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**WILKES COUNTY
SOLID WASTE ORDINANCE**

Wilkes County, N.C.

WILKES COUNTY SOLID WASTE ORDINANCE

TABLE OF CONTENTS

		<u>PAGE</u>
ARTICLE I.	GENERAL PROVISIONS	
Section 1.	Title	1
Section 2.	Authority	1
Section 3.	Findings and Purpose.	1
Section 4.	Jurisdiction.	2
Section 5.	Definitions	3
	(1) Agricultural Solid Waste	3
	(2) Assisted Living Facility	3
	(3) Automobile Graveyard	3
	(4) Board of Commissioners	4
	(5) Board of Health.	4
	(6) Bulky Waste	4
	(7) Business	4
	(8) Child Care Facility.	4
	(9) Church	4
	(10) Collection.	4
	(11) Commercial Solid Waste	4
	(12) Commercial Solid Waste Collector	4
	(13) Compost	4
	(14) Construction and Demolition Waste.	4
	(15) County Manager	5
	(16) Curtilage	5
	(17) DENR	5
	(18) Disposal.	5
	(19) Division.	5
	(20) Dwelling Unit	5
	(21) Educational Facility	5
	(22) Enforcement Officer	5
	(23) Establishment	5
	(24) Garage	6
	(25) Garbage.	6
	(26) Hazardous Waste	6
	(27) Health Department	6
	(28) Health Director.	6
	(29) Health or Safety Nuisance.	6
	(30) Hospital	7
	(31) Incineration	7
	(32) Industrial Solid Waste	7
	(33) Inert Debris	7
	(34) Infectious Waste	7
	(35) Inspections Department.	7
	(36) Institutional Solid Waste	7
	(37) Junk.	8

(38)	Junked Motor Vehicle	8
(39)	Junkyard	8
(40)	Junkyard Control Act	9
(41)	Land-clearing Debris	9
(42)	Medical Waste.	9
(43)	Motor Vehicle	9
(44)	Motor Vehicle Restoration.	9
(45)	Municipal Solid Waste.	9
(46)	New Automobile Graveyard	10
(47)	New Junkyard	10
(48)	Nonprocessable Solid Waste	10
(49)	Nursing Home.	10
(50)	Opaque	10
(51)	Open Burning	10
(52)	Pathological Waste	10
(53)	Person	11
(54)	Planning Department.	11
(55)	Plastic Bag	11
(56)	Pre-existing Automobile Graveyard	11
(57)	Pre-existing Junkyard	11
(58)	Premises	11
(59)	Private Road.	11
(60)	Processing	11
(61)	Public Road	11
(62)	Putrescible.	11
(63)	Radioactive Waste	11
(64)	RCRA	12
(65)	Recovered Material	12
(66)	Recyclable Material	12
(67)	Recycling	12
(68)	Refuse	12
(69)	Residential Solid Waste.	12
(70)	Resource Recovery	12
(71)	Rural Medical Center	12
(72)	Sanitary Landfill	12
(73)	Septage	13
(74)	Service Station	13
(75)	Sharps	13
(76)	Sheriff's Office	13
(77)	Sludge	13
(78)	Slurry Waste	13
(79)	Solid Waste	13
(80)	Solid Waste Department.	14
(81)	Solid Waste Director	15
(82)	Solid Waste Receptacle.	15
(83)	Solid Waste Rules	15
(84)	Source Separation	15
(85)	Special Waste	15

	(86) Towing Operation	15
	(87) Used Oil	15
	(88) Vector	15
	(89) Visible	15
	(90) White Goods	15
	(91) Yard Trash	16
Section 6.	Construction and Interpretation	16
Section 7.	Board of Health Rules and Abatement of Public Health Nuisances	16
	A. Board of Health Rules.	16
	B. Abatement of Public Health Nuisances.	17
ARTICLE II.	STORAGE AND DISPOSAL OF SOLID WASTE	
Section 1.	Storage and Disposal.	17
Section 2.	Sanitary Landfill Management.	19
Section 3.	Convenience Centers, Solid Waste Receptacles, and Recycling	22
Section 4.	Recycling	23
Section 5.	Administration, Enforcement, and Penalties.	23
ARTICLE III.	COMMERCIAL SOLID WASTE COLLECTOR	
Section 1.	Purpose	23
Section 2.	Registration Required	24
Section 3.	Registration Application and Fee	24
Section 4.	Effective Date of Registration; Transfer	24
Section 5.	Vehicles and Containers	24
Section 6.	Administration, Enforcement, and Penalties	24
ARTICLE IV.	JUNKYARDS AND AUTOMOBILES GRAVEYARDS	
Section 1.	Junkyards and Automobile Graveyards Regulated	25
Section 2.	Exemptions	25
Section 3.	Procedures: Registration and Permitting	26
	A. Registration Required for Existing Junkyards and Automobile Graveyards.	26
	B. Registration Application and Fee	27
	C. Effective Date and Duration of Registration; Scope; Expansion; Transferability	27
	D. Revocation of Registration Upon Violation; Termination	29
	E. Permit Required for all Junkyards and Automobile Graveyards	30
	F. Permit Application and Fee	30
	G. Issuance or Denial of Permit; Transferability	32
	H. Conditions of Permit	34
	I. Revocation of Permit	34
Section 4.	General Standards	34
	A. Pre-existing Junkyards and Pre-existing	

	Automobile Graveyards	34
	B. New Junkyards and New Automobile Graveyards	35
Section 5.	Maintenance	39
Section 6.	Other Permits	39
Section 7.	Variances and Appeals	39
	A. Board of Adjustment	39
	B. Powers of Board of Adjustment under This Ordinance.	39
	C. Board of Adjustment Rules of Procedure	40
	D. Variances	40
	E. Appeals	41
	F. Application of Interpretation Power	42
	G. Appeal Stays Further Proceedings.	42
	H. Exceptions to Stay of Action	42
	I. Appeals of Board Actions	42
Section 8.	Administration, Enforcement, and Penalties	43
 ARTICLE V. ADMINISTRATION, ENFORCEMENT, AND PENALTIES		
Section 1.	Administration and Enforcement	43
	A. Storage and Disposal of Solid Waste.	43
	B. Commercial Solid Waste Collectors	43
	C. Junkyards and Automobile Graveyards.	43
	D. Ordinance Administrator	44
	E. Cooperation with Other Departments	44
Section 2.	Procedure Upon Complaint of Violation	44
	A. Complaints.	44
	B. Notice of Violation and Order to Remedy . . .	44
	C. Enforcement Without Notice of Violation . . .	44
	D. Scope of Orders to Remedy Violations	45
	E. Pre-Existing Junkyards and Pre-Existing Automobile Graveyards	45
Section 3.	Election by County to Remedy Violation	45
	A. Election to Remedy Violation	45
	B. Pre-Existing Junkyards and Pre-Existing Automobile Graveyards	46
Section 4.	Penalties	46
	A. Interference	46
	B. Violations; Criminal Penalties	46
	C. Violations; Civil Penalties	46
	D. Equitable Enforcement; Order of Abatement	47
	E. Cumulative Remedies	47
Section 5.	Severability	48
Section 6.	Repeal of Prior Ordinance and Amendments	48
Section 7.	Conflict with Other Laws	48
Section 8.	Effective Date	48

WILKES COUNTY, NORTH CAROLINA

AN ORDINANCE FOR THE STORAGE,
COLLECTION, TRANSPORTATION, PROCESSING,
RECYCLING, AND DISPOSAL OF SOLID WASTE
AND FOR THE REGULATION
OF JUNKYARDS AND AUTOMOBILE GRAVEYARDS
IN WILKES COUNTY, NORTH CAROLINA

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF
WILKES IN REGULAR SESSION ASSEMBLED:

ARTICLE I
GENERAL PROVISIONS

Section 1. Title.

This Ordinance shall be known and may be cited as the Wilkes County Solid Waste Ordinance.

Section 2. Authority.

The Wilkes County Board of Commissioners enacts this Ordinance pursuant to the authority granted under G.S. Chapter 153A, Article 6, Section 153A-121, General Ordinance-Making Power; G.S. Chapter 153A, Article 6, Section 153A-123, Enforcement of Ordinances; G.S. Chapter 153A, Article 6, Section 153A-132, Removal and Disposal of Abandoned and Junked Motor Vehicles; G.S. Chapter 153A, Article 6, Section 153A-132.1, Removal and Disposal of Trash, Garbage, Etc.; G.S. Chapter 153A, Article 6, Section 153A-132.2, Regulation, Restraint and Prohibition of Abandonment of Junked Motor Vehicles; G. S. Chapter 153A, Article 6, Section 153A-134, Regulating and Licensing Businesses, Trades, etc.; G.S. Chapter 153A, Article 6, Section 153A-136, Regulation of Solid Wastes; G.S. Chapter 153A, Article 6, Section 153A-140, Abatement of Public Health Nuisances; G.S. Chapter 153A, Article 15, Part 3, Section 153A-292, County Collection and Disposal Facilities; and G.S. Chapter 130A, Article 9, Part 2A, Nonhazardous Solid Waste Management.

Section 3. Findings and Purpose.

The Wilkes County Board of Commissioners declares that the proper collection, storage, separation, and disposal of solid waste is essential to maintaining and promoting the health, safety, and welfare of the citizens of Wilkes County. The Board of Commissioners finds that solid waste which is improperly stored, collected, or disposed of creates unsanitary, unhealthy, and unsightly conditions. The Board of Commissioners recognizes that different forms of solid waste require different methods of collection and disposal at sanitary landfills and convenience

centers. Wilkes County intends to operate its sanitary landfill and convenience centers and to assure that solid waste is collected, transported, and disposed of in compliance with these findings and with federal and state laws and regulations. Furthermore, there is a need to preserve resources and land in Wilkes County, and thus the Board of Commissioners intends to encourage the recycling of materials. The Board of Commissioners also finds and declares that County government has a legitimate and important role in preventing the accumulation of junk and other solid waste along and littering of highways, streets, roads, and other places in Wilkes County visible to the general traveling public, and in regulating the hauling of solid waste along such highways, streets, and roads.

The Board of Commissioners further finds and declares that the establishment, use, and maintenance of junkyards and automobile graveyards should be regulated and controlled in order to preserve the natural scenic beauty of the County and to protect the public from health nuisances and safety hazards related to unregulated junkyards.

In accordance with the above findings, the Board of Commissioners adopts this Ordinance in order to:

- (1) Provide for regulation in an economically feasible, cost-effective, and environmentally-safe manner as to the storage, collection, transportation, separation, processing, recycling, and disposal of solid waste, including hazardous waste (to the extent permitted by law) and medical waste.
- (2) Enhance the environment for the citizens and residents of Wilkes County and recover resources which have the potential for further usefulness, all in accordance with the authority, purposes, policies, and goals enunciated in the laws and regulations of the State of North Carolina pertaining to solid waste management;
- (3) Provide incentives and penalties which will deter unlawful disposal of solid waste,
- (4) Provide means of abating illegal dump sites;
- (5) Encourage voluntary, county-based efforts to monitor and report littering and illegal dumping;
- (6) Impose and establish a schedule to defray the cost to the county of providing solid waste disposal, collection, and resource recovery services and facilities; and
- (7) Provide for the regulation of junkyards and automobile graveyards.

Section 4. Jurisdiction.

Pursuant to G.S. Chapter 153A, Article 6, Section 153A-122, this Ordinance shall be applicable to all geographical areas of Wilkes County outside the corporate limits of any municipality

located within the County. At the discretion of the Board of Commissioners, this Ordinance may be made applicable to all areas within the corporate limits of a municipality if the municipality's governing body has by resolution authorized the same.

Section 5. Definitions.

A. The following definitions shall apply throughout this Ordinance:

- (1) Agricultural solid waste – Solid waste, including fecal waste from fowls and animals other than humans, which is generated by activities or operations involving the cultivation of crops, husbandry of livestock or poultry, or any other agricultural activity or operation, whether agronomic, floricultural, horticultural, viticultural, silvicultural, aquacultural, dairy farming, animal operations under G.S. §143-215.10B(1), or otherwise; provided, that this definition shall not include yard trash as defined hereinbelow. Agricultural solid waste shall further include all animal carcasses.
- (2) Assisted living facility – Any group housing and services program for two or more unrelated adults, however named, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more North Carolina licensed home care or hospice agencies.
- (3) Automobile graveyard – Any establishment, premises, or place, whether commercial, industrial, agricultural, residential, or otherwise, which is maintained, operated, or used by the owner, tenant, or person in lawful possession thereof for storing, keeping, buying, or selling junked motor vehicles; provided, that this definition shall only apply if more than six (6) junked motor vehicles, or a cumulative area of six hundred (600) square feet or more of junked motor vehicles, whichever is less, is located at such establishment, premises, or place; provided further, that this definition shall apply only if any portion of the junked motor vehicles is, as of the effective date of this Ordinance or at any time thereafter:
 - (a) Visible during any part of the year from the traveled portion of a public or private road, or
 - (b) Visible during any part of the year from an occupied dwelling or the curtilage thereof located on any adjoining property, or
 - (c) Visible during any part of the year from a business located on any adjoining property.

For purposes of this definition, a property shall be considered adjoining if it is separated solely by a stream, creek, branch, or river, or by a city, county, or other political subdivision boundary.

- (4) Board of Commissioners – The Wilkes County Board of Commissioners.
- (5) Board of Health – The Wilkes County Board of Health as established pursuant to Article 2 of Chapter 130A of the North Carolina General Statutes.
- (6) Bulky waste – Large items of solid waste such as furniture, large auto parts, trees, branches, stumps, and other oversize wastes whose large size precludes or complicates handling by normal solid waste collection, processing, or disposal methods.
- (7) Business – A commercial trade or enterprise in regular operation, including but not limited to retail, wholesale, manufacturing, industrial, agricultural, financial, professional, and other similar trades or operations.
- (8) Child care facility – A child care facility as defined in G.S. §110-86 or any successor statute thereto.
- (9) Church – A building used on a regular basis for the primary purpose of serving as a place of public worship.
- (10) Collection – The act of removing solid waste (or materials that have been separated for the purpose of recycling) to a transfer station, processing facility or disposal facility.
- (11) Commercial solid waste – Solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding agricultural, residential, industrial, and institutional solid wastes.
- (12) Commercial solid waste collector – Any person engaged in whole or in part in the collection, transportation, delivery, or disposal of solid waste generated within Wilkes County, including any such entity engaged in such activities with respect to solid waste generated by others for profit and/or hire.
- (13) Compost – A humus-like material resulting from the biological decomposition of organic materials.
- (14) Construction and demolition waste – Pursuant to G.S. §130A-290(a)(4), solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but excluding inert debris, land-clearing debris, yard debris, or used asphalt,

asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material. Construction and demolition waste shall not include materials remaining from construction, remodeling, repair, or demolition operations which are stored by the owner or lessee of the same on property owned or leased by said owner or lessee.

- (15) County Manager – The County Manager for Wilkes County.
- (16) Curtilage – That portion of the area immediately surrounding a dwelling unit, which shall be deemed to include the yard and all outbuildings (garages, workshops, barns, cribs, storage sheds, and other similar outbuildings).
- (17) DENR – The North Carolina Department of Environment and Natural Resources or any successor Department thereto.
- (18) Disposal – Pursuant to G.S. §130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- (19) Division – The Division of Solid Waste Management of the North Carolina Department of Environment and Natural Resources, or any successor Division thereto.
- (20) Dwelling unit – A building, manufactured home, or modular home providing complete independent living facilities for a single family, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Two or more manufactured homes which are combined on one lot or parcel shall be considered as a single dwelling unit if they are joined together in one living unit for the use of a single family and meet all of the requirements for a “dwelling unit” under the Amended Wilkes County Watershed Protection Ordinance.
- (21) Educational facility – An elementary school, secondary school, charter school, private school, community college, college, university, or any other similar institution or facility for the education of persons, including any property owned by such facility used for educational purposes.
- (22) Enforcement Officer – The County Manager or his designee.
- (23) Establishment – Any place, land, building, or structure on which or in which there is operated or maintained a business or going concern.

- (24) Garage – Any establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles, and which is used to store not more than six (6) junked motor vehicles at any one time. If the garage owner lists all of its business personal property in the Tax Assessor's Office by the listing deadline for that year as required by law, it may store up to a maximum of twelve (12) junked motor vehicles at any one time during said year.
- (25) Garbage – Pursuant to G.S. §130A-290(a)(7), all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.
- (26) Hazardous waste – Pursuant to G.S. §130A-290(a)(8), solid waste, or a combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (27) Health Department – The Wilkes County Health Department.
- (28) Health Director – The Director of the Wilkes County Health Department or his or her authorized representative.
- (29) Health or safety nuisance – Junk or junked motor vehicles of any size or quantity which:
1. Constitute a breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests; or
 2. Constitute or create a point of collection for pools or ponds of water; or
 3. Create or cause an unsafe concentration of gasoline, oil, or other flammable or explosive material; or
 4. In the case of junked motor vehicles, are so located that there is a danger of such vehicle falling or turning over without assistance; or
 5. Constitute a source of danger for children due to potential

entrapment in areas of confinement that cannot be opened from the inside or potential overturning of heavy items; or

6. Create or cause an unsafe concentration of car radiators, batteries, or other materials that pose a hazard of either immediate or long-term environmental degradation.
- (30) Hospital – A facility as defined in G.S. §131E-76(3) or any successor statute thereto.
 - (31) Incineration – The process of burning solid, semisolid, or gaseous combustible wastes to an inoffensive gas and a residue containing little or no combustible material.
 - (32) Industrial solid waste – Pursuant to G.S. §130A-290(a)(13a), solid waste generated by manufacturing or industrial processes that is not hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals in iron and steel manufacturing; leather and leather products; non-ferrous manufacturing/foundries; organic chemicals; plastics and resins; manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; sandblasting grit; stone, glass, clay, paving, and concrete products; textile manufacturing; transportation equipment; and waste treatment. This term does not include mining waste or oil and gas waste.
 - (33) Inert debris – Pursuant to G.S. §130A-290(a)(14), solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal, including but not limited to brick, rock, concrete, and clean soil.
 - (34) Infectious waste – Solid waste capable of producing an infectious disease. The types of waste designated as infectious are microbiological waste, pathological waste, blood products, and sharps.
 - (35) Inspections Department – The Wilkes County Building Inspections Department.
 - (36) Institutional solid waste – Solid waste generated by educational, health care, correctional, and other institutional facilities, excluding residential, commercial, and industrial solid wastes (institutional solid waste, however, shall include solid waste which would otherwise be considered residential in nature but is generated by dormitories, nursing homes, prisons, hospitals, or other institutional facilities providing for the housing of persons).

(37) Junk – Abandoned or salvaged building materials; abandoned or salvaged machinery; dismantled, wrecked, or inoperable boats, bicycles, mopeds, or other conveyances, or parts thereof; iron and steel and other scrap ferrous or non-ferrous material; and mobile homes or other dwellings in a state of decay, destruction, or extreme disrepair which appear to have been abandoned for residential purposes and which have no historical value as determined by the Planning Department; provided, that mobile homes which have been stripped or partially dismantled shall be excluded from this definition and shall be considered solid waste. Junk shall also include junked motor vehicles as defined herein below. Unless specifically listed above, items of waste from the following categories as defined in this Ordinance are excluded from the definition of “junk”: agricultural solid waste, bulky waste, commercial solid waste, compost, construction and demolition waste, garbage, hazardous waste, industrial solid waste, infectious waste, institutional solid waste, land-clearing debris, medical waste, municipal solid waste, nonprocessable solid waste, pathological waste, residential solid waste, septage, sharps, sludge, slurry waste, special waste, and yard trash.

(38) 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.

(39) Junkyard – Any establishment, premises, or place, whether commercial, industrial, agricultural, residential, or otherwise, which is maintained, operated, or used by the owner, tenant, or person in lawful possession thereof for storing, keeping, buying, or selling junk; provided, that this definition shall only apply if a cumulative area of six hundred (600) square feet or more of junk is located at such establishment, premises, or place; provided further, that this definition shall apply only if any portion of the junk is, as of the effective date of this Ordinance or at any time thereafter:

- (a) Visible during any part of the year from the traveled portion of a public or private road, or
- (b) Visible during any part of the year from an occupied dwelling or the curtilage thereof located on any adjoining property, or
- (c) Visible during any part of the year from a business located on any adjoining property.

For purposes of this definition, a property shall be considered adjoining if it is separated solely by a stream, creek, branch, or river, or by a city, county, or other political subdivision boundary.

Notwithstanding the foregoing definition, where an establishment stores or keeps junk that has been derived or created as a result of commercial or industrial activity located on the same premises, such establishment shall not constitute a junkyard unless said junk is stored or kept thereon for a period of ninety (90) days or more.

- (40) Junkyard Control Act – The North Carolina Junkyard Control Act as codified under Article 12, Chapter 136, North Carolina General Statutes.
- (41) Land-clearing debris – Pursuant to G.S. §130A-290(a)(15), solid waste which is generated solely from land-clearing activities.
- (42) Medical waste – Pursuant to G.S. §130A-290(a)(17a), any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biological materials, but excluding any hazardous waste identified or listed pursuant to this Ordinance, radioactive waste, household waste as defined in 40 C.F.R. §261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in subdivision (79) below.
- (43) Motor vehicle – Any vehicle or machine designed or intended to travel over land by self-propulsion, including a vehicle or machine which is designed to be pulled by the same.
- (44) Motor vehicle restoration – The act or activity of performing repairs and replacement of parts, body work, and other similar adjustments to a junked motor vehicle which is more than ten (10) years old, for the purpose of restoring said junked motor vehicle to its original condition; provided, that no more than six (6) junked motor vehicles are stored or kept at any one time on the premises where the motor vehicle restoration activity takes place; provided further, that a maximum of twelve (12) junked motor vehicles may be stored or kept on said premises if the motor vehicle restoration activity is conducted as a business and if the owner thereof lists all of its business personal property in the Tax Assessor's Office by the listing deadline for that year as required by law.
- (45) Municipal solid waste – Pursuant to G.S. §130A-290(a)(18a), any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid

waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

- (46) New automobile graveyard – An automobile graveyard that is not pre-existing as defined under subdivision (56) below, or whose registration has been revoked under Article IV, Section 3, subsection D of this Ordinance.
- (47) New junkyard – A junkyard that is not pre-existing as defined under subdivision (57) below, or whose registration has been revoked under Article IV, Section 3, subsection D of this Ordinance.
- (48) Nonprocessable solid waste -- Solid waste, other than hazardous waste, which could impair the operation or capacity of the disposal system or cause potential or actual injury to the County's employees and/or contractors, but which is capable of being disposed of by sanitary landfill, including but not limited to furniture, bedding, white goods, metal cable, gypsum board, bricks and blocks, concrete, industrial solid waste, asphalt materials, liquid wastes including sludge from water or waste water treatment plants, petroleum products, metal (other than containers), tree stumps, logs, brush, pallets and other scrap wood, and construction and demolition waste.
- (49) Nursing home – A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the operator.
- (50) Opaque – A substance that cannot be seen through when viewed perpendicularly at the same elevation.
- (51) Open burning – Incineration under which the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar device.
- (52) Pathological waste – Human tissues, organs, and body parts, and the carcasses and body parts of any animals that were known to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologicals or in in vivo testing of pharmaceuticals, or that died with a known or suspected disease transmissible to humans.

- (53) Person – A firm, corporation, general partnership, limited partnership, limited liability company, association, sole proprietor, individual, individual acting on behalf of another, or any other entity of any type whatsoever.
- (54) Planning Department – The Wilkes County Planning Department.
- (55) Plastic bag – A polyethylene or other heavy-duty plastic bag meeting the National Sanitation Foundation standard of 1.5 mils and not exceeding 30 gallons capacity with a securing twist tie.
- (56) Pre-existing automobile graveyard – An automobile graveyard in existence at the time of the effective date of this Ordinance which registers as required under Article IV, Section 3, subsection A below.
- (57) Pre-existing junkyard – A junkyard in existence at the time of the effective date of this Ordinance which registers as required under Article IV, Section 3, subsection A below.
- (58) Premises – A definite portion of real estate including its appurtenance, a building, or part of a building.
- (59) Private road – Any road, highway, or street which is not a public road as defined below but which is shown as a road, highway, or street on the County's E-911 system or on a plat recorded in the Wilkes County Register of Deeds office.
- (60) Processing – Pursuant to G.S. §130A-290(a)(23), any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage, or recycling; safe for disposal; or reduced in volume or concentration.
- (61) Public road – Any road, highway, or street which is now or hereafter designated and maintained by the N.C. Department of Transportation as part of the State Highway System; or which is maintained by a municipality pursuant to Article 15 of Chapter 160A of the North Carolina General Statutes; or which is located wholly or partly in a subdivision which has been duly approved by the Board of Commissioners pursuant to the Wilkes County Subdivision Ordinance.
- (62) Putrescible – Capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases.
- (63) Radioactive waste – Waste containing any material, whether solid, liquid, or gas, that emits ionizing radiation spontaneously.

- (64) RCRA – Pursuant to G.S. §130A-290(a)(25), the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. §6901 et seq.
- (65) Recovered material – Pursuant to G.S. §130A-290(a)(24), a material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse. In order to qualify as a recovered material, a material must meet the requirements of G.S. §130A-309.05(c).
- (66) Recyclable material – Pursuant to G.S. §130A-290(a)(26), material which is capable of being recycled and which would otherwise be processed or disposed of as solid waste.
- (67) Recycling – Pursuant to G.S. §130A-290(a)(27), any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.
- (68) Refuse – Pursuant to G.S. §130A-290(a)(28), all nonputrescible wastes.
- (69) Residential solid waste – Solid waste, whether putrescible or otherwise, including but not limited to food waste, paper, cardboard, plastic or metal food or household chemical containers, wood objects, glass, bedding, crockery, metals, and other similar objects or materials, but specifically excluding junk, junked automobiles, yard trash, bulky waste, animal carcasses, and fecal waste, which originates from private households (including dwelling units, apartments, townhouses, condominiums, etc., but excluding institutional facilities).
- (70) Resource recovery – Pursuant to G.S. §130A-290(a)(29), the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.
- (71) Rural medical center – A facility staffed on a regular basis by one (1) or more physicians licensed to practice medicine in the State of North Carolina, which facility is located outside the boundaries of a municipality and is established and maintained for the purpose of providing medical care to members of the community in which it is situated.
- (72) Sanitary landfill – Pursuant to G.S. §130A-290(a)(31), a facility for disposal of solid waste on land in a sanitary manner in accordance with rules adopted by the Division pursuant to Article 9 of Chapter 130A of the North Carolina General Statutes.

- (73) Septage – Pursuant to G.S. §130A-290(a)(32), solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system, including all forms of septage as set forth in said statute.
- (74) Service station – Any establishment which is maintained and operated for the primary purpose of making retail sales of fuels, lubricants, air, water, and/or other items for the operation and routine maintenance of motor vehicles, and/or for making mechanical repairs, servicing, and/or washing motor vehicles, and which is used to store not more than six (6) junked motor vehicles at any one time. If the service station owner lists all of the its business personal property in the Tax Assessor's Office by the listing deadline for that year as required by law, it may store up to a maximum of twelve (12) junked motor vehicles at any one time during said year.
- (75) Sharps – Needles, syringes, and scalpel blades.
- (76) Sheriff's Office – The Wilkes County Sheriff's Office.
- (77) Sludge – Pursuant to G.S. §130A-290(a)(34), any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other waste having similar characteristics and effects.
- (78) Slurry waste – A waste with high liquid content not easily dewatered.
- (79) Solid waste – Pursuant to G.S. §130A-290(a)(35), any hazardous or nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored, or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, institutional, commercial, and agricultural operations, and from residential and community activities. Unless otherwise indicated by context or stated expressly, the term "solid waste" as used in this Ordinance shall include agricultural solid waste (except for fecal waste from fowls and animals other than humans), bulky waste, commercial solid waste, compost, construction and demolition waste, industrial solid waste, institutional solid waste, infectious waste, land clearing debris, medical waste, municipal solid waste, nonprocessable solid waste, pathological waste, residential solid waste, septage, sharps, sludge, slurry waste, special waste, and yard trash. "Solid waste" shall

also include mobile homes which have been stripped or partially dismantled. The term "solid waste" does not include:

- a. Fecal waste from fowls and animals other than humans
- b. Solid or dissolved material in:
 - (i) Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment, and disposal systems which are designated to discharge effluents to the surface waters.
 - (ii) Irrigation return flows.
 - (iii) Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. §143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Ordinance.
- c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Ordinance.
- d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011).
- e. Mining refuse covered by the North Carolina Mining Act, G.S. §§74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. §143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Ordinance.
- f. Recovered material.
- g. Junk or junked motor vehicles as defined hereinabove, unless provided otherwise under Article IV, Section 8.B. below.

(80) Solid Waste Department – The Wilkes County Solid Waste Department.

- (81) Solid Waste Director – The Director of the Wilkes County Solid Waste Department or his or her authorized representative.
- (82) Solid waste receptacle – A sealable container of metal or plastic used for the temporary storage of solid waste while awaiting collection; or, in the case of convenience centers, a container provided by the owner or operator of the convenience center for use as a receptacle into which solid waste may be deposited.
- (83) Solid waste rules – The regulations governing solid waste management as adopted by the Division in accordance with EPA guidelines and other Federal regulations.
- (84) Source separation – Setting aside recyclable materials at their point of generation by the generator.
- (85) Special waste – Pursuant to G.S. §130A-290(a)(40), any solid waste that can require special handling and management, including white goods, whole tires, used oils, lead-acid batteries, and medical waste.
- (86) Towing operation – Any establishment which is maintained and operated for the primary purpose of towing motor vehicles that have become unable to move by self-propulsion, and which is used to store not more than six (6) junked motor vehicles at any one time. If the towing operation owner lists all of the its business personal property in the Tax Assessor's Office by the listing deadline for that year as required by law, it may store up to a maximum of twelve (12) junked motor vehicles at any one time during said year.
- (87) Used oil – Pursuant to G.S. §130A-290(b)(5), any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties, but which may be suitable for further use and is economically recyclable.
- (88) Vector – An organism that carries disease-causing micro-organisms from one host to another (e.g., rats, mosquitoes, etc.).
- (89) Visible – Capable of being seen by a person who has normal visual acuity (whether or not the same is assisted by visual aids such as eyeglasses, contacts, etc.).
- (90) White goods – Pursuant to G.S. §130A-290(a)(44), refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

- (91) Yard trash – Pursuant to G.S. §130A-290(a)(45), solid waste consisting solely of vegetative matter resulting from landscaping maintenance.
- B. In addition to those definitions set forth above, all definitions in G.S. §130A-290 which are not expressly set forth in subsection A of this Section 1 shall apply for the purposes of interpreting this Ordinance.
- C. The lawful tenant of property may be considered the “owner” of the same for purposes of this Ordinance, where applicable in the determination of the Ordinance Administrator (as defined in Article V, Section D below).
- D. For terms not defined in this Section 1, the common usage of the term shall prevail. Words used in the present tense include the future and past tense, words in the plural number include the singular number, words in the singular number include the plural number, and words in the masculine gender include the feminine gender.
- E. Any definition of or reference to a Federal, State, or local law, rule, regulation, or ordinance contained in this Ordinance shall be deemed to include any amendment or successor law, rule, regulation, or ordinance thereto; provided, that, unless the doctrine of Federal or State preemption applies, no such amendment or successor statute shall have the effect of materially altering a definition in subsection A without a duly enacted amendment to this Ordinance.

Section 6. Construction and Interpretation.

The provisions of this Ordinance are intended, and shall be interpreted, to be consistent with and supplementary to the North Carolina General Statutes, State rules, and any other ordinance of the County. To insure such intent and interpretation, and in the event of ambiguity between the provisions of this Ordinance and other such laws, rules, or ordinances, the stricter of the provisions shall apply. Any violation of such laws, rules, or ordinances shall also be a violation of this Ordinance.

Section 7. Board of Health Rules and Abatement of Public Health Nuisances.

A. Board of Health Rules.

No provision of this Ordinance shall be deemed to limit or modify the authority of the Board of Health to adopt rules for the protection and promotion of the public health pursuant to G.S. §130A-39, and to enforce the same pursuant to Part 2, Article 1, Chapter 130A, North Carolina General Statutes. Whenever possible, the rules adopted by the Board of Health and the provisions of this Ordinance shall be construed so as to be consistent with each other. In the event of a conflict, however, the stricter provision shall apply.

B. Abatement of Public Health Nuisances.

No provision of this Ordinance shall be deemed to limit or modify the authority of the Board of Health, the Health Director, or the Board of Commissioners to abate public health nuisances pursuant to Chapter 130A or Chapter 153A of the North Carolina General Statutes or any rules promulgated thereunder.

ARTICLE II
STORAGE AND DISPOSAL OF SOLID WASTE

Section 1. Storage and Disposal

- A. No owner, occupant, tenant, or lessee of any real or personal property shall place, deposit, or store, or cause or knowingly permit the storage or accumulation of, any solid waste thereon or therein that is not placed, deposited, stored, or accumulated in a manner prescribed by this Ordinance; nor shall said owner, occupant, tenant, or lessee dispose of such solid waste except in a manner prescribed by this Ordinance.
- B. No person shall place, deposit, or store, or cause or knowingly permit the placement, deposit, storage, or accumulation, of solid waste on or inside real or personal property owned, leased, or under the constructive possession of said person, unless such solid waste is generated thereon or therein and is stored as provided in this Ordinance.
- C. The owner, occupant, tenant, or lessee of any real or personal property on or in which solid waste is or has been located, placed, deposited, stored, or accumulated shall dispose of or cause the same to be disposed of at least once each week, by means not inconsistent with this Ordinance.
- D. No owner, occupant, tenant, or lessee of any building or dwelling other than a licensed junk dealer may place or leave, or cause to be placed or left, outside the building or dwelling any bulky waste for longer than seventy-two (72) hours.
- E. Residential solid waste shall be placed, deposited, stored, or accumulated only in a container that is durable, rust-resistant, non-absorbent, watertight, and easily cleaned, with closefitting, fly-tight cover in place. Solid waste receptacles, as defined by this Ordinance, may be used for such purpose provided they meet the requirements of this subsection D. Each container shall be kept clean so that no odor or other nuisance condition exists.
- F. Refuse shall be sorted and placed, deposited, stored, or accumulated in a manner that will resist harborage to rodents and vermin and that will not create a fire hazard. Regulated refuse under this subsection includes, but is not limited to, lumber, boxes, barrels, bottles, cans, tires, paper, cardboard, rags, bulky waste,

and white goods. The lids, doors, or other openings to white goods shall be removed or sealed shut so as to prevent children from becoming trapped therein. Useful materials, such as firewood and building materials, may be stored on the premises, provided they are sorted in a safe manner at a reasonable height above ground.

- G. All other solid waste shall be placed, deposited, stored, or accumulated in sealed solid waste receptacles.
- H. Solid waste shall be disposed of only in one of the following ways:
 - (1) In a sanitary landfill, as approved by the Division, in accordance with the provisions of Section 2 below;
 - (2) In an incinerator that has obtained and possesses all required local, state and federal control permits;
 - (3) By any other method, including recycling and resource recovery, that has been approved by the Division; or
 - (4) At a convenience center duly established by the County, in accordance with the provisions of Section 3 below, and transported to a sanitary landfill approved by the Division.

Notwithstanding the foregoing, animal carcasses may be buried on privately owned property by or with the consent of the owner, tenant, or person in lawful possession of said property.

- I. All persons engaged in the collection, transportation, and disposal of solid waste shall comply with the following provisions concerning vehicles and containers:
 - (1) Vehicles and containers used for the collection and transportation of solid waste shall be covered, leakproof, durable, and easily cleaned. The same shall be cleaned as often as necessary to prevent insect breeding and other similar nuisances, and shall be maintained in good repair.
 - (2) Vehicles and containers used for the collection and transportation of solid waste shall be loaded and moved in such manner that the contents will not fall, leak, or spill, and shall be covered to prevent the blowing of material. If spillage or leakage should occur, the materials shall be recovered immediately by the operator of the vehicle or person responsible for handling the container, and the area affected by such spillage or leakage shall be thoroughly cleaned.

In addition, commercial solid waste collectors shall comply with the registration provisions of Article III below.

- J. No person shall intentionally or recklessly discard, leave, dump, throw, scatter, spill, or otherwise dispose of any solid waste on or along any street or highway or on public or private property unless such solid waste is placed in a receptacle or at a location designated for the deposit of solid waste. The operator of a vehicle from which solid waste is disposed of as set forth herein shall be rebuttably presumed to have violated the provisions of this subsection.
- K. Construction and demolition waste shall be disposed of at disposal sites approved and permitted by the Division.
- L. Regulated medical, hazardous, and radioactive waste shall be disposed of according to written procedures approved by the Division.
- M. All sharps shall be placed in a sealed, puncture-proof container prior to disposal.
- N. Open burning of solid waste is prohibited.
- O. No provision of this Ordinance is intended or shall be construed to authorize the disposal of solid waste in any manner prohibited by Federal or State law.

Section 2. Sanitary Landfill Management

- A. The County sanitary landfill may be used for the disposal of solid waste by County residents and nonresident property owners. The sanitary landfill shall be open during business hours established by the Board of Commissioners. In emergencies the sanitary landfill may be opened for additional hours as directed by the County Manager or the Solid Waste Director. Except when open during regular business hours the sanitary landfill shall be kept locked, and entry shall not be permitted. Solid waste shall be disposed of at the sanitary landfill in the manner according to procedures established by the Solid Waste Director.
- B. The following waste shall not be disposed of in the County sanitary landfill:
 - (1) Agricultural solid waste other than animal carcasses; with regard to animal carcasses, the notice provisions of subsection C(2) below shall be met;
 - (2) Burning or smoldering materials, or any other materials that would cause a fire hazard;
 - (3) Hazardous waste;
 - (4) Lead-acid batteries (but see subsection D(5) below);
 - (5) Liquid waste;

- (6) Untreated regulated medical waste;
- (7) Radioactive waste;
- (8) Used oil (but see subsection D(4) below);
- (9) White goods (but see subsection D(2) below);
- (10) Aluminum dills;
- (11) Tires (but see subsection D(1) below);
- (12) Any other type of solid waste which, due to its quantity, nature, or other characteristics, or due to the permit requirements for the sanitary landfill, is determined by the Solid Waste Director or the Division to be inappropriate for deposit at said sanitary landfill.

C. The following wastes may be accepted on a conditional basis only or may require special treatment before they are placed in the sanitary landfill:

- (1) Asbestos: accepted for disposal if properly packaged in accordance with 40 CFR 61 and N.C. Gen. Stat. § 150-B14 (check) (double-bagged in grill polybag and close with a tie and a twenty-four (24)-hour notice is given).
- (2) Animal carcasses: one hour notification prior to delivery.
- (3) Barrels or drums: both ends cut out and barrels and drums flattened.
- (4) Ashes: accepted only when securely placed in plastic bags or cardboard boxes prior to disposal.
- (5) Mobile homes: accepted only upon prior arrangements being made with the sanitary landfill.

Conditionally acceptable wastes may be disposed of in accordance with Division regulations and policies promulgated by the Solid Waste Director. Generators of conditionally acceptable waste shall obtain prior approval from the sanitary landfill office before transporting conditionally approved wastes to the sanitary landfill. Additional disposal fees maybe required or conditionally acceptable waste.

D. The following wastes may be accepted at the sanitary landfill for the purpose of recycling and may require special handling for proper separation and disposal. Disposal must be in compliance with State solid waste rules, Federal regulations, and applicable policies promulgated by the Solid Waste Director which are not inconsistent therewith.

- (1) Tires: Must be separated and stacked in the designated area, container, or trailer.
- (2) White Goods (Appliances): Must be separated and stacked in the designated area, container, or trailer.
- (3) Scrap Metals: Must be separated and deposited in the designated area or container.
- (4) Used Oil: Must be motor oil only and be deposited in designated containers.
- (5) Used Batteries: Must be placed in designated containers or trailers.

All recyclable material must be used, cleaned prior to deposit at the sanitary landfill, and placed in separate containers or areas.

- E. No person may loiter or rummage about the sanitary landfill, or remove articles therefrom.
- F. No person may deposit material at any point in the sanitary landfill except where indicated by authorized employees of the sanitary landfill or by official signs.
- G. No person may discharge firearms, fireworks, or explosives on sanitary landfill property, except duly sworn law enforcement officers in the line of duty.
- H. The maximum speed of vehicles at the sanitary landfill is twenty-five (25) miles per hour.
- I. Persons under the age of fourteen (14) years must remain inside vehicles while at the sanitary landfill.
- J. No persons shall go upon or remain at the sanitary landfill, except to dispose of solid waste as permitted by this Ordinance, or to participate in activities sponsored by the County at the sanitary landfill. Any person who goes upon or remains at the sanitary landfill, except as authorized by this Ordinance, shall be considered a trespasser and may be prosecuted as such by the Solid Waste Director on behalf of the County. The Solid Waste Director shall place or cause to be placed appropriate signs at conspicuous places in the sanitary landfill to give notice of the prohibition set forth in this section.
- K. All solid waste management activity described in this Article II is subject to the restrictions imposed by State and Federal laws and regulations. In the event of a conflict between the provisions of this Ordinance and any State or Federal law, the latter shall prevail.

Section 3. Convenience Centers, Solid Waste Receptacles, and Recycling.

- A. Solid waste receptacles shall be maintained at convenience centers for the convenience of County residents at such locations as shall be determined by the Board of Commissioners, and shall be owned or leased by the County. Except as otherwise provided in this Section, disposal of solid waste at convenience centers shall be permitted and regulated in the same manner as disposal of solid waste at the sanitary landfill, in accordance with the provisions of this Ordinance. No solid waste may be disposed of at a convenience center unless it may feasibly be placed within a solid waste receptacle maintained at the convenience center.
- B. The following types of solid waste shall not be deposited at convenience centers in any manner:
- (1) Agricultural solid waste;
 - (2) Any solid waste containing asbestos;
 - (3) Burning or smoldering materials, ashes, or any other materials that would create a fire hazard;
 - (4) Commercial solid waste;
 - (5) Construction and demolition waste;
 - (6) Hazardous waste;
 - (7) Industrial solid waste;
 - (8) Institutional solid waste;
 - (9) Sludge;
 - (10) Barrels;
 - (11) Medical waste, infectious waste, pathological waste, or sharps;
 - (12) Any other type of solid waste which, due to its quantity, nature, or other characteristics, or due to the design or capacity of the convenience center, is determined by the Solid Waste Director to be inappropriate for deposit at said convenience center; provided, that no person shall be charged with a violation under this subdivision (12) unless the Solid Waste Department has, prior to such violation, posted a conspicuous sign on the premises or otherwise communicated by reasonable means to persons using the convenience center that said type(s) of solid waste may not be deposited there.

- C. Solid waste intended for disposal in solid waste receptacles at convenience centers shall be in plastic bags or suitable containers and deposited inside the receptacle. No solid waste may be left at a convenience center outside of such receptacles.
- D. No person shall remove any item from, or climb on or into, a solid waste receptacle, nor shall any person damage a convenience center.
- E. No solid waste generated outside the boundaries of the County may be deposited at a convenience center provided and maintained by the County.
- F. No person shall go upon or remain on the premises of real property on which a convenience center is located and provided and maintained by the County except to dispose of solid waste pursuant to the terms and provisions of this Ordinance.

Any person that goes upon or remains at such convenience center, except to dispose of solid waste as permitted by this Ordinance shall be considered a trespasser and may be prosecuted by the County. The Solid Waste Director shall place or cause to be placed an appropriate sign at a conspicuous location at the convenience center to give notice of the prohibition set forth in this subsection.

Section 4. Recycling.

The County shall encourage recycling through the adoption and enforcement of such programs and policies as may be recommended from time to time by the Solid Waste Director and approved by the Board of Commissioners.

Section 5. Administration, Enforcement, and Penalties.

Except as otherwise set forth in this Article II, the administration and enforcement of and penalties under the same shall be as set forth in Article V below.

ARTICLE III
COMMERCIAL SOLID WASTE COLLECTORS

Section 1. Purpose.

The purpose of this Article III is to establish a system of registration for all commercial solid waste collectors in the County in order to allow the Solid Waste Department to identify and maintain records with respect to the existence of the same.

Section 2. Registration Required.

No person shall engage in business as a commercial solid waste collector in the County or any portion thereof without first registering with the Solid Waste Department as set forth in this Article III.

Section 3. Registration Application and Fee.

Registration shall be accomplished by completing a registration application on such form as shall have been approved by the Solid Waste Department and by paying such fee as shall have been established by the Board of Commissioners. The registration application shall include such information as the Solid Waste Department may reasonably require in order to accomplish the purposes set forth in Section 1 above. One copy of the completed signed registration application shall be submitted to the Solid Waste Department.

Section 4. Effective Date of Registration; Transfer.

Registration shall be deemed to be effective on the date the Solid Waste Department receives an application that complies with all of the requirements of Section 3 above. Upon the receipt of such application the Solid Waste Department shall note thereon the effective date of registration and shall notify the applicant in writing as to the same. Registration, once effective under this Section 4, shall continue in effect without having to be renewed, and shall be transferable to heirs, devisees, personal representatives, successors, or assigns of the commercial solid waste collector, and to purchasers of the same; provided, however, that the transferee of a duly registered commercial solid waste collector shall notify the Solid Waste Department immediately upon becoming owner or operator of the same and shall thereupon furnish such updated registration information as shall be required by the Solid Waste Department.

Section 5. Vehicles and Containers.

Vehicles and containers utilized by commercial solid waste collectors in the collection, transportation, and disposal of solid waste shall at all times comply with the requirements of Article II, Section 1, subsection I of this Ordinance.

Section 6. Administration, Enforcement, and Penalties.

Except as otherwise set forth in this Article III, the administration and enforcement of and penalties under the same shall be as set forth in Article V below.

ARTICLE IV
JUNKYARDS AND AUTOMOBILE GRAVEYARDS

Section 1. Junkyards and Automobile Graveyards Regulated.

Unless exempted under Section 2 below, all junkyards and automobile graveyards are hereby regulated as set forth in this Article IV.

Section 2. Exemptions.

The following are exempted from the requirements of this Article IV:

- A. Garages, service stations, and towing operations as defined under Article I, Section 5 above, to the extent set forth in said definitions;
- B. Junked motor vehicles which are stored or kept at any establishment, premises, or place in connection with motor vehicle restoration as defined under Article I, Section 5 above, to the extent set forth in said definition;
- C. Approved solid waste disposal sites as set forth under Article II, Section 1, subsection H of this Ordinance;
- D. Junk which is stored or kept at any establishment, premises, or place in such quantity and/or manner as to not constitute a "junkyard" as defined under Article I, Section 5 of this Ordinance;
- E. Junked motor vehicles which are stored or kept at any establishment, premises, or place in such quantity and/or manner as to not constitute an "automobile graveyard" as defined under Article I, Section 5 of this Ordinance;
- F. Junk or junked motor vehicles, regardless of quantity, which are stored or kept at all times in an enclosed building or buildings, solid waste container, or rolling stock, so as to not be visible to the public; and
- G. Junkyards and automobile graveyards which are subject to the provisions of the Junkyard Control Act, to the extent the same are regulated or prohibited thereunder.

Junkyards and automobile graveyards, once subject to the provisions of this Article IV, shall not thereafter be considered exempt merely by virtue of compliance with the screening requirements of Section 4B(7) below.

Section 3. Procedures: Registration And Permitting.

A. Registration Required for Existing Junkyards and Automobile Graveyards.

All owners or operators of junkyards or automobile graveyards existing as of the effective date of this Ordinance shall cause the same to be registered with the Planning Department within a period of ninety (90) days from the effective date hereof, as set forth in this Section 3. Registration after the expiration of the applicable ninety (90) day period may be allowed by the Planning Department if the remaining requirements of this subsection A are met and the Planning Department finds in its discretion that the owner or operator has acted in good faith in attempting to comply with the requirements of said subsection A. Upon such registration, said junkyard or automobile graveyard shall be considered "pre-existing" as defined in Article I, Section 5 above, unless said registration is revoked under subsection D below. All other junkyards and automobile graveyards shall be considered "new" as defined in Article I, Section 5 above. For purposes of this subsection A, a junkyard or automobile graveyard shall be considered to be "existing" as of the effective date of this Ordinance if on said date it meets the definition for the same as set forth under Article I, Section 5, subsections (3) or (39) (whichever is applicable). The burden of proof shall be on the owner or operator to demonstrate by clear, cogent, and convincing evidence that the junkyard or automobile graveyard satisfies said requirements.

Subject to the remaining requirements of this subsection A as set forth above, the ninety (90) day deadline to register shall be subject to the following provisions:

- (1) In the case of a junkyard or automobile graveyard existing as of the effective date of this Ordinance which fails to meet the definition for the same under Article I, Section 5 above due to the fact that it does not meet the visibility requirements thereunder, but which subsequently becomes visible within the meaning of said requirements, the aforementioned ninety (90) day deadline to register shall run from the date such subsequent visibility occurs as determined in the discretion of the Planning Department.
- (2) In the case of a junkyard or automobile graveyard existing as of the effective date of this Ordinance which fails to meet the definition for the same under Article I, Section 5 above due to the fact that it does not exceed the allowed cumulative square footage of junk or number of junked motor vehicles thereunder, but which subsequently enlarges so as to exceed the same, the ninety (90) day deadline to register shall run from the date such enlargement occurs as determined in the discretion of the Planning Department.
- (3) In the case of a junkyard or automobile graveyard to which subdivisions (1) and (2) are both applicable, the ninety (90) day

deadline to register shall run from the earliest applicable date thereunder.

B. Registration Application and Fee.

Registration shall be accomplished by completing a registration application on such form as shall have been approved by the Planning Department and by paying such fee as shall have been established by the Board of Commissioners. The registration application shall be in the name of the owner(s) or operator(s) of the junkyard or automobile graveyard and shall include the following information: the applicant's name, address, and phone numbers for business and home; if different from the applicant, the name, address, and phone numbers for business and home of the owner of the tract(s) of property on which the junkyard or automobile graveyard is situated; the applicant's state and/or local business registration number or licenses; the location of the tract(s) of property on which the junkyard or automobile graveyard is situated, by township, state road number, and property identification number (as stated on the records of the Wilkes County Tax Mapping Office); and the total acreage of the tract(s) of property and approximate acreage involved in and boundaries of the junkyard or automobile graveyard operation. One copy of the completed signed registration application shall be submitted to the Planning Department.

C. Effective Date and Duration of Registration; Scope; Expansion; Transferability.

(1) Effective Date and Duration.

Registration shall be deemed to be effective on the date the Planning Department receives an application that complies with all of the requirements of subsection B above. Upon the receipt of such application the Planning Department shall note thereon the effective date of registration and shall notify the applicant in writing as to the same and as to the requirements for obtaining a permit under this Section 3. Registration, once effective under this subsection C, shall continue in effect without having to be renewed, unless and until such time as:

- a. Said registration is revoked pursuant to the provisions of this Ordinance; or
- b. Said registration is voluntarily surrendered by the holder thereof, in which event the same shall be deemed to have terminated on the date it is surrendered; or
- c. The use of the premises for which the registration was issued as a junkyard or an automobile graveyard is discontinued for one hundred eighty (180) or more consecutive days, in which event the

registration shall be deemed to have automatically terminated at the end of said one hundred eighty (180) days.

(2) Scope.

Upon compliance with the applicable provisions of this Section 3, a registration shall be issued for the junkyard or automobile graveyard as described in the application therefore and, once a permit is obtained for the same, shall apply to the "permitted premises" as defined under subsection E(2) below.

(3) Expansion.

Registration, once effective under this subsection C, and unless terminated under subdivision (1) above, shall continue in effect for any expansion of the permitted premises. For purposes of this subdivision (3), an "expansion" shall be defined as an enlargement of the existing permitted premises by adding a new area of operations which is contiguous thereto. A re-location of a junkyard or automobile graveyard shall be governed by the provisions of subdivision (4)b below. An expansion of a junkyard or automobile graveyard which is not covered by the provisions of this subdivision (3) and which is not a re-location under subdivision (4)b below shall be treated as a new junkyard or automobile graveyard.

(4) Transfer.

a. A registration under this subsection C shall be transferable to heirs, devisees, personal representatives, successors, or assigns of the owner or operator, and to purchasers of the registered junkyard or automobile graveyard; provided, however, that the transferee of a duly registered junkyard or automobile graveyard shall notify the Planning Department immediately upon becoming owner or operator of the same and shall thereupon furnish such updated registration information as shall be required by the Planning Department; provided further, that the transfer of a registration to the purchaser of a junkyard or automobile graveyard shall be subject to the provisions of subdivision (4)c below.

b. A registration under this subsection C shall be transferable in the event of a re-location of a junkyard or automobile graveyard. For purposes of this subdivision (4)b, a "re-location" shall be defined as the establishment of a different location for a pre-existing junkyard or automobile graveyard, whereupon all operations or activities as a junkyard or automobile graveyard at the former location are terminated in their entirety and the permitted premises for said former location are completely cleared of all junk and

junked vehicles. In order for a registration to be transferable in the event of a re-location under this subdivision (4)b, the following conditions shall be met:

- (i) The owner or operator of the junkyard or automobile graveyard shall terminate all operations and activities at the former location for the same, shall completely clear all junk and junked vehicles from the permitted premises, and shall leave said permitted premises reasonably clean and free of any solid waste;
- (ii) The new location for the junkyard or automobile graveyard shall comply with the spacing requirements for protected facilities under Section 4, subsection B(1) below, unless waived under Section 4, subsection B(2);
- (iii) The owner or operator of the junkyard or automobile graveyard shall furnish such updated registration information for the new location as shall be required by the Planning Department; and
- (iv) The provisions of subdivision (4)c below shall be met.

- c. As a condition of the transfer of a registration under subdivisions (4)a or (4)b above, the junkyard or automobile graveyard shall have no pending violations under any provision of this Ordinance.

D. Revocation of Registration Upon Violation; Termination.

Upon violation of any of the provisions of this Article IV by a junkyard or automobile graveyard which has duly registered and qualified as pre-existing under subsection A above, the Planning Department may, pursuant to Section 2 or Section 3 of Article V below, and after due notice to the holder of the registration and an opportunity to be heard, revoke the same upon finding that:

- (1) The holder of the registration has violated one or more of the provisions of this Article IV and remains in violation as of the date of the notice required under this subsection; and
- (2) The provisions of either Section 2 or Section 3 of Article V of this Ordinance are applicable.

Upon revocation of a registration under this subsection D, or upon termination of a registration under subsection C(1) above, the junkyard or automobile graveyard which is registered thereunder shall, as of the effective date of the revocation or termination, no longer be deemed to be pre-existing, but shall instead be deemed

to be a new junkyard or new automobile graveyard, as the case may be, and shall thereupon comply with all requirements for the same under Section 4 below, within such time as shall be established by the Planning Department, but in no event to be less than twelve (12) months from the effective date of revocation.

E. Permit Required for all Junkyards and Automobile Graveyards.

(1) Permit Required.

No person shall establish, operate, or maintain a junkyard or automobile graveyard, whether pre-existing or new, without a valid permit for the same as set forth herein.

(2) Scope – Permitted Premises.

The permit shall apply solely to the specific premises on which the junkyard or automobile graveyard operation, or any part thereof, is being conducted, which shall be referred to for purposes of this Article IV as the “permitted premises” and which may constitute all or any portion of the tract(s) on which the junkyard or automobile graveyard is situated.

(3) Duration of Permit.

The permit shall be valid for a period of one (1) year from the issuance thereof unless sooner revoked pursuant to the provisions of this Ordinance or voluntarily surrendered by the holder thereof. Each year thereafter, on or before the anniversary date of the permit’s issuance, the holder shall renew the same as set forth herein. Notwithstanding the foregoing, an expired permit shall remain valid for up to thirty (30) days after the expiration of its one (1) year duration if, within said period of thirty (30) days, the holder files an application for a renewal permit in compliance with the requirements of subsection F(2) below.

F. Permit Application and Fee.

(1) Initial Permits.

Application for an initial permit hereunder shall be filed with the Planning Department on such forms as the Planning Department shall have approved. Applications shall be accompanied by such fee as shall have been established by the Board of Commissioners. In the case of pre-existing junkyards or pre-existing automobile graveyards, the permit application shall be submitted to the Planning Department no more than thirty (30) days following the effective date of registration for the applicant. In the case of new junkyards or new automobile graveyards, the permit application shall be submitted to the Planning Department prior to

establishment, operation, or maintenance of the same. All permit applications shall be in the name of the owner(s) or operator(s) of the junkyard or automobile graveyard and shall include or be accompanied by the following:

- a. The applicant's name, address, and phone numbers for business and home;
- b. If different from the applicant, the name, address, and phone numbers for business and home of the owner of the tract(s) of property on which the junkyard or automobile graveyard is or is to be situated, together with information describing the legal relationship between the applicant and the property owner (e.g., lessor/lessee, licensor/licensee, corporate subsidiary, etc.);
- c. The applicant's state and/or local business registration number or licenses;
- d. The location of the tract(s) of property on which the junkyard or automobile graveyard is or is to be situated, by township, state road number, and property identification number (as stated on the records of the Wilkes County Tax Mapping Office);
- e. The total acreage of the tract(s) of property on which the junkyard or automobile graveyard is or is to be situated, and the approximate acreage of the junkyard or automobile graveyard operation itself (the "permitted premises" as defined in subsection E(2) above);
- f. A Wilkes County aerial photo tax map depicting: the boundaries of the tract(s) of property on which the junkyard or automobile graveyard is situated; the location, boundaries, and lay-out of the junkyard or automobile graveyard operation itself (the "permitted premises" as defined in subsection E(2) above); the approximate location of any structures or facilities planned for or located on the permitted premises; the approximate location of all public and private roads and driveways or entranceways serving, crossing, or adjoining the permitted premises; the location of all setbacks as required under Section 4 below; the location of the fence and vegetative buffer as required under Section 4 below; the location of any protected facilities which may possibly be affected; a radius in all directions showing the spacing requirements as set forth in Section 4, subsection B(1) below; the boundary lines of all tracts affected by the above required radius; and the current owners of all such tracts;

- g. Information demonstrating the applicant's compliance with the requirements of Section 4 below; and
- h. Such further information as may be required by the Planning Department.

Three (3) copies of the application shall be submitted.

(2) **Renewal Permits.**

Application for renewal of a permit shall be filed with the Planning Department on such forms as the Planning Department shall have approved. Said application shall, subject to the provisions of subsection E(3) above, be filed on or before the expiration of the permit currently held by the applicant and shall be accompanied by such fee as shall have been established by the Board of Commissioners. Renewal applications shall include all information as required with initial applications; provided, that the applicant shall only be required to update information which has changed from the previous application, including but not limited to any expansion of the junkyard or automobile graveyard or the permitted premises. If information provided with the previous application has not changed, the applicant shall so state. Three (3) copies of the application shall be submitted.

(3) **Certifications.**

Applications for initial and renewal permits shall contain certifications by the applicant that:

- a. The junkyard or automobile graveyard for which the permit is being requested will at all times comply with the applicable regulations and standards imposed under this Ordinance.
- b. The applicant is not operating or maintaining any other junkyard or automobile graveyard within Wilkes County that is in violation of any of the requirements of this Ordinance.
- c. No permit issued to the applicant under this Ordinance, or under any successor Ordinance hereto, has ever been revoked.

G. **Issuance or Denial of Permit; Transferability.**

The Planning Department shall complete its review of the application and notify the applicant in writing as to what action has been taken with respect to the same. Said written notification shall be issued no later than forty-five (45) days following receipt by the Planning Department of all information required to be

submitted by the applicant under this Section 3. Action by the Planning Department shall consist of one of the following:

- (1) If the Planning Department determines that the application fails to meet one or more of the requirements of this Ordinance, or that any one or more of the certifications in subsection F(3) above cannot truthfully and correctly be made, the application shall be denied. Written notification of the denial from the Planning Department to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the application does not comply. The applicant shall have sixty (60) days from receipt of said written notification to bring the application into compliance, in which event the provisions of subdivision (3) below shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new application, or, in the alternative, the applicant may file an appeal under Section 7 below. The Planning Department shall provide written notification to the applicant as to the Planning Department's decision with regard to any attempts by the applicant to bring the application into compliance.
- (2) An application for a permit shall further be denied upon a determination by the Planning Department that said application or information submitted in connection therewith contains a material misrepresentation, either of commission or omission.
- (3) If the Planning Department determines that the application meets all of the requirements of this Ordinance, and that the application does not violate the provisions of subdivision (2) above, the Planning Department shall issue a permit to the applicant.
- (4) If the Planning Department fails within the above stated period of forty-five (45) days to notify the applicant as to what action has been taken, the application shall be deemed approved and a permit shall be issued to the applicant. For purposes of this subdivision (4), the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All permits hereunder are issued on the condition that they are and shall remain subject to the holder's continued compliance with those certifications contained in the application and with the requirements of this Ordinance. No permit may be assigned or transferred by the holder to any other person, nor may a permit be transferred to any premises other than the permitted premises for which it was issued.

H. Conditions of Permit.

Each permit approved hereunder shall be issued on condition that:

- (1) The certifications contained in the application are true and correct, and, if continuing in nature, shall at all times remain true and correct;
- (2) The application, and information submitted in support of the same, contains no material misrepresentation, either of commission or omission;
- (3) The applicant is and will at all times remain in compliance with the terms and conditions of the permit and with all requirements of this Ordinance; and
- (4) The permitted premises will not cease to be used as a junkyard or automobile graveyard, as the case maybe, for a period of one hundred eighty (180) or more consecutive days.

I. Revocation of Permit.

The Planning Department may, after due notice to the holder of a permit and an opportunity to be heard, revoke such permit upon a finding that:

- (1) The holder has violated any of the terms or conditions of the permit or any of the requirements of this Ordinance; or
- (2) The application on which issuance of the permit was based contains a material misrepresentation, either of commission or omission.

Section 4. General Standards.

Junkyards and automobile graveyards shall conform to the following requirements of this Ordinance at all times.

A. Pre-existing Junkyards and Pre-existing Automobile Graveyards.

Pre-existing junkyards and pre-existing automobile graveyards shall meet the following standards under this Section 4 within the times specified, which times shall run from the date of issuance of the permit:

- (1) Setbacks from streams, creeks, branches, and rivers, as set forth under subsection B(4) below, within twelve (12) months;
- (2) Requirements for a vegetative buffer or opaque fence, as set forth under subsection B(6) below, within twelve (12) months; for vegetative buffers,

planting as required under subsection B(6) shall take place within said twelve (12) month period; and

- (3) Confining junk and junked motor vehicles to the permitted premises, as set forth under subsection B(7) below, at the time the permit application is filed under this Article IV.

In addition, pre-existing junkyards and pre-existing automobile graveyards which are re-locating under subdivision (4)b of Section 3C above shall meet the spacing requirements for protected facilities as set forth under subsection B(1) below.

B. New Junkyards and New Automobile Graveyards.

New junkyards and new automobile graveyards shall meet all of the following standards as a condition of receiving and holding a permit hereunder:

- (1) Spacing Requirements – Protected Facilities.

No portion of the permitted premises of a junkyard or automobile graveyard shall be located within one thousand (1,000) feet of any of the following, which for purposes of this Article IV are hereinafter referred to as “protected facilities”:

- a. An educational facility;
- b. A North Carolina licensed child care facility;
- c. A North Carolina licensed assisted living facility;
- d. A North Carolina licensed nursing home;
- e. A public or privately owned hospital;
- f. A rural medical center;
- g. A church;
- h. An occupied dwelling unit other than one occupied by the owner or operator of the junkyard or automobile graveyard.

The provisions of this subdivision (1) shall apply only if the protected facility is already in existence prior to receipt by the Planning Department of an application for an initial permit under Section 3, subsection F(1) above. A protected facility other than a dwelling unit shall be deemed to be in existence if, at the time of receipt by the Planning Department of the application for said permit, construction of the protected facility has been

completed and all required licenses have been duly issued for operation of the same, or a building permit or required license has been duly issued for construction of the same. A dwelling unit shall be deemed to be in existence if, at the time of receipt by the Planning Department of the application for said permit, construction of the dwelling unit has been completed and it is occupied on a regular basis, or, in the case of a dwelling unit that has not been completed, a building permit has been duly issued for construction of the same.

In the event an application for an initial permit is received by the Planning Department prior to the existence of a protected facility as listed above, and such protected facility is thereafter located or constructed so as to make the provisions of this subdivision (1) applicable in the event of an expansion of the junkyard or automobile graveyard, said junkyard or automobile graveyard may nonetheless undertake any such expansion notwithstanding the spacing requirements established in this subdivision (1), provided that such expansion is located entirely on property owned by or leased to the owner or operator of the junkyard or automobile graveyard prior to the existence of the protected facility, and provided further that the owner or operator of the junkyard or automobile graveyard complies with the requirements of Section 3, subsection F(2) above with respect to renewal permits.

In order to establish permitted locations, measurement shall be made in a straight line, without regard to intervening structures or objects, from the boundary of the permitted premises of the junkyard or automobile graveyard to the nearest point of any building, structure, or use comprising all or a portion of the protected facility; provided, that where the protected facility is a dwelling unit, measurement shall be to the nearest point of the principal building or structure. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this subdivision. All measurements made hereunder shall be taken by the Planning Department, utilizing aerial photographs from the Wilkes County Tax Mapping Office, scaled for distance, or such other method as the Planning Department determines in its discretion to be reasonable and accurate.

(2) Spacing Requirements – Waiver.

A protected facility as listed in subdivision (1) may, for itself but not on behalf of another protected facility, waive all or any portion of the spacing requirements set forth therein. Said waiver shall be in writing and shall be in the form of an easement as set forth in Appendix "A" to this Ordinance. The waiver shall be signed by a duly authorized officer or officers of the protected facility, or, in the case of an occupied dwelling unit or a North Carolina licensed child care facility located in a dwelling unit, by all of the

owners of the dwelling unit. Where the dwelling unit is the subject of a current lease agreement, the waiver shall further be signed by the person(s) named as tenant(s) thereunder. The waiver shall also be signed by the owner(s) or operator(s) of the junkyard or automobile graveyard, and, if different, by all of the owners of the tract(s) of property on which the junkyard or automobile graveyard is situated. The waiver shall further be signed by the County Attorney, whose signature shall serve as a certification that the requirements of this subdivision (2) have been met. All of said signatures shall be notarized, whereupon the waiver shall be recorded in the Wilkes County Register of Deeds Office at the expense of the owner(s) or operator(s) of the junkyard or automobile graveyard. Following such recording, the spacing requirements of subdivision (1) as between said protected facility and said junkyard or automobile graveyard shall be deemed amended to conform to the provisions of the waiver. The easement granted by said waiver shall be appurtenant to and run with the land and shall be binding on the parties, their heirs, successors, and assigns; provided, that the same shall by its express provisions terminate at such time as said junkyard or automobile graveyard ceases to have a valid permit under this Article IV. The Planning Department shall, in the event a junkyard or automobile graveyard for which a waiver has been recorded ceases to have a valid permit, cause an instrument to be recorded in the Wilkes County Register of Deeds Office evidencing the same.

(3) Setbacks from Public and Private Roads.

No portion of the permitted premises of a junkyard or automobile graveyard shall be situated within thirty (30) feet from the traveled portion of a public or private road.

(4) Setbacks from Streams, Creeks, Branches, and Rivers.

All junkyards and automobile graveyards shall comply with State and Federal requirements for setbacks from streams, creeks, branches, rivers, and other surface waters, and, where required by State laws, rules, or regulations, shall at all times possess a valid permit from the North Carolina Division of Water Quality with respect to the same.

(5) Setbacks from Front, Side, and Rear Property Lines.

No portion of the permitted premises of a junkyard or automobile graveyard shall be located within ten (10) feet of the front, side, or rear boundary lines of the tract(s) of property on which said junkyard or automobile graveyard is situated.

(6) Vegetative Buffer or Opaque Fence.

Any portion of the permitted premises of a junkyard or automobile graveyard which is visible to any extent as set forth under Article I, Section 5, subsections (3) or (39) above, shall be screened by an opaque fence or vegetative buffer that provides a continuous all-season opaque screening, such that no portion of said permitted premises remains visible. Opaque fences shall be of a sufficient height and shall be constructed of a sufficient material, as approved by the Planning Department, to completely screen the permitted premises as set forth above. Vegetative buffers shall comply with such specifications as shall be developed by the Planning Department and shall consist of trees, shrubbery, and/or other natural vegetation which may reasonably be expected to grow to a height of at least six (6) feet within four (4) years of planting and to completely screen the permitted premises when fully grown. Additional screening shall not be required when natural vegetation exists that provides an all-season opaque screening as required hereinabove. If natural vegetation is reduced below the depth or effectiveness specified in this subdivision (6), the permitted premises shall be required to be screened as set forth herein. The owner(s) or operator(s) of a junkyard or automobile graveyard shall utilize good husbandry techniques such as pruning, mulching, and proper fertilization, so that the vegetative buffer will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time. Where due to distance, topography, or other site considerations, the Planning Department determines from field investigation that no opaque fence or vegetative buffer would be sufficient to screen the permitted premises as required under this subdivision (6), the Planning Department may waive said requirement by written waiver explaining the reasons for the same, which waiver shall be furnished to the owner(s) or operator(s) of the junkyard or automobile graveyard.

(7) Confining Junk and Junked Motor Vehicles to Permitted Premises.

All junk and junked motor vehicles shall be kept within the confines of the permitted premises of the junkyard or automobile graveyard at all times unless in motion by transport to or from the site.

(8) On-Site Traffic Areas.

On-site traffic areas for all junkyards and automobile graveyards shall be provided and arranged in such manner as to provide adequate areas to prevent backward movement onto any public or private road, driveway, or entranceway serving, crossing, or adjoining the permitted premises.

Section 5. Maintenance.

All junkyards and automobile graveyards shall be maintained by the owner or operator thereof so as to prevent a health or safety nuisance. The Health Department may inspect each junkyard and automobile graveyard to determine that no vectors are present. Should vectors be identified, the owner/operator/maintainer shall submit satisfactory evidence to the Health Department and Planning Department that vectors have been eliminated.

Section 6. Other Permits.

- A. Any building, zoning, watershed, environmental health, or other permit issued or to be issued by the County, which is associated with property that has a permit for a junkyard or automobile graveyard hereunder, may be denied or revoked by the County in accordance with the provisions of this Section 6 if the applicant for or holder of the permit has failed to develop or maintain the property in accordance with the requirements of this Ordinance.

- B. Before such building, zoning, watershed, environmental health, or other permit may be denied or revoked as set forth in subsection A above, the applicant for or holder of such permit shall be given ten (10) days written notice of intent to deny or revoke the same. Notice shall be given by the County department which issued or was to issue such permit and shall describe the reasons for the denial or revocation and the right of the applicant for or holder of the permit to a hearing in accordance with the procedures of said department. If any permit is denied or revoked as set forth herein, said department shall provide to the applicant for or holder of the permit a written statement of the decision and the reasons therefore. An appeal from a decision of a County department to deny or revoke a permit under this Section 6 shall be as provided by law.

Section 7. Variances and Appeals.

A. Board of Adjustment.

The Wilkes County Board of Adjustment, as established by G.S. §153A-345, shall hear all appeals and requests for variances under this Article IV.

B. Powers of Board of Adjustment under this Ordinance.

The Board shall have the following powers under this Ordinance:

- (1) To hear and decide applications for variances from the requirements of this Article IV; and

- (2) To hear, decide, and review appeals from any order, requirement, decision, or determination made by the Planning Department in the performance of its duties hereunder.

C. Board of Adjustment Rules of Procedure.

The Rules of Procedure duly adopted by the Board of Adjustment shall govern all proceedings that may come before it under this Ordinance. In the event of a conflict between said Rules of Procedure and the procedural requirements of this Ordinance, said Rules of Procedure shall govern.

D. Variances.

- (1) Variances may be authorized by the Board of Adjustment as to any of the requirements of Section 4 above; provided, that in no event shall a variance be authorized which destroys or is directly contrary to the intent of the Ordinance; provided further, that in no event shall a variance be authorized which is based on circumstances that are the fault of the applicant. The granting or denial of all variances shall be recorded in the minutes of the Board of Adjustment. Variances shall be granted only in cases involving unnecessary hardships, which, for purposes of this Section 7, shall refer solely to the unique or unusual character of the permitted premises, including but not limited to its size, shape, topography, or distance requirement. Hardships which are solely economic or financial in nature shall not be considered.
- (2) All requests for variances shall be in writing, shall specifically describe the variance requested, and shall demonstrate how the requirements of this Ordinance applicable to the variance requested have been satisfied. Requests for variances shall be forwarded or delivered to the Clerk to the Board of Adjustment.
- (3) Following receipt of a request for variance, the Clerk to the Board of Adjustment shall schedule the same for hearing before the Board of Adjustment. Notice of the date, time, place, and subject of said hearing, together with a copy of the variance request, shall be forwarded by registered or certified mail, return receipt requested, to the following persons, and the return receipt for the same shall evidence that it was received at least seven (7) days prior to the hearing by said persons:
 - a. The junkyard or automobile graveyard owner or operator requesting the variance; and
 - b. The record owners of all tracts of real property which are contiguous to the tract(s) owned by or leased to the owner or operator of the junkyard or automobile graveyard.

- (4) In presenting a variance request, the applicant shall bear the burden of proof that the requirements of this Ordinance with respect to variances have been met, which shall be by the greater weight of the evidence.
- (5) All evidence presented to the Board of Adjustment shall be sworn.
- (6) The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any witnesses in any matter coming before the Board.
- (7) The Board of Adjustment shall cause written notice of its decision to be delivered to the applicant for the variance. Delivery shall be by registered or certified mail, return receipt requested, and shall be deemed delivered on the date appearing on the return receipt.
- (8) The Board of Adjustment may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violation of any such conditions shall be a violation of this Ordinance and subject the offender to the penalties set forth in Article V below.

E. Appeals.

- (1) Notice of appeal from any order, requirement, decision, or determination made by the Planning Department hereunder shall be in writing, shall specifically state the grounds on which the same is based, and shall be forwarded or delivered to the Clerk to the Board of Adjustment. Said notice of appeal must be received by the Clerk within thirty (30) days following the applicant's or permit holder's receipt of the final decision of the Planning Department. Appeals not complying with the above requirements shall not be considered.
- (2) In presenting an appeal, the appellant shall bear the burden of proof, which shall be by the greater weight of the evidence.
- (3) All evidence presented to the Board of Adjustment shall be sworn.
- (4) The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any witnesses in any matter coming before the Board.
- (5) The Board of Adjustment shall cause written notice of its decision to be delivered to the appellant. Delivery shall be by registered or certified mail, return receipt requested, and shall be deemed delivered on the date appearing on the return receipt.

F. Application of Interpretation Power.

An appeal from an order, requirement, decision, or determination of the Planning Department shall be decided by the Board of Adjustment duly supported by competent evidence. In exercising this power, the Board of Adjustment shall act in a prudent manner so that the purpose and intent of the Ordinance shall be served. No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter of right any use otherwise limited or prohibited hereunder.

G. Appeal Stays Further Proceedings.

An appeal to the Board of Adjustment from a decision or determination of the Planning Department stays all proceedings in furtherance of the decision or determination appealed from, except as provided in subsection H below, during the pendency of the appeal.

H. Exceptions to Stay of Action.

An appeal to the Board of Adjustment of a decision or determination of the Planning Department shall not stay proceedings in furtherance of the decision or determination appealed from, if the Planning Director certifies to the Board of Adjustment, and the Board of Adjustment finds, either:

- (1) That a stay would cause imminent peril to life or property; or
- (2) That the situation subject to the appeal is transitory in nature, and therefore an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Planning Department shall set forth in the certificate facts to support its conclusion, and the Board of Adjustment shall set forth findings of fact sufficient to support its determination.

I. Appeals of Board Actions.

Every decision of the Board of Adjustment shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the later of the following to occur: the filing of the decision in the office of the Planning Department; or the delivery of the notice required under subsection D(7) or subsection E(5) above, as the case may be. Appeals not received within this thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Board of Adjustment upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

Section 8. Administration, Enforcement, and Penalties.

- A. Except as otherwise set forth in this Article IV, the administration and enforcement of and penalties under the same shall be as set forth in Article V below.
- B. Upon a violation of any of the provisions of this Article IV, the junk or junked motor vehicles (as the case may be) which is/are the subject of such violation shall thereupon be considered solid waste as defined under Article I, Section 5A above, and shall be subject to such provisions of Article II of this Ordinance as may be applicable, including provisions concerning administration, enforcement, and penalties for violations thereunder. The provisions of this subsection B shall also apply to a mobile home which has been stripped or partially dismantled, as set forth under subdivisions (37) and (79) of Article I, Section 5A above, notwithstanding the fact that said mobile home may be located on the permitted premises of a duly registered and/or permitted junkyard or automobile graveyard.

ARTICLE V
ADMINISTRATION, ENFORCEMENT, AND PENALTIES

Section 1. Administration and Enforcement.

- A. Storage and Disposal of Solid Waste.

Administration and enforcement under Article II of this Ordinance, "Storage and Disposal of Solid Waste," shall be vested with the Solid Waste Department, by and through such enforcement official as shall be duly authorized to act thereunder.

- B. Commercial Solid Waste Collectors.

Administration and enforcement under Article III of this Ordinance, "Commercial Solid Waste Collectors," shall be vested with the Solid Waste Department, by and through such enforcement official as shall be duly authorized to act thereunder.

- C. Junkyards and Automobile Graveyards.

Administration and enforcement under Article IV of this Ordinance, "Junkyards and Automobile Graveyards," shall be vested with the Planning Department, by and through such enforcement official as shall be duly authorized to act thereunder.

D. Ordinance Administrator.

For purposes of this Article V, the term "Ordinance Administrator" shall refer to the Solid Waste Department or its duly authorized enforcement official, or the Planning Department or its duly authorized enforcement official, as the case may be.

E. Cooperation with Other Departments.

The Ordinance Administrator shall administer and enforce the terms and provisions of this Ordinance in cooperation with the Sheriff's Office, the Health Department, the Inspections Department, and any other department of County government having involvement from time to time with the subject matter hereof.

Section 2. Procedure Upon Complaint of Violation.

The following procedure shall apply upon complaint of a violation of any of the provisions of this Ordinance:

A. Complaints.

Complaints of violations of Article IV of this Ordinance shall be submitted to the Ordinance Administrator in writing on a form developed by the Ordinance Administrator and shall be signed by the complainant(s). Complaints of violations of this Ordinance other than Article IV may be submitted to the Ordinance Administrator either verbally or in writing; in the case of a written complaint, need not be signed by the complainant(s); and may include complaints initiated by the Ordinance Administrator.

B. Notice of Violation and Order to Remedy.

If the Ordinance Administrator finds upon receipt of a complaint as specified in subsection A above that any provision of this Ordinance is being violated, he shall notify the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to remedy it, and advising the violator of the time period within which the violation shall be remedied. If the violation is not fully remedied within said time period, the Ordinance Administrator may thereafter seek enforcement by invoking any of the penalties or remedies authorized in this Article V.

C. Enforcement Without Notice of Violation.

Notwithstanding the provisions of subsection B above, in cases where delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, or in cases involving a second or

subsequent violation of this Ordinance by the same person(s), or in cases where the violation is recurring, the Ordinance Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in this Article V.

D. Scope of Orders to Remedy Violations.

The Ordinance of Administrator may order the person responsible for a violation to remedy the same, at such person's expense, by undertaking any and all reasonable actions to effect such remedy, including but not limited to clean-ups of sites on which solid waste and/or junk is located in violation of the terms of this Ordinance, and further including but not limited to a requirement that such person dispose of said solid waste or junk at the County sanitary landfill and pay all tipping fees and/or other charges in connection therewith.

E. Pre-Existing Junkyards and Pre-Existing Automobile Graveyards.

For violations of Article IV of this Ordinance as to a pre-existing junkyard or pre-existing automobile graveyard, the Ordinance Administrator may, upon ordering correction of a violation under subsection A above, or upon proceeding with any other penalty or remedy under this Article V, initiate proceedings to revoke the registration of said pre-existing junkyard or pre-existing automobile graveyard under the provisions of Article IV, Section 3, subsection D hereof.

Section 3. Election by County to Remedy Violation.

A. Election to Remedy Violation.

Notwithstanding the provisions of Section 2 above, the County may, in its discretion and under such circumstances and conditions as it deems appropriate, elect to remedy a violation of this Ordinance at its expense and/or through use of its own personnel, agents, and/or contractors, including but not limited to clean-ups of sites on which solid waste and/or junk is located in violation of the terms of this Ordinance. Upon electing such remedy, the County and its personnel, agents, and/or contractors shall have the right to enter on the premises where the violation has occurred, at reasonable times and under reasonable conditions, for the purpose of taking such actions as may be reasonably necessary to remedy said violation. The County's election to remedy a violation under this Section 3 shall not prejudice the right of the County to pursue any other remedy or enforce any penalty authorized under this Article V or under any other provision of law, including but not limited to the right of the County to recover its expenses under this subsection A through civil penalties or an order of abatement as set forth in Section 4 below. The County's expenses shall include, but shall not be limited to, tipping fees and/or other charges for disposing of solid waste and/or junk at the County sanitary landfill which the person responsible for the violation was ordered by the Ordinance Administrator to pay but failed to do so.

B. Pre-Existing Junkyards and Pre-Existing Automobile Graveyards.

For violations of Article IV of this Ordinance as to a pre-existing junkyard or pre-existing automobile graveyard, the County (through the Ordinance Administrator) may, upon electing to remedy a violation under subsection A above, and as a condition of such remedy, initiate proceedings to revoke the registration of said pre-existing junkyard or pre-existing automobile graveyard under the provisions of Article IV, Section 3, subsection D hereof.

Section 4. Penalties.

A. Interference.

It shall be unlawful for any person to interfere with, hinder, or harass the employees, agents, or authorized representatives of the County in the performance of their duties under this Ordinance.

B. Violations; Criminal Penalties.

- (1) The violation of any provision of this Ordinance shall be a Class 3 misdemeanor.
- (2) Each day's continuing violation of this Ordinance, where applicable, shall constitute a separate and distinct offense.

C. Violations; Civil Penalties.

In addition to, and not in lieu of, the criminal penalties and other remedies provided by this Ordinance or by State law, a violation of the provisions of this Ordinance may subject the offender to the civil penalties hereinafter set forth. The Ordinance Administrator shall be authorized to issue a citation to such person, giving notice of the violation. Citations so issued may be delivered in person or mailed by registered or certified mail to the person charged if such person cannot otherwise be readily located. The civil penalty or penalties set forth in the citation must be paid within seven (7) days of receipt of the citation and shall be paid to the Ordinance Administrator. For purposes of this subsection (b), a citation is deemed received on the date it is delivered to the person charged, or, in the case of registered or certified mail, on the date the return receipt is signed. The Ordinance Administrator shall forward all such penalties collected to the Finance Department for the County of Wilkes for application as by law provided. If the person charged fails to pay the civil penalty within the time prescribed, the County may recover said penalty by civil action in the nature of debt; or a criminal summons may be issued against such person charging a misdemeanor violation of this Ordinance under subsection B above and, upon conviction, such person shall in addition to the penalties prescribed for said

misdemeanor violation of this Ordinance be punished as the court prescribes for failure to pay the civil penalties imposed hereby; or the County may pursue both of said remedies, provided there shall only be one recovery for the civil penalty imposed. The civil penalties for a violation of this Ordinance shall be as follows:

- (1) For a violation of any provisions of Article II or Article IV, the civil penalty shall be Two Hundred Fifty Dollars (\$250.00) for a first offense, Five Hundred Dollars (\$500.00) for a second offense, and One Thousand Dollars (\$1,000.00) for a third or subsequent offense, and shall further include such additional amount as shall be necessary to reimburse the County for expenses incurred by the County in remedying the violation under Section 3, subsection A above.
- (2) For a violation of any provisions of Article III, the civil penalty shall be Twenty-Five Dollars (\$25.00) for a first offense, Fifty Dollars (\$50.00) for a second offense, and One Hundred Dollars (\$100.00) for a third or subsequent offense.

For a continuing violation, each day's violation shall be deemed to be a separate offense for purposes of imposing the civil penalties set forth above. In such cases the citation issued by the Ordinance Administrator shall state that the offense is continuing and that a separate civil penalty in the applicable amount is assessed for each day the violation continues. The Ordinance Administrator shall not thereafter be required to issue a subsequent citation for the same offense, and all civil penalties as set forth in the initial citation shall be paid for such time as the violation continues, with payment in full to be made no later than seven (7) days following receipt of the citation or seven (7) days following the last day of a continuing violation, whichever occurs last.

D. Equitable Enforcement; Order of Abatement.

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G. S. § 153A- 123(d) and (e).

E. Cumulative Remedies.

The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty by the County hereunder shall not preclude the election of any other remedy or enforcement of any other penalty by the County which may be provided under this Ordinance or by law.

Section 5. Severability.

If any Section, subsection, sentence, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Repeal of Prior Ordinance and Amendments.

The provisions of the Wilkes County Solid Waste Management Ordinance, as enacted by the Wilkes County Board of Commissioners on September 8, 1981, together with those Amendments to the same enacted on September 16, 1981 (licensing of solid waste collectors), July 2, 1984 (disposal of solid waste on private property), February 16, 1993 (warning citations – recorded in Book 714, Page 339, Wilkes County Registry), and April 17, 1995 (uncovered loads, storage and disposal, licensing of solid waste collectors, etc. – recorded in Book 743, Page 581, Wilkes County Registry), are repealed as of the effective date of this Ordinance.

Section 7. Conflict with Other Laws.

Wherever the provisions or application of this Ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions or application of this Ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions of this Ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

Section 8. Effective Date.

This Ordinance shall become effective upon adoption.

ON MOTION OF ~~COMMISSIONER~~ Vice Chairman Luther Parks **SECONDED BY**
COMMISSIONER Charlie Sink, **THE FOREGOING ORDINANCE**
WAS READ, APPROVED, AND ADOPTED BY THE BOARD OF COMMISSIONERS
OF WILKES COUNTY, IN REGULAR SESSION ASSEMBLED ON THE 3rd **DAY**
OF April, 20 07, **BY A VOTE OF** 4 **IN FAVOR AND** 1 **OPPOSED.**

WILKES COUNTY BOARD OF COMMISSIONERS

By: Zach Henderson
Zach Henderson, Chairman
Wilkes County Board of Commissioners

ATTEST:

Alene E. Faw
Alene E. Faw, Clerk



APPENDIX "A"

NORTH CAROLINA

WILKES COUNTY

EASEMENT AND WAIVER UNDER WILKES COUNTY SOLID WASTE ORDINANCE

THIS EASEMENT AND WAIVER UNDER WILKES COUNTY SOLID WASTE ORDINANCE (hereinafter "Easement") is made and entered into this _____ day of _____, 20____, pursuant to the provisions of Article IV, Section 4, subsection B(2) of the Wilkes County Solid Waste Ordinance as recorded at Book _____, Page _____, Wilkes County Registry, as the same may be amended from time to time, by and between the following parties:

Protected Facility:

(referred to in this Easement as the "Protected Facility")

Name(s) of Owner(s) _____

Mailing Address _____

Property Address [if different] _____

Wilkes County PIN No. _____ Deed Book _____, Page _____, WCR.

Nature of Protected Facility, as defined under Article IV of the Wilkes County Solid Waste Ordinance [*check applicable block*]:

- Educational Facility
- North Carolina Licensed Child Care Facility
- North Carolina Licensed Assisted Living Facility
- North Carolina Licensed Nursing Home
- Public or Privately Owned Hospital
- Rural Medical Center
- Church
- Occupied Dwelling Unit

Name(s) of Tenant(s) [if applicable] _____

Mailing Address _____

Starting Date of Lease _____ Expiration Date of Lease _____

Lease Recorded in Book _____, Page _____, WCR [if applicable]

Junkyard or Automobile Graveyard:
(referred to in this Easement as the "Junkyard or Automobile Graveyard")

Nature of use, as defined under Articles I and IV of the Wilkes County Solid Waste Ordinance
[check applicable block]:

- Junkyard
- Automobile Graveyard

Name _____

Owner (if different) _____

Address _____

Site of Operations _____

Wilkes County PIN No. _____ Deed Book _____, Page _____, WCR.

**Owner(s) of Property on which Junkyard or Automobile Graveyard
is Located (if different from above):**
(referred to in this Easement as the "Property Owners")

Name(s) and Address(es) _____

WITNESSETH:

THAT WHEREAS, Article IV, Section 4, subsection B(2) of the Wilkes County Solid Waste Ordinance (hereinafter "Ordinance") as enacted by the Wilkes County Board of Commissioners under date of April 3, 2007, and as recorded in Book _____, Page _____, Wilkes County Registry, as the same may be amended from time to time, establishes certain spacing requirements between a protected facility (as defined in the Ordinance) and a new junkyard or new automobile graveyard (as defined in the Ordinance); and

WHEREAS, Article IV, Section 4, subsection B(2) of the Ordinance, authorizes a protected facility (as defined in the Ordinance) to waive the spacing requirements between such protected facility and a new junkyard or new automobile graveyard (as defined in the Ordinance), said waiver to be in the form of an easement executed by the protected facility, the owner of said junkyard or automobile graveyard, and, if different, the owner(s) of the property on which the junkyard or automobile graveyard is situated; and

WHEREAS, the provisions of said easement are to be as prescribed in the Ordinance; and

WHEREAS, this Easement, being in form the same as that prescribed by the provisions of the Ordinance and attached to the Ordinance as Appendix "A" thereto, is executed by the above named parties for the purpose of complying with said provisions; and

WHEREAS, the above named parties desire by this Easement to evidence their agreement that the spacing requirements under the Ordinance as between the Protected Facility and the Junkyard or Automobile Graveyard be waived and modified as hereinafter set forth; and

WHEREAS, the Property Owners (if different from the Junkyard or Automobile Graveyard) execute this instrument for the purposes of being bound thereby and of complying with the Ordinance;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand received by the Protected Facility, the sufficiency of which is hereby acknowledged, and in further consideration of the mutual promises and covenants hereinafter set forth, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals shall constitute an integral part of this Easement and shall be incorporated herein and made a part hereof.

2. Waiver and Grant of Easement. Protected Facility waives the spacing requirements of the Ordinance as set forth under Article IV, Section 4, subsection B(1) thereof, as the same may be amended from time to time, and agrees that Junkyard or Automobile Graveyard may be located within, but no closer than, _____ (_____) feet from Protected Facility. For purposes of establishing and enforcing the foregoing, measurement shall be made as prescribed under Article IV, Section 4, subsection B(1) of the Ordinance. In order to

effectuate said waiver, Protected Facility doe hereby grant, bargain, sell and convey unto Junkyard or Automobile Graveyard and Property Owners, their heirs, successors and assigns, a perpetual, non-exclusive, and irrevocable right and easement to locate said Junkyard or Automobile Graveyard within, but no closer than, that distance from Protected Facility as set forth in this paragraph 2 and measured in accordance with the terms of the Ordinance, said right and easement to be appurtenant to and run with the land now owned by Junkyard or Automobile Graveyard and Property Owners; provided, however, that said right and easement, and the waiver granted hereunder, shall be subject to termination as set forth in paragraph 3 below.

3. Termination. The right and easement granted hereunder, and waiver effectuated thereby, shall terminate at such time as Junkyard or Automobile Graveyard ceases to have a valid permit under the provisions of Article IV, Section 3 of the Ordinance, as the same may be amended from time to time, for the permitted premises which are the subject of this Easement as set forth hereinabove.

4. Binding Effect. This Easement and all of the terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

TO HAVE AND TO HOLD the aforesaid right and easement herein conveyed to Junkyard or Automobile Graveyard and Property Owners, their heirs, successors and assigns forever, subject only to the termination provisions of paragraph 3 above.

IN WITNESS WHEREOF, all the parties hereto have hereunto set their hands and seals, the date and year first above written.

PROTECTED FACILITY

[required signatures]

JUNKYARD OR AUTOMOBILE GRAVEYARD

[required signatures]

PROPERTY OWNERS

[required signatures]

[NOTARIES]

THE UNDERSIGNED, County Attorney for Wilkes County, North Carolina, does hereby certify pursuant to Article IV, Section 4, subsection B(2) of the Ordinance, as the same may be amended from time to time, that the form and execution of this Easement comply with the requirements of said Ordinance.

County Attorney

NORTH CAROLINA

WILKES COUNTY

I, _____, a Notary Public of Wilkes County, North Carolina, certify that _____ personally came before me this day and acknowledged the execution of the foregoing instrument in his capacity as County Attorney for Wilkes County, North Carolina. Witness my hand and official stamp or seal, this the _____ day of _____, 20_____.

Notary Public

My commission expires: _____
