

**Town of Lubec**

**Junkyard, Automobile Graveyard,**

**and**

**Automobile Recycling Ordinance**

Attest: *Diana C. Wilson*  
Diana C. Wilson  
Town Clerk  
November 18, 1999

Enacted by The Town of Lubec  
December 13, 1999

*Diana C. Wilson*  
Diana C. Wilson  
Town Clerk

## **TOWN OF LUBEC JUNKYARD AUTOMOBILE GRAVEYARD AND AUTOMOBILE RECYCLING ORDINANCE**

### **1. Purpose.**

The purpose of this Ordinance is to provide adequate controls to ensure that junkyards, automobile graveyards and automobile recycling businesses do not have an unreasonable adverse impact upon the public health, safety and welfare.

### **2. Authority.**

This Ordinance is enacted pursuant to 30-A M.R.S.A. Par. 3001 et seq. and 3751 et seq.

### **3. Applicability.**

This Ordinance applies to all junkyards, automobile graveyards and automobile recycling businesses as defined at 30-A M.R.S.A. Par. 3752, and located wholly or partially within the municipal boundaries of the Town of Lubec.

### **4. Grandfathering.**

Junkyards, automobile graveyards and automobile recycling businesses existing and lawfully permitted by the Town of Lubec at the time of the passage of this Ordinance shall have six (6) months, or until the end of their current municipal permit period, whichever is sooner, to obtain a new permit in accordance with the terms of this Ordinance. Thereafter, no such pre-existing junkyards, automobile graveyards or automobile recycling businesses shall be suffered to exist except in conformity with this Ordinance.

### **5. Administration.**

- 5.1. This Ordinance shall be administered by the municipal officers or their duly authorized representative. No junkyard, automobile graveyard or automobile recycling business permit shall be issued except in conformity with this Ordinance.
- 5.2. Upon receipt of an application for a permit the municipal officers shall hold a hearing in accordance with 30-A M.R.S.A. Par. 3754.
- 5.3. Permits for junkyards and automobile graveyards shall remain valid for one (1) year and shall expire on the last day of the calendar year for which they are issued.
- 5.4. Permits for an automobile recycling businesses shall be valid for five (5) years from the year of issue, and shall expire on the last day of the year of expiration.
- 5.5. Once a Site Plan is approved by the municipal officers it does not need to be resubmitted unless changes are made to the site or the location on the site where business activities are conducted.

- 5.6. The municipal officers or their duly authorized representative shall inspect all junkyards, automobile graveyards and automobile recycling businesses located within the Town of Lubec to ensure compliance with this Ordinance. Such inspections shall occur as frequently as is reasonably necessary to ensure compliance with this Ordinance, but in no case less frequently than once per year.
- 5.7. Each permittee is deemed to have given permission for reasonable inspection during normal business hours for the purpose stated in the previous paragraph. Any permittee who refuses permission or access for such inspection shall be in violation of this Ordinance.
- 5.8. A fee of one hundred (\$100.00) dollars shall be submitted with every permit application to cover the costs of posting and publishing the notice. Additional permit fees shall be submitted as follows:
  - 5.8.1 Fifty (\$50.00) dollars for any automobile graveyard or junkyard located more than one hundred (100) feet from a public way;
  - 5.8.2 Two hundred (\$200.00) dollars for any automobile graveyard or junkyard located within one hundred (100) feet of a public way; and
  - 5.8.3 Two hundred and fifty (\$250.00) dollars for a 5-year permit for an automobile recycling business.

## **6. Permit Required.**

No person or landowner shall establish, operate or maintain a junkyard, automobile graveyard or automobile recycling business without first obtaining a non-transferable permit from the municipal officers.

## **7. Submission Requirements.**

Any application for a junkyard, automobile graveyard or automobile recycling business shall contain the following information and materials.

- 7.1. The name and address of each property owner of the site property, and the name and address of each person or entity who will operate the facility.
- 7.2. A Site Plan, drawn to scale no smaller than 1:100, on which is shown the following:
  - 7.2.1 The owners' names, and the tax map and lot numbers for each abutting property;
  - 7.2.2 The tax map and lot numbers for the site property;
  - 7.2.3 The boundary lines of the site property showing dimensions and bearings;
  - 7.2.4 The soil types and their locations on the site property;
  - 7.2.5 The location of any wells on or within one hundred (100) feet of the site property;

- 7.2.6 The location of any sand or gravel aquifer recharge area on the site property, as mapped by the Maine Geological Survey or a licensed geologist;
- 7.2.7 The location of any residence, school, church, public park or public playground within five hundred (500) feet of the site property;
- 7.2.8 The location of any water body or wetland on or within three hundred (300) feet of the site property;
- 7.2.9 Any 100-year flood plain boundaries on the site property;
- 7.2.10 A written plan for the containment of fluids, containment and disposal of batteries and storage or disposal of tires;
- 7.2.11 The location on the site property where vehicles are to be drained, dismantled or stored; and
- 7.2.12 The locations and names of all public and private roads within one thousand (1000) feet of the site property.

## **8. Performance Standards.**

The following performance standards are required of every permittee.

- 8.1. The site must be enclosed by a visual screen at least six (6) feet in height, constructed in accordance with the Maine Department of Transportation rules issued pursuant to 30-A M.R.S.A. Par. 3759.
- 8.2. No vehicle, vehicle parts or junk shall be stored within one hundred (100) feet of any water body or inland wetland.
- 8.3. No vehicle, vehicle parts or junk shall be stored within five hundred (500) feet of any school, church, public park or public playground which existed at the time the junkyard was first duly licensed.
- 8.4. No vehicle, vehicle parts or junk shall be stored within fifty (50) feet of any lot line without the written, notarized consent of the abutting landowner.
- 8.5. No vehicle, vehicle parts, vehicle fluids or junk shall be dismantled or stored within one hundred (100) feet of any sand or gravel aquifer recharge area as mapped by the Maine Geological Survey or a licensed geologist.
- 8.6. No vehicle, vehicle parts, vehicle fluids or junk shall be stored within the 100-year floodplain.
- 8.7. No vehicle, vehicle parts, vehicle fluids or junk shall be stored within one hundred (100) feet of any well, except a private well that serves only the permittee's business or on-site or abutting residence occupied by the permittee.
- 8.8. Within twenty-four (24) hours of arrival at the site, the battery, and the door and trunk locks shall be removed, and all engine, transmission, brake, coolant and other vehicle fluids shall be drained from the vehicle and stored in

watertight covered containers. A concrete or other impervious surface shall be provided; fluids may only be drained while the vehicle is located on this surface. All fluids shall then be recycled or disposed of in accordance with all applicable state and federal laws, rules and regulations.

8.9. No discharge of any fluid from any vehicle or vehicle parts shall be permitted into or onto the ground.

8.10. In order to reduce noise, all dismantling of vehicles shall take place within a fully enclosed building, and only between 7:00 a.m. and 6:00 p.m., Monday through Saturday.

8.11. No vehicle may remain intact on the site for more than thirty (30) days. Complete processing of vehicles shall be accomplished within four (4) months.

8.12. No burning of junk or salvage materials shall be permitted on the site.

**9. Revocation or Suspension.**

A permit may be revoke or suspended by the municipal officers, after hearing, for any violation of this Ordinance, or of any state or federal law, rule or regulation relating to hazardous materials occurring on the site. Any hearing under this section shall be conducted in accordance with 30-A M.R.S.A. Par 3758.

**10. Enforcement.**

This Ordinance may be enforced by the municipal officers or their duly authorized agent as permitted by state law. Each day a violation occurs is a separate violation. Violations are subject to prosecution and penalties in accordance with 30-A M.R.S.A. Par. 4452. Violations are also deemed to be nuisances subject to 17 M.R.S.A. Par. 2802 and are subject to abatement or any other remedy available at law or in equity.

**11. Effective Date and Amendment.**

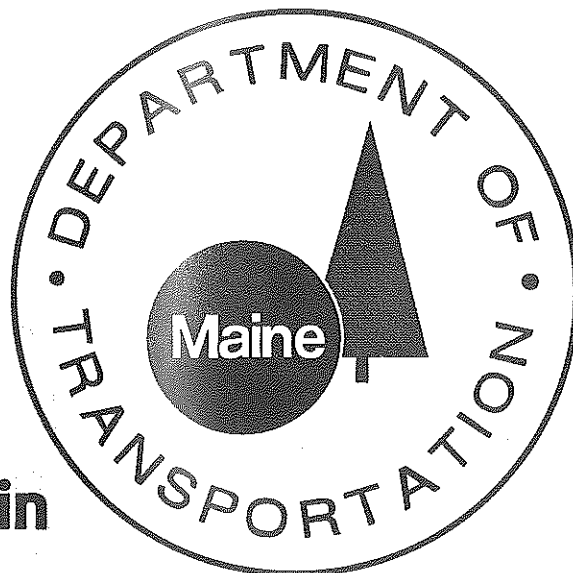
This Ordinance and any amendments hereto shall become effective upon the date of adoption by Town Meeting.

**12. Severability.**

In the event any portion of this Ordinance is ruled to be invalid by any court of competent jurisdiction, the remaining provisions of the Ordinance shall remain in full force and effect.

Department of Transportation  
Bureau of Maintenance & Operations  
Traffic Division

16 State House Station  
Augusta, ME 04333-0016



**Informational  
Bulletin**

**Informational  
Bulletin**

Recommendations

For  
**Automobile Graveyard  
Automobile Recycling Business  
and/or  
Junkyard Control**

Title 30-A MRSA, Section 3751 - 3760

Contents:

Copy of Legislation - D.O.T. Screening Regulations  
Recommended Interpretation - Sample Application Form  
Sample Permit Form - Conduct of Hearing

**Title 30-A M.R.S.A., Sections 3751-3760**  
**Chapter 183**  
**SUBCHAPTER I**  
**As Revised through September 26, 1996**  
**JUNKYARDS AND AUTOMOBILE GRAVEYARDS**

**SECTION**

**SECTION**

- 3751. Purpose.
- 3752. Definitions.
- 3753. Permit required.
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- 3755-A. Recycling permits & standards.
- 3756. Permit fees.

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- 3759. Rules.
- 3760. Relocation, removal, disposal, compensation and condemnation.

**§ Section 3751. Purpose**

Junkyards and so-called "auto graveyards" have been steadily expanding and frequently encroach upon highways. These junkyards and graveyards have become a nuisance and menace to safe travel on public ways, often distracting the attention of drivers of motor vehicles because it appears cars are parked on the highway or that an accident has occurred. It is declared that such junkyards and automobile graveyards are a nuisance and are properly subject to regulation and control.

It is recognized that recycling of automobiles is a business enterprise that, when conducted in accordance with certain standards, differs from the enterprise of an automobile graveyard and that adoption of uniform state standards for this type of business enterprise would assist in development and regulation of that business.

**§ Section 3752. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following meanings.

1. Automobile graveyard. "Automobile graveyard" means a yard, field or other area used to store 3 or more unserviceable, discarded, worn-out or junked motor vehicles as defined in Title 29-A, section 101, subsection 42, or parts of such vehicles.

A. "Automobile graveyard" does not include any area used for temporary storage by an establishment or place of business that is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

B. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

1A. Automobile recycling business. "Automobile recycling business" means the business premises of a person who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, provided that 80% of the business premises specified in the site plan in section 3755-A, subsection 1, paragraph C is used for automobile recycling operations.

2. Highway. "Highway" means any public way.

3. Interstate System. "Interstate System" means those portions of the Maine Turnpike and the state highway system incorporated in the National System of Interstate and Defense Highways, as officially designated by the Department of Transportation.

4. Junkyard. "Junkyard" means a yard, field or other area used to store:

- A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
- B. Discarded, scrap and junked lumber;
- C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and
- D. Garbage dumps, waste dumps and sanitary fills.

5. Primary System. "Primary System" means that portion of the state highway system which the Department of Transportation has by official designation incorporated into the Federal-Aid Primary System.

6. Recycling or recycling operations. "Recycling or recycling operations" means the dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles.

#### **§ Section 3753. Permit required**

No person may establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard without first obtaining a nontransferable permit from the municipal officers of the municipality in which the automobile graveyard, automobile recycling business or junkyard is to be located, or from the county commissioners of the county of any unorganized territory in which the automobile graveyard, an automobile recycling business or junkyard is to be located. Permits issued to an automobile graveyard or junkyard under this section are valid until the first day of the following year. Permits issued to an automobile recycling business under this section are valid for 5 years from the date of issuance and are renewable provided that the permit holder furnishes a sworn statement, annually, on the anniversary date of the granting of the permit, that the facility complies with the standards of operation applicable at the time of issuance of the permit. A person operating

a business that involves the recycling of automobiles may operate under a permit for an automobile graveyard or a permit for an automobile recycling business.

#### § Section 3754. Hearings

Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard. They shall post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. The municipal officers or county commissioners shall give written notice of the application to the Department of Transportation by mailing a copy of the application at least 7 and not more than 14 days before the hearing.

#### § Section 3755. Limitations on permits

1. Highways; Interstate and Primary Systems. No permit may be granted for an automobile graveyard or junkyard within 1,000 feet of the right-of-way of any highway incorporated in the Interstate and Primary Systems or within 600 feet of the right-of-way of any other highway, except for:

A. Those automobile graveyards or junkyards that are kept entirely screened to ordinary view from the highway at all times by natural objects, plantings or fences;

(1) Screening required by this paragraph must be well constructed and properly maintained at a minimum height of 6 feet and acceptable to the municipal officers or county commissioners. It must comply with the rules adopted by the Department of Transportation. The permit shall specify that compliance with these rules is required; and

B. Those automobile graveyards or junkyards located within areas that have been zoned for industrial use and located more than 600 feet but less than 1,000 feet from the right-of-way of any highway incorporated in the Interstate and Primary Systems.

2. Public Facilities. No permit may be granted for an automobile graveyard or junkyard that is:

- A. Located within 300 feet of any public park, public playground, public bathing beach, school, church or cemetery; and
- B. Within ordinary view from that public facility.

2-A. Public and private water supplies. No permit may be granted for automobile graveyard operations within 100 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the automobile graveyard or the owner's or operator's abutting residence. This prohibition does not apply to wells installed after the effective date of this subsection if the automobile graveyard has already received a permit under section 3753.

3. Limitation on new permits. No permit may be granted for any automobile graveyard or junkyard established after October 3, 1973, and located within 100 feet of any highway.

4. Rules. No permit may be granted for an automobile graveyard or junkyard that does not comply with the rules adopted under section 3759. Municipal officers or county commissioners as provided for in section 3753 may apply more stringent restrictions, limitations and conditions in considering whether to grant or to deny any permit for an automobile graveyard or junkyard adjacent to any highway.

5. Local ordinances. This subchapter may not be construed to limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards, automobile recycling businesses and junkyards that concern any other standards that the municipality determines reasonable, including, but not limited to:

- A. Compliance with state and federal hazardous waste regulations;
- B. Fire and traffic safety;
- C. Levels of noise that can be heard outside the premises;
- D. Distance from existing residential or institutional uses; and
- E. The effect on ground water and surface water, provided that municipal ordinances on ground water are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection concerning automobile graveyards and junkyards.

Municipal officers or county commissioners shall consider compliance with these local ordinances in deciding whether to grant or deny a permit for any automobile graveyard, automobile recycling business or junkyard and in attaching conditions of approval to the grant of a permit.

6. Applicability. Municipalities may apply local ordinances adopted previously under subsection 5 pertaining to automobile graveyards and junkyards to an automobile recycling business without amending those ordinances to include automobile recycling businesses. A municipality must provide notice of its intent to apply these ordinances at the time an application for an automobile recycling business permit is filed.

§ Section 3755-A. Automobile recycling business permits; operation standards

1. Application. An application for an automobile recycling business permit must include the following information.

- A. The name and address of the property owner;
- B. The name and address of the person or entity who will operate the site; and
- C. A site plan, including:
  - (1) Property boundary lines;
  - (2) A description of the soils on the property;
  - (3) The location of any sand and gravel aquifer recharge areas;
  - (4) The location of any residence or school within 500 feet of where the cars will be stored;
  - (5) The location of any body of water on the property or within 200 feet of the property lines;
  - (6) The boundaries of the 100-year flood plain;
  - (7) The location of all roads within 1,000 feet of the site;
  - (8) A plan for containment of fluids, containment and disposal of batteries and storage or disposal of tires; and
  - (9) The location within the property boundary lines where vehicles are drained, dismantled or stored.

2. Standards for permit. The municipality may issue a permit to an automobile recycling business if the business demonstrates that the business meets the operation standards set forth in subsection 3.

3. Operation standards. An automobile recycling business licensed under this section must meet the following standards.

- A. The site of the yard must be enclosed by a visual screen at least 6 feet high and built in accordance with rules adopted by the Department of Transportation pursuant to section 3759.
- B. A vehicle with an intact engine or motor may not be stored within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5.
- C. A vehicle may not be dismantled or stored within 500 feet of a school, church, cemetery or public playground or park that existed on the date the permit was issued.
- D. A vehicle may not be dismantled or stored over a sand and gravel aquifer or aquifer recharge area.
- E. A vehicle containing fluids may not be dismantled or stored within the 100-year flood plain.
- F. A vehicle may not be dismantled or stored within 100 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling business or the owner or operator's abutting residence.
- G. A vehicle may not be located or dismantled closer than 20 feet from any lot line, unless the operator has notarized written permission from the abutting property owner.

H. Dismantling of a vehicle must be performed in accordance with the following standards.

- (1) The battery must be removed.
- (2) Engine lubricant, transmission fluid, brake fluid and engine coolant must be drained into watertight, covered containers and must be recycled or disposed of in accordance with applicable federal or state laws, rules or regulations.
- (3) Fluids from a vehicle may not be permitted to flow or be or be discharged into or onto the ground.
- (4) The recycling operation must comply with all applicable federal or state laws related to hazardous materials.

4. Revocation or suspension of permit. For purposes of section 3758, subsection 3, each of the standards set forth in this section are conditions of a permit.

5. Relationship to automobile graveyard permit. A person who recycles automobiles but does not qualify for, or loses, an automobile recycling business permit may apply for an automobile graveyard permit.

#### **§ Section 3756. Permit Fees**

The Municipal officers or county commissioners shall collect, in advance from the applicant for a permit, a fee in accordance with the following schedule:

1. Graveyard or junkyard more than 100 feet from highway. Fifty dollars for each permit for an automobile graveyard or junkyard located more than 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754;

2. Graveyard or junkyard within 100 feet from highway. Two hundred dollars for each permit for an automobile graveyard or junkyard located within 100 feet from any highway, plus the cost of posting and publishing the notice under section 3754; and

3. Recycling business. Two hundred fifty dollars for a 5-year permit for an automobile recycling business plus the cost of posting and publishing the notice under section 3754.

#### **§ Section 3757. Provisions regarding nuisances unaffected**

This subchapter shall not be construed as in any way repealing, invalidating or abrogating Title 17, section 2802, or limiting the right of prosecutions under that section. Violation of this subchapter in the establishment, maintenance or operation of any automobile graveyard or junkyard constitutes prima facie evidence that the yard is a nuisance as defined in Title 17, section 2802.

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**§ Section 3758. Violation**

1. Enforcement. The State Police as well as local and county law officers shall enforce this subchapter. Municipal officers or their designee may also enforce this subchapter.

2. Penalties. Whoever violates this subchapter or the rules of the Department of Transportation adopted under section 3759 must be penalized in accordance with section 4452. Each day that the violation continues constitutes a separate offense.

3. Revocation or suspension of permit. Violation of any condition, restriction or limitation inserted in a permit by the municipal officers or county commissioners is cause for revocation or suspension of the permit by the same authority that issued the permit. No permit may be revoked or suspended without a hearing and notice to the owner or the operator of the automobile graveyard, automobile recycling business or junkyard. Notice of hearing must be sent to the owner or operator by registered mail at least 7 but not more than 14 days before the hearing. The notice must state the time and the place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations inserted in the permit.

**§ Section 3759. Rules**

In the interest of uniformity and to establish guidelines for the municipal officers and county commissioners in the matter of adequate screening, the Department of Transportation shall adopt rules establishing minimum standards for screening of automobile graveyards and junkyards.

**§ Section 3760. Relocation, removal, disposal, compensation and condemnation**

1. Acquisition of land. If the Department of Transportation determines that the topography of the land adjacent to any portion of a highway incorporated in the Interstate or Primary Systems will not permit adequate screening, as required in sections 3751 to 3760, or that adequate screening would not be economically feasible, it may acquire by gift, purchase or condemnation any interests in property that are necessary to secure the relocation, removal or disposal of the automobile graveyards or junkyards.

2. Compensation. In the case of such acquisition, just compensation shall be paid to the owner for the relocation, removal or disposal of the following automobile graveyards and junkyards:

- A. Those which were operating and in existence on May 11, 1966 and located in areas adjacent to any portion of a highway incorporated in the Interstate or Primary Systems, which exceed federal restrictions and for which federal funds are available to defray the costs;
- B. Those in operation along any highway made a part of the Interstate or Primary Systems on or after May 11, 1966; and
- C. Those in operation and established on or after May 11, 1966.

3. Procedures. The purchase, condemnation, negotiation, assessment of damage and appeal procedures shall be in accordance with this section and Title 23, section 153-A to 159.

4. Use of federal funds. This section does not prevent the department from participating with the owner when federal funds are available to defray costs of screening junkyards whenever it is determined to be more feasible to screen rather than to be involved in the cost or impact of acquisition and relocation.

17- DEPARTMENT OF TRANSPORTATION  
 229 OFFICE OF THE COMMISSIONER  
 CHAPTER 202 REGULATIONS FOR SCREENING JUNKYARDS

SUMMARY: Rules regulating the screening of junkyards

**.01 DEFINITIONS**

A. Automobile graveyard. "Automobile graveyard" as used in this subchapter shall mean a yard, field or other area used as a place of storage, other than temporary storage by an establishment or place of business which is engaged primarily in doing auto body repair work for the purpose of making repairs to render a motor vehicles serviceable, for 3 or more unserviceable, discarded, worn-out or junked motor vehicles as defined in Title 29-A, section 101, subsection 42, or parts thereof.

B. Junkyard. "Junkyard" as used in this subchapter shall mean a yard, field or other area used as a place of storage for:

- i. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
- ii. Discarded, scrap and junked lumber;
- iii. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or non ferrous material; and,
- iv. Garbage dumps, waste dumps and sanitary fills.

C. Interstate System. "Interstate System" as used in this subchapter shall mean those portions of the Maine Turnpike and the state highway system incorporated in the National System of Interstate and Defense highways, as officially designated, or as may hereafter be so designated, by the Department of Transportation.

D. Primary System. "Primary System" as used in this subchapter shall mean that portion of the state highway system which the Department of Transportation has by official designation incorporated into the Federal-Aid primary System or as may hereafter be designated by the Department.

E. Highway. "Highway" as used in this subchapter shall mean any public Way.

**.02 Screening**

Screening may be accomplished by natural or man-made objects, plantings or properly constructed fences, any of which must completely screen the junkyard from ordinary view from any portion if any Highway within the prescribed distances throughout the entire calendar year all of which shall be outside of the highway right-of-way limits.

Natural or man-made objects may be interpreted to be:

1. Hills, gullies, or embankments. Such man-made objects must be constructed to blend with the landscape with loaming and seeding or other treatment as may be necessary to establish a natural appearance.
2. Buildings or other installations.
3. Combinations of above.

**.03 Plantings**

Trees, shrubs, or other vegetation of sufficient height, density and depth of planting or growth to completely screen the junkyard from ordinary view from any highway within the prescribed distance throughout the entire calendar year may be used for screening.

**.04 Fences**

Fences shall be so located and of sufficient height to completely screen the junkyard from ordinary view from any highway within the prescribed distances. Although the minimum height of any fence is stated to be six feet, it must be emphasized that height must be sufficient to accomplish the complete screening from ordinary view. All fences shall be well constructed and maintained. Only sound undamaged material, uniform in appearance, and erected in a workmanlike manner will be acceptable.

**.05 Suggested Materials**

Posts: Wood - Sound, round or square, preferably cedar, hackmatack, spruce, or fir. Preservative treatment with creosote oil or cuprinol is suggested. 4" x 4" minimum (square) or 4" minimum diameter (round).

Metal - Steel pipe or structural section steel either galvanized or base coat painted with red lead or other rust inhibitive paint.

All posts to extend a minimum of 4 feet below ground level and to be set plumb. Recommended post spacing 8' to 12'. End and corner posts to be diagonal braced to nearest adjacent post.

Stringers: Minimum 2 x 4 - Spruce or Fir - Sound and free of excessive or weakening knots, and relatively free from warp or wain, preferably treated with creosote or cuprinol after cutting to length. Solidly spiked to wood posts or bolted to metal posts. Three stringers for 6 or 8 foot height of fence, 4 stringers for 10 or 12 foot height. Over 12 foot height would require a special design.

Steel pipe or structural section stringers may be used. These should be either galvanized or base coat painted with red lead or other rust inhibitive paint.

#### **.06 Facing Material**

Facing material may be wood, composite, sheet metal or plastic. Although new material will not be a requirement, bent, damaged, poor quality, scrap, discarded, mixed or conglomerate materials will not be acceptable.

Suggested materials would be sound, new or used boards; exterior grade hardboard or plywood; corrugated steel, aluminum, or plastic.

It is suggested that all fastenings be galvanized nails, spikes, bolts, clamps, etc., and that all wood materials be treated with either a creosote oil base stain or cuprinol (with color additive) to preserve and prolong the life of the fence and to present a uniformity of appearance.

Since wind damage is a problem with any fence, bracing may be required and certainly would be essential on any fence over 8 feet in height. In board fence construction, relief of wind pressure may be achieved by placing the boarding alternatively on outside and inside of stringers with the spacing to be such that edges overlap enough to present a solid appearance and effectively screen the junkyard from ordinary view.

**BASIS STATEMENT:** The Department is authorized by 30-A M.R.S.A. 3759 to "make rules and regulations to establish minimum standards for screening of automobile graveyards and junkyards" in order to establish guidelines for municipal officers and county commissioners.

**AUTHORITY:** 30-A M.R.S.A. 3759

**EFFECTIVE DATE\*:** Adopted on May 15, 1979 and filed on May 16, 1979; revised to reflect recodification from 30 M.R.S.A. to 30-A M.R.S.A. effective March 1, 1989.

\*HISTORICAL DERIVATION: Enacted May 11, 1966.

March 1, 1989

### Regulating Automobile Graveyards and Junkyards

This article concerns the operation and regulations of automobile graveyards and junkyards. These procedures can be used by municipal officials and county commissioners with some assurance that if our recommendations are followed, municipal officials and county commissioners will be on safe ground. We do not suggest that it is exclusive.

The Statute appears in M.R.S.A., T30-A, Sections 3751 through 3760.

#### DEFINITIONS:

Section 3752 provides definitions for "Automobile Graveyard" and "Junkyard" as follows:

1. Automobile Graveyard. "Automobile Graveyard" means a yard, field or other area used to store 3 or more unserviceable, discarded, worn-out or junked motor vehicles as defined in Title 29-A, Section 101, Subsection 42, or parts of such vehicles.

A. "Automobile graveyard" does not include any area used for temporary storage by an establishment or place of business which is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

The terms: "Discarded", "worn-out", and "junked" seem to be self-explanatory regarding their definitions. However, the term "unserviceable" has not been defined by the Legislature; but is defined in the Town of Pownal vs Emerson by the Law Court, therefore, the definition which has been assigned to this term by the Department of Transportation is as follows:

"An unserviceable motor vehicle as used in the subchapter shall mean any motor vehicle which is one not ready for use or not presently useable. This definition, however, would exclude wrecked or dismantled vehicles which are awaiting auto body work for the purpose of making repairs to render a motor vehicle serviceable. It is also suggested that the term "temporary storage" does not exceed (90) days. This definition shall be used until such time the definition is changed by a Legislative Act.

2. Junkyard. "Junkyard" means a yard, field or other area used to store:
  - A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
  - B. Discarded, scrap and junked lumber;
  - C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and
  - D. Garbage dumps, waste dumps and sanitary fills.

If either the automobile or the salvage material is inside a building, neither would be subject to the statute in most cases.

### Section 3752

"Highway means any public way". The intent of the legislature in defining the term "highway" was to include not only the state highways, but also town and county roads.

The allowing of unserviceable, discarded, worn-out or junked automobiles or the salvage items referred to in Section 3752, subsection 4, to be on a property, is sufficient to be within the statutory definition of maintaining an automobile graveyard or junkyard. This section states that there must be three or more automobiles, bodies, engines or any parts thereof gathered together, or the specified salvage items on a single property in order to fall within its definitions.

It is the intent of the statute to regulate automobile graveyards, automobile recycling businesses, or junkyards no matter where they are found.

### LICENSING

Any automobile graveyard or junkyard established, operated or maintained is required to be licensed whether or not the person is actually in the junk business. There are no limitations in the statute beyond the fact that there must be three or more automobiles or parts thereof, or the specified items of salvage. There is no grandfather clause, so-called, permitting uses in existence before the enactment of the statute to continue. The present emphasis on licensing automobile graveyards and junkyards is a direct way of getting them cleaned up and made presentable.

Because the law defines these types of operations to be a nuisance, the immediate problem becomes whether or not a permit will be issued under these circumstances (the operation proposed by the application). This then, is a privilege granted to an individual by the State acting through the municipal officers and not an inherent right of the individual.

The statute does not differentiate between initial applications for a permit and renewal applications. Each licensing is an original proceeding. Conditions might change to the extent that it would not be feasible to permit the continuation of an automobile graveyard or junkyard in a certain place after it has been operating lawfully in that area.

Provisions in MRSA. T30-A, Sec. 3751-3760 are minimum standards. Municipalities may establish their respective zoning ordinance "equal to" or more "stringent than" these minimum standards. Ordinances of cities and towns which control litter, unsightly conditions, dangerous conditions, attractive nuisances should be considered in hearings for licensing of automobile graveyards, automobile recycling businesses and junkyards. Section 3755, subsection 5, grants authority to municipalities to enact ordinances establishing more stringent requirements than state law.

## HEARINGS

Section 3754 provides that the municipal officers shall hold hearings and be the licensing agency in organized municipalities, and that the county commissioners shall perform the same function in unorganized territories. These two groups are the sole boards to issue permits and there are no provisions for appeal from an adverse decision. In matters of licensing, an appeal is limited to abuse of discretion by the licensing board.

Although the statute is silent on the point, municipal officers should require the applicant to make a written request for the granting of the permit, stating such things as location, size, and other information pertaining to the operation. The written application must be accompanied by a fee as provided in section 3756 plus the cost of posting and publishing the hearing notice.

Upon receipt of the application, the municipal officials are required to order a public hearing, notice of which shall be posted in two public places within the municipality and printed in at least one newspaper or general circulation in the area at least seven days prior and not more than 14 days prior to the hearing. The public places would be those where town, city or state warrants are usually posted. While the newspaper publication period is not specified, at least one insertion should be made sometime between the seventh and fourteenth days. The notice of the posting of the publication should be kept with the other records relating to the hearing.

Section 3755 provides that no automobile graveyard, or junkyard shall be established within 600 feet of any state or state-aid highway or county or town roads (secondary highways), or within 1000 feet of any primary or interstate highway if the yard would be within view of that particular highway, unless it is screened from ordinary view by fences or natural screening as called for in this section and section 3759. In addition, permits are prohibited if the junkyard would be within a radius of 300 feet from any public park, public playground, public bathing beach, school, church or cemetery, and be within ordinary view.

In authorizing the issuance of a permit, the statute permits the municipal officers to establish reasonable conditions under which the automobile graveyard or junkyard will be established, operated and maintained. Some of the more common conditions relate to neatness, noise, smoke, hours of operation (prohibition against operating nights, holidays, or weekends, and the like), the maintenance of records open for inspection by any officer of the law, area used, etc.. These and other conditions are designed to reduce the nuisance incidence of the operation. When and if the municipal officers grant a permit, and there

are conditions attached to it, the conditions should be clearly stated in the space provided on the permit. This makes for clear notice of the conditions for the operator and the enforcement agency.

Section 3755 also provides that a permit cannot be granted for an automobile graveyard, or junkyard located within 100 feet of any highway prior to October 3, 1973, (the effective date of the statute which first required the 100 foot setback, p.l. 1973, Chapter 424, T30 M.R.S.A., Sec. 2454, Sub. Sec. 3A). All bonafide automobile graveyard, and/or junkyards in existence within 100 feet of the highway Right-of-Way prior to October 3, 1973 may remain if they were there legally prior to that date. Those automobile graveyards, and/or junkyards which have been illegally established, operated and maintained, on or before October 3, 1973 would be considered "new yards" and cannot be within 100 feet of any highway Right-of-Way.

Section 3756 provides that the municipal officers or county commissioners shall collect in advance from the applicant a permit fee of \$50.00 for an automobile graveyard or junkyard located more than 100 feet or \$200.00 if located less than 100 feet from any highway, plus the cost of posting and publishing the notice as provided in section 3754. The latter fee of \$200.00 is an effort to keep automobile graveyards and junkyards back at least 100 feet from highways. The measurement should start from the edge of the highway (right of way) limit and not from the center of the highway.

Section 3756, also \$250.00 to be collected for a 5-year permit for an automobile recycling business plus the cost of posting and publishing the notice under section 3754.

Section 3758 provides that the State Police as well as local and county law officers shall enforce this subchapter. Municipal officers or their designee may also enforce this subchapter.

Violation of this subchapter or the rules of the Department of Transportation adopted under Section 3759 shall be subject to penalties set forth in Title 30-A, Section 4452 relating to enforcement of land use laws and ordinances.

Revocation or suspension of permit. Violation of any condition, restriction or limitation inserted in a permit by the municipal officers or county commissioners is cause for revoked or suspended without a hearing and notice to the owner or the operation of the automobile graveyard or junkyard. Notice of hearing shall be sent to the owner or operator by registered mail at least 7 but not more than 14 days before the hearing. The notice must state the time and the place of hearing and contain a statement describing the alleged violation of any conditions, restrictions or limitations inserted in the permit.