Each owner, operator, or maintainer of a junkyard shall utilize

good husbandry techniques such as pruning, mulching, and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

I. All junk and/or inoperable motor vehicles shall be kept within the confines of said fence and/or vegetative screening at all times unless in motion by transport to or from the site.

J. On site traffic areas shall be provided and arranged in a manner to provide adequate areas to prevent backward movement onto the state maintained road.

§ 93:08: MAINTENANCE

All junkyards shall be maintained to protect the public from health nuisances and safety hazards.

The Ashe County Health Department may inspect each junkyard to determine that no vectors are present. The Compliance Officer may also inspect each junkyard to determine that no vectors are present and that no other violations exist. Should vectors or other violations be identified, the

owner/operator/maintainer shall submit satisfactory evidence to the Health Department and Planning Department that vectors or other violations have been eliminated.

Failure to comply with this Section may result in revocation of permit as well as other penalties and remedies for violation as provided for in Section 93:09.

§ 93:09: ENFORCEMENT PROVISIONS

The Compliance Officer shall enforce this Ordinance. The Compliance Officer shall periodically travel all County roads for the purpose of discovering violations of this ordinance. He may call upon other agencies as necessary to assist in enforcement of this Ordinance.

In addition, whenever the Compliance Officer receives a complaint alleging a violation of this Ordinance, the Compliance Officer shall investigate the complaint and take whatever action is warranted. The complainant's name(s) shall not be divulged nor record made of the complaint.

The owner, tenant, or occupant of any building or land or any part thereof and agent or other person who participate in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

A. The following procedure shall apply upon discovery of a violation.

1. If the Compliance Officer finds that any provisions of this Ordinance are being violated; he shall send a written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and advising the violator of the number of days or months within which the violation shall be corrected. The violator shall be informed of his right to appeal to the Planning Board.

2. Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Compliance Officer may seek enforcement

without prior written notice by invoking any of the penalties or remedies authorized in this Section.

B. Penalties and remedies for violation shall be as follows:

1. Any violation of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or imprisonment, not to exceed thirty (30) days, as provided in N.C. General Statute 14-4.
2. Any violation of the provisions of this Ordinance or a failure to comply with any of its requirements shall subject the offender to pay this penalty of \$50.00 per violation, if the offender fails to pay this penalty within ten (10) days after being cited for a violation, the penalty may be recovered by the County in a civil action in the nature of debt.
3. This Ordinance may also be enforced by any appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include removal of junk from illegal junkyards

and other actions required to make the property comply with the provisions of this Ordinance at the owner's expense.

4. Each day that any violation continues after final notification by the Compliance Officer that such violation exists may be considered a separate offense for purposes of the penalties and remedies specified in this Section.

5. Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance. In addition to the foregoing enforcement provisions, this Ordinance may be enforced by any remedy provided in N.C. General Statute 153A-123; including, but not limited to, all appropriate equitable remedies provided in N.C. General Statute 153A-123 (d) and particularly the remedy of injunction and order of abatement as allowed in N.C. General Statute 153A-123 (e).

6. Any County permit(s) associated with property that has the junkyard permit may be revoked by the permit issuing authority (in accordance with the provisions of this Section) if the permit recipient fails to develop or maintain the property in accordance with the plans

submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the County Board of Commissioners.

7. Before such permit(s) may be revoked the permit recipient shall be given ten (10) days written notice of intent to revoke any relevant permit. The notice shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations before the County Manager. If any relevant permit is revoked, the Compliance Officer shall provide to the permittee a written statement of the decision and the reasons therefore.

93:09(a) Relief

Unless otherwise listed, appeals from the specific provisions of this Ordinance and appeals from any ruling of the Compliance Officer shall be submitted to the Ashe County Planning Board within ten (10) days of receipt of adverse action or ruling.

93:09(b) Variance

The Planning Board may authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or extreme hardship, and so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done, such variance may be granted in such individual case of extreme hardship upon a finding by the Planning Board that the following conditions exist:

A. There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography that are not applicable to other automobile graveyards and junkyards governed by this Ordinance.

B. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other operators of other automobile graveyards and junkyards governed by this Ordinance.

C. A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other operators of automobile graveyards or junkyards governed by this Ordinance.

D. The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.

E. The special circumstances are not the result of the action of the applicant.

F. The variance requested is the minimum variance that will make possible the legal use of the land in question.

In granting a variance the Planning Board shall make findings that the requirements of this Section have been met. The Planning Board shall make a finding, and written notice of the decision shall be prepared and furnished to the applicant. In granting any variance, the Planning Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the

variance is granted, shall be deemed a violation of this Ordinance.

93:09(c) Decision

Decisions of the Planning Board may be appealed; to do so a petition for the writ of certiorari must be filed with the Ashe County Clerk of Superior Court within thirty (30) days after the later of the following occurrences:

A. A written copy of the Planning Board's decision has been filed in the office of the County Planning Department, and

B. A written copy of the Planning Board's decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellate and every other aggrieved party who has filed a written request for such copy at the hearing of the case. A copy of the petition for writ of certiorari shall be served upon Ashe County through the Office of the County Manager.

§ 93:10: EFFECTIVE DATE

This Ordinance shall be come effective upon its
adoption, this the ___ day of _____, 200_.

ASHE COUNTY BOARD OF
COMMISSIONERS

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

County Attorney