



# A SELECTED READING

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## Control of Junkyard and Salvage Operations

Frequently the League receives questions about the regulation and control of salvage operations. Activities of this type include junk dealers, junkyards, junk collectors, second-hand dealers, junk brokers and automobile salvage yards and dealers. This article summarizes the laws pertaining to the control of salvage operations. Also included are ordinance provisions which have been adopted by several Alabama cities and towns.

### Police Power

The authority of a municipality to control salvage operations must be derived either from an express grant of power from the legislature or it must come from the general grant of police power to adopt ordinances and regulations for the health, safety, morals, welfare and convenience of its inhabitants.

The only statutory provisions governing junkyards are found at Sections 23-1-240 through 23-1-251, Code of Alabama 1975. These sections deal with the regulation of all junkyards within 1,000 feet of the right of way of any interstate or primary highway. Additionally, Section 11-80-10, Code of Alabama 1975, gives municipalities the power to license junkyards within its police jurisdiction to the same extent as if the junkyard was located within its corporate limits.

While these specific provisions are helpful, they fall far short of the control required to protect the public health, safety and welfare. It is generally recognized that municipalities may regulate second-hand dealers and shops, junk or salvage shops, dealers, stores and yards, including automotive wrecking, junking and dismantling places and may require that they be licensed. The general police and licensing power of a municipality is sufficient for this purpose. *McQuillin, Municipal Corporations*, 3rd Edition, Section 24.351. These establishments are subject to strict police control because of fire hazards created by the accumulation of inflammable materials, frequently in combustible buildings. Such businesses may pose a health hazard if clothing and materials are infected with disease. Furthermore, regulation is necessary to prevent them from becoming an outlet for stolen goods.

### Power to Prohibit Limited

Municipal authorities having the power to abate nuisances cannot absolutely prohibit a lawful business which is not necessarily a nuisance. They may, however, abate it when the business is carried on in a manner so as to constitute a nuisance. Municipalities cannot, under the claim of exercise of police power, substantially prohibit a lawful trade, unless it is so conducted as to be injurious or dangerous to the public health. *Greensboro v. Ehrenreich*, 2 So. 725 (Ala. 1887). It is generally said that the operation of an automobile salvage yard is not a nuisance per se. *Crabtree v. City Auto Salvage Co.*, 340 S.W.2d 940 (Tenn. 1960). However, Section 23-1-250, Code of Alabama 1975, specifically provides that the operation of a junkyard required to be licensed under Alabama law is a public nuisance. See *Burnett Used Auto Parts v. Limestone County*, 687 So.2d 171 (Ala. Civ. App. 1997). Under Alabama zoning powers, cities and towns are authorized to restrict the establishment of junkyards to certain areas within the municipality and its zoning jurisdiction. However, where such yards and businesses were established prior to zoning they are allowed to continue as a nonconforming use until such use is discontinued.

The biggest problem is found in the allowance as a nonconforming use. Can a municipality prohibit salvage-type operations within certain areas of the municipality under the general police power? The answer is a qualified "yes." If the business would amount to a public nuisance in the area, then the municipal governing body could and should refuse to license such business operations. However, the prohibition must have a definite, obvious and real relationship to the public health, safety, morals, welfare and convenience. While some states have recognized aesthetic considerations in regulating and restricting automobile junk businesses, this is not the general rule. In the *Crabtree* case, the court pointed out that it found no decisions upholding an injunction to prevent the continuance of a business simply because of its unsightliness. The court pointed out that a difference exists between direct control by courts through injunction on the one hand and legislative control through the use of the police power on the other.

## Consent of Neighbors

As a general rule, a municipality may not adopt an ordinance which makes the issuance of a license to conduct a salvage operation at a particular location dependent upon the consent of a specified percentage of neighboring land owners. Such requirements have been held oppressive and unreasonable and an unlawful delegation of the municipal legislative power. No cases in Alabama have directly dealt with this question, but it is safe to assume that the courts would not go along with such a requirement.

## Special Zoning Provisions

In the case of *Allen v. Corpus Christi*, 247 S.W.2d 130 (Tex. Civ. App. 1952), the court held that a municipality could not adopt a zoning ordinance provision requiring automobile salvage businesses located in areas restricted against them to move within three years to a proper zone or go out of business. In this case, the court pointed out that zoning ordinances work prospectively and should not be given retroactive effect.

## Fencing Requirements

Numerous cases have considered ordinances requiring fencing around salvage and junkyards, including automobile wrecking yards. The decisions have not been uniform by any means. Generally, a municipality has the authority to require that salvage yards be fenced where it can be shown that the requirement is reasonably related to public health and safety. If the fencing requirement is obviously imposed to prohibit the operation, then the ordinance will be held invalid.

Conversely, if the requirement is not oppressive and obviously imposed but will prevent junk from scattering over adjoining areas or prevent children from being hurt by attractive nuisances located in such areas, it is generally upheld. If the ordinance specifies the type of fence in such detail that it is not necessarily connected with the reason for the fence, then the ordinance would be considered unreasonable and arbitrary. If the fencing requirement is based solely on aesthetic reasons, the courts have held such ordinances invalid.

**NOTE:** For junkyards requiring licenses by the state of Alabama, Section 23-1-245, Code of Alabama 1975, requires screening in order to qualify for a license. Screening includes natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled road or otherwise removed from sight.

## Licensing Requirements

Before issuing a license to engage in business as a junk collector, junk dealer, second-hand dealer or automobile salvage dealer, a municipality may impose valid conditions. The applicant may be required to be of good character. Issuance of the license may be conditioned upon an investigation of the past conduct of the applicant which relates to the business involved. A prior conviction for receiving or purchasing junk from minors may disqualify an applicant, as may a conviction for receiving stolen property or a conviction for failure to keep proper records of purchases.

The ordinance may require that the applicant give permission to the police and fire departments to inspect and search the premises of the business at all times. The applicant may be required to specifically describe the area upon which the operation will be conducted and to submit a plat showing the area. As pointed out above, the ordinance may require that the area be fenced for proper purposes and in a reasonable manner. In addition to these restrictions, the hours of business may be restricted and licensees may be required to maintain a rodent and vermin control program on the premises.

## Selected Caselaw and Attorney General's Opinions

- In *Jaffe Corporation, Inc. v. Board of Adjustment of Sheffield*, 361 So.2d 556 (1977) the Alabama Court of Civil Appeals held that the city was correct when it ruled the corporation was operating a junkyard in an area not zoned for such business. The lower court decision was affirmed.
- The power to zone, qualify and define junk or salvage activities is a municipal function in light of the fact that the state has not taken action in the field. AGO to Hon. J.H. Summerlin, September 1, 1977.
- A county commission cannot require a junkyard to seek a county license if the junkyard is in the municipality's police jurisdiction, regardless of whether the city is enforcing its licensing requirements within its police jurisdiction. If a residence is being operated as a junkyard and is not within a municipality's police jurisdiction then the county is entitled to require the residence to be licensed as a junkyard. AGO 2002-177.
- A city ordinance's definitions of "junk" and "nuisance" cannot be arbitrary, unreasonable, and overbroad, since cities may not, under the guise of police power, impose restrictions that are unnecessary and unreasonable upon the use of private property. A resolution authorizing a nuisance abatement submitted by the housing code department, accompanied by a list of the properties containing alleged nuisances and a short description of the alleged nuisances by housing code

department employees, was itself sufficient evidence and that no additional evidence was required to shift the burden of proof to the property owners. *K & D Automotive, Inc. v. City of Montgomery*, 150 So.3d 752, 2014 (Ala.2014).

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