

# County Authority To Regulate Automotive Wrecking & Salvage Yards and Junkyards

Local Government Code § § 234.001 – 234.004  
Transportation Code Ch. 396



# County's Reasons to Regulate Auto Salvage and Wrecking Yards, and Junkyards



# Reasons to Regulate Auto Salvage and Wrecking Yards, & Junkyards

## Public Health, Safety, & Welfare

- State has a substantial interest regulating vehicle-dismantling and automobile-junkyard industry because of motor vehicle theft.
  - Automobile Junkyards are 1 of 4 “Closely Regulated” Commercial Industries, *New York v. Burger*, 107 S.Ct. 2636 (1987); *City of Los Angeles, Calif. v. Patel*, 135 S.Ct. 2443 (2015).
- Highway Beautification Act of 1965, 23 U.S.C. Sections 131, 136, 319 – “Lady Bird Johnson Highway Beautification Act”
  - “The Congress hereby finds and declares that the establishment and use and maintenance of junkyards .... should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.”
  - “Effective control means ... such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.”
- State Highway Beautification Act – Transportation Code Chapter 391
  - Junkyards must be screened
  - May not be within 1,000 feet of Right-Of-Way

# **County's Reasons to Regulate Auto Salvage and Wrecking Yards, and Junkyards**

- Fort Bend County does not regulate Auto Salvage and Wrecking Yards, and Junkyards
- Fort Bend County has not adopted any aesthetic standards for “screening” Auto Salvage and Wrecking Yards, and Junkyards
- County has the ability to adopt regulations specifying visual aesthetics standards and licenses for these businesses

# County Regulation of Businesses and Occupations

## Local Government Code Section 234.001

### Subchapter A. Certain Outdoor Businesses

#### 234.001 Definitions:

- (1) “Automotive wrecking and salvage yard” means a business, other than a business classified as a salvage pool operator under Chapter 2302, Occupations Code, that stores three or more wrecked vehicles outdoors for the purpose of:
  - (A) selling the vehicles whole; or
  - (B) dismantling or otherwise wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business.
- (4) “Junkyard” means a business that stores, buys, or sells materials that have been discarded or sold at a nominal price by a previous owner and that keeps all or part of the materials outdoors until disposing of them.

## **§ 234.002. Authority To Regulate; Adoption of Rule**

- (a) The commissioners court of a county by order may establish visual aesthetic standards for automotive wrecking and salvage yards, junkyards, ..... in the unincorporated area of the county.
- (b) The commissioners court may not include in an order adopted under this section a screening requirement for an automotive wrecking and salvage yard or a junkyard that is less restrictive than the screening requirement under Chapter 396, Transportation Code.
- (c) An order adopted under this section must provide a reasonable period of time not to exceed 12 months for a business operating on the effective date of the order to comply with the visual aesthetic standards.

Transportation Code § 396.021. Screening Requirements.

- (b) A person who operates a junkyard or an automotive wrecking and salvage yard shall screen the junkyard or automotive wrecking and salvage yard with a solid barrier fence at least eight feet high. The fence must be painted a natural earth tone color and may not have any sign appear on its surface other than a sign indicating the business name.

## § 234.003. Exceptions.

- (a) A commissioner's court may not regulate under this subchapter farm machinery owned or operated by the person on whose property the machinery is located and kept on that property for purposes other than sale.
- (b) A business subject to a screening requirement under Subchapter E of Chapter 391, Chapter 396, or Chapter 397, Transportation Code, that was in compliance with that screening requirement on **August 26, 1991**, is exempt from a screening requirement adopted under this subchapter.

## **§ 234.004. Civil Penalty**

- (a) The appropriate attorney representing the county in civil cases may file a civil action to recover a civil penalty from a business that violates a visual aesthetic standard established under this subchapter. The penalty may not exceed \$50 each day for the first 10 days of the violation, \$100 each day for the next 10 days, \$250 each day for the next 10 days, and \$1,000 for each day thereafter. In determining the amount of the penalty, the court shall consider the seriousness of the violation.
- (b) A penalty recovered under this section shall be deposited in the general fund of the county.

## §§ 234.001 – 234.004 Summary

- County can require automotive wrecking and salvage yards, and junkyards to erect a fence around their business (screen)
- Minimum Fencing Standards:
  - Must be a solid barrier
  - Must be at least 8 feet high
  - Must be painted natural earth tone color
  - May not have any sign appear on its surface other than a sign indicating the business name

# **Transportation Code Chapter 396.**

## **Automobile Wrecking and Salvage Yards**

§ 396.001. Definitions. In this chapter:

- (1) “Automotive wrecking and salvage yard” means an outdoor place where a person stores three or more vehicles for the purpose of dismantling or wrecking the vehicles to remove parts for sale or for use in automotive repair or rebuilding.
- (2) “Junk” means copper, brass, iron, steel, rope, rags, batteries, tires, or other material that has been discarded or sold at a nominal price by a previous owner of the material. The term does not include a wrecked vehicle.
- (3) “Junkyard” means a place where a business that owns junk, and is operated to store, buy, or sell junk, keeps all or part of the junk outdoors until the business disposes of the junk.
- (5) “Wrecked vehicle” means a discarded, junked, damaged, or worn-out automotive vehicle that is not in a condition to be lawfully operated on a public road.

# County Regulation of Junkyards or Automotive Wrecking and Salvage Yards

## 396.041. COUNTY LICENSE.

(a) **This section does not apply to:**

**(3) a junkyard or automotive wrecking and salvage yard in operation before June 1, 1987.**

(b) To protect the public health, safety, or welfare, the commissioners court of a county may by ordinance require a junkyard or automotive wrecking and salvage yard to be licensed by the county.

(c) **An ordinance may:**

**(1) impose a fee of \$25 for the issuance or renewal of a license;**

(2) impose a fee of not more than:

(A) \$150 for the issuance or renewal of a license, if the ordinance is adopted by the commissioners court of a county with a population of one million or more that contains two or more municipalities, each of which has a population of 250,000 or more; or

(B) \$500 for the issuance or renewal of a license, if the ordinance is adopted by the commissioners court of a county with a population of 3.3 million or more;

**(3) condition the license on the operation of the junkyard or automotive wrecking and salvage yard only at a location approved by the commissioners court; or**

**(4) establish grounds for suspending or revoking a license if the junkyard or automotive wrecking and salvage yard is not screened.**

(d) The county shall deposit each license fee received to the credit of the county general fund.

# Transportation Code Ch. 396 Screening Requirements and Location

## 396.021. Screening Requirements.

(b) A person who operates a junkyard or an automotive wrecking and salvage yard shall screen the junkyard or automotive wrecking and salvage yard with a solid barrier fence at least eight feet high. The fence must be painted a natural earth tone color and may not have any sign appear on its surface other than a sign indicating the business name.

## 396.022. Location of Yard

(a) A junkyard or an automotive wrecking and salvage yard may not be located:

- (1) within 50 feet of the right-of-way of a public street or state highway; or
- (2) within 50 feet of the nearest property line of a residence.

(b) A person may not accumulate or stack materials associated with a junkyard or an automotive wrecking and salvage yard higher than eight feet above ground level.

396.023. Effect of Local Ordinance. A person who operates a junkyard or an automotive wrecking and salvage yard, in screening the yard, shall comply, to the extent practicable, with an applicable ordinance adopted by a political subdivision.

# Adopting An Ordinance

## 396.042. Public Hearing.

- (a) Before adopting an ordinance under Section 396.041, the commissioners court must hold a public hearing.
- (b) Any interested member of the public may appear and testify at the hearing about the subject of the proposed ordinance.

## 396.043. Notice of Hearing

- (a) The commissioners court shall:
  - (1) post in a public place in the county courthouse a notice of the time, place, and general subject of the public hearing; and
  - (2) publish the notice in a newspaper of general circulation in the county.
- (b) The notice must be:
  - (1) posted for the 10 days preceding the date of the public hearing; and
  - (2) published at least once a week for the three weeks preceding the week the public hearing is held.

396.044. Conflict With Other Law. If a requirement, standard, or condition established under this subchapter conflicts with another law of this state, a rule adopted under state law, or a municipal ordinance, the stricter of the two provisions prevails.

# Enforcement

## 396.002. Injunction

- (a) A person is entitled to an injunction to prohibit a violation or threatened violation of this chapter or of a county ordinance adopted under this chapter.
- (b) The venue for the injunction proceeding is in the county in which any part of the junkyard or automotive wrecking and salvage yard is located.

## 396.024. Penalty.

- (a) A person commits an offense if the person knowingly violates Section 396.021 or 396.022.
- (b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$500.
- (c) Each day a violation continues is a separate offense.

## 396.045. Penalty.

- (a) A person commits an offense if the person violates an ordinance adopted under this subchapter that defines an offense.
- (b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 and not more than \$500.
- (c) Each day a violation continues is a separate offense.

# Summary of Transportation Code Ch. 396

- County can adopt ordinance requiring auto salvage and wrecking yards, and junkyards whose business operations began after June 1, 1987, to obtain a County issued license to operate in the unincorporated area of the County
- May charge a \$25.00 fee for the issuance or renewal of a license
- License conditional on Commissioners Court approval of designated location of businesses
  - Minimum of 50 feet from Right-Of-Way
  - Minimum of 50 feet from nearest property line of a residence
  - Location of business cannot be a place that would be detrimental to public health, safety, or welfare of the County
- Establish grounds to revoke the license for violating screening requirements

## Texas Counties With Ordinances

- Collin County
- Travis County
- Smith County
- Tarrant County



# Fire Marshal's Office



Permitting Process and Enforcement of Regulation

## ADOPTION OF SCREEN REQUIREMENTS AND COUNTY LICENSE

- First month after adoption, staff will be contacting and sending certified mail to all state regulated salvage yards.

## REGULATIONS AND COUNTY LICENSE TAKE EFFECT

- November 1, 2017: Visual aesthetic must be in effect unless variance been approved.
- January 1, 2018 all Salvage yards MUST have approved application.
- Each junk and salvage yard will be required to obtain a \$25 issuance or renewal of a license.

## ENFORCEMENT

- Will follow permitting and documentation set forward by County Fire Marshal's Office
- 234 Order For Visual Aesthetic Standards: Screening Requirements must be met
- 396.022: Locations
  - 50 Feet of right-of-way
  - 50 - 300 Feet from property line of a residence, school, church, hospital, or park
  - 1,000 Feet from any downstream lake, river, creek, tributary, or pond
  - Location detrimental to the public health, safety, or welfare
- Materials cannot be stacked higher than 8 feet
- Injunction from County Attorney Office

## PENALTY

- Any violation after November 1, 2017 of 234 Order or 396.022
- Misdemeanor punishable by a fine not less than \$100 or more than \$500
- Civil offense and can refer to County Attorney office.
- Each day violation continues is a separate offense.

# Screening Requirements



# Applications

- Application begins on the date a completed application is received by the Department.
- A “completed application” means an application that is in the form provided by this ordinance.
  - Filled out and accurately containing the required information
  - Including a description of a location of the property
  - Compliance with screening requirements
  - License fee has been paid.
  - Must have a map of the site of the junkyard or automotive wrecking and salvage yard indicating the location of required screening as described in ordinance.
- The location of junkyard or automotive wrecking and salvage yard must be described on the application and verified by Fire Marshal Staff:
  - Mail address
  - Legal description
  - Verifying the date of existence. (If in business before June 1, 1987 could be exempt from licensing)



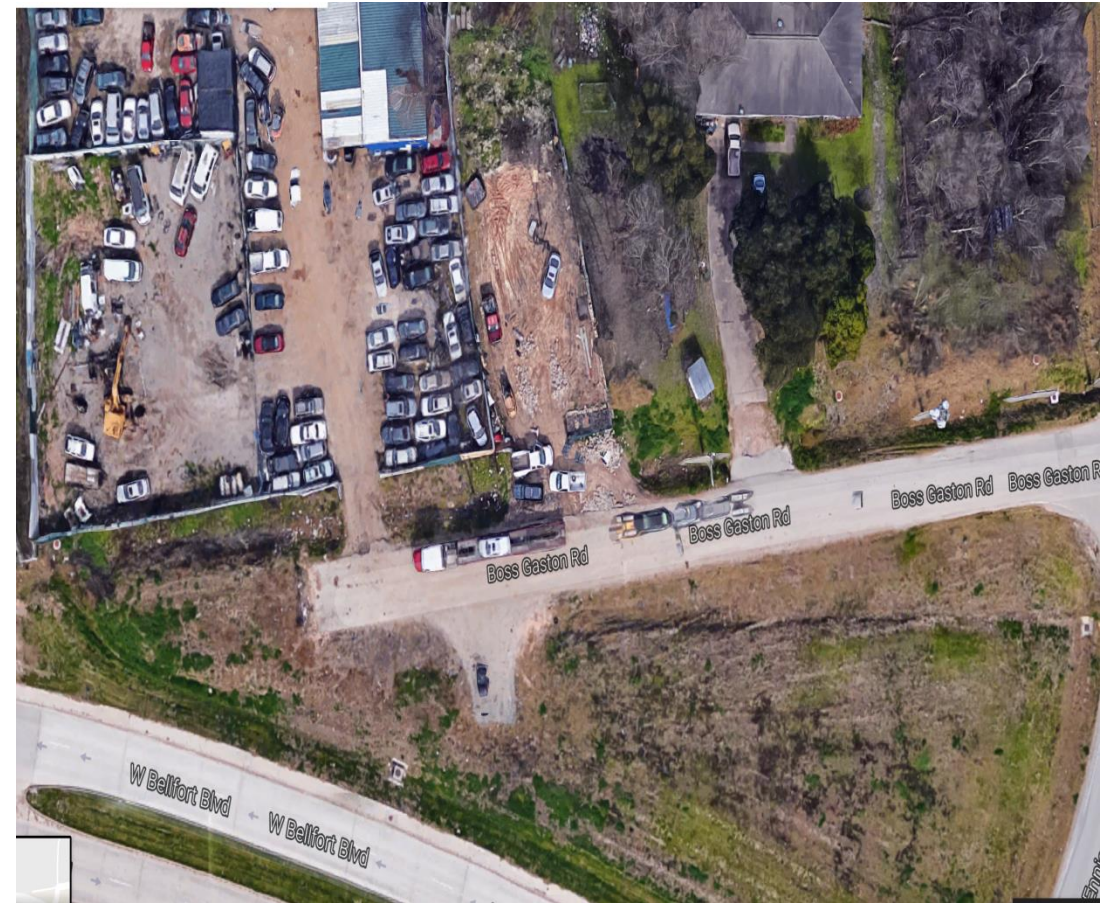
# Current Hurdles

- Currently there are 249 registered Salvage Yards or Junk Yards in the County needing to be verified and regulated. (On state paperwork)
- Multiple locations house multiple businesses, with Salvage and Junk Yards on the site.



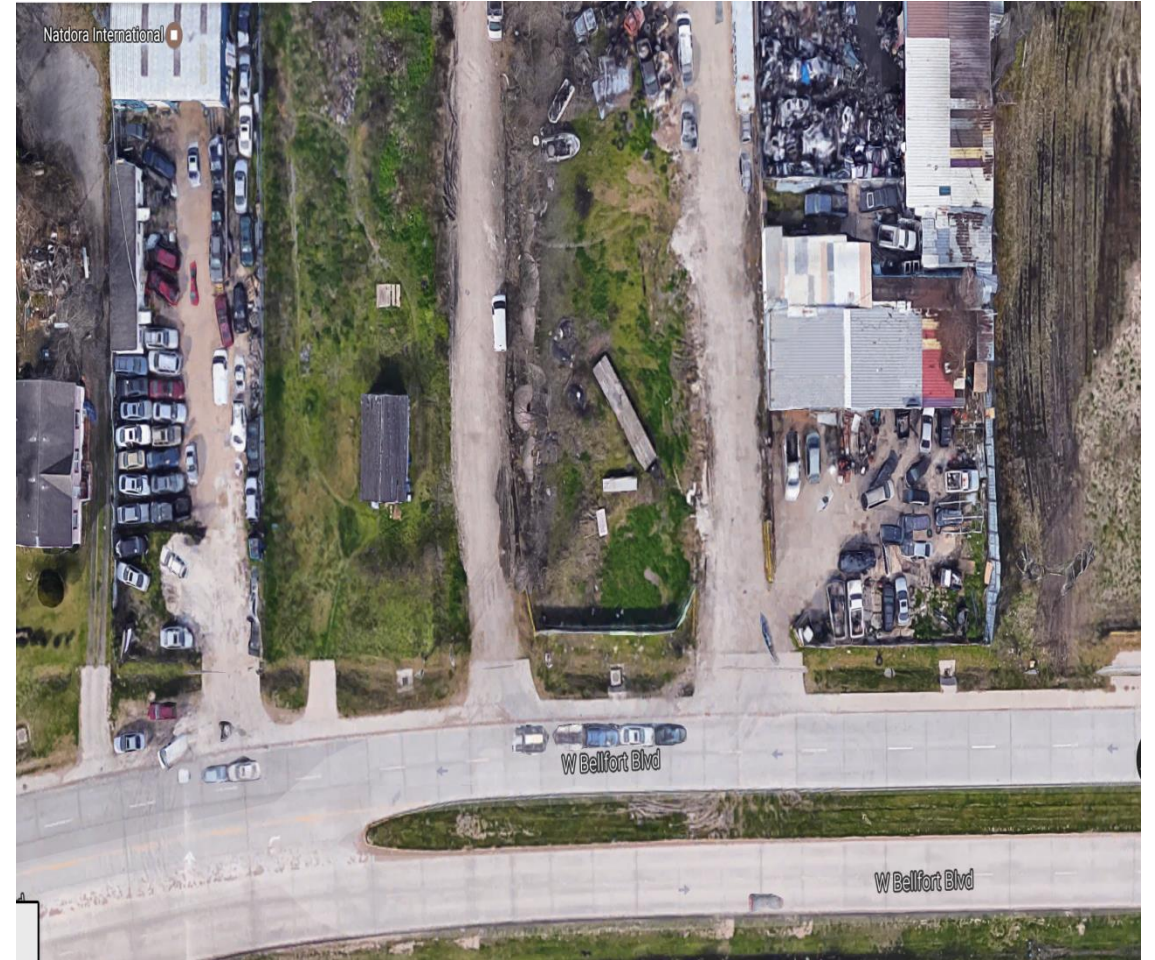
# Current Hurdles

- Need to map and coordinate all the locations within the county.
- Verify which businesses are currently in compliance with regulations on minimum distance requirements.
- Verify access to the buildings on site.



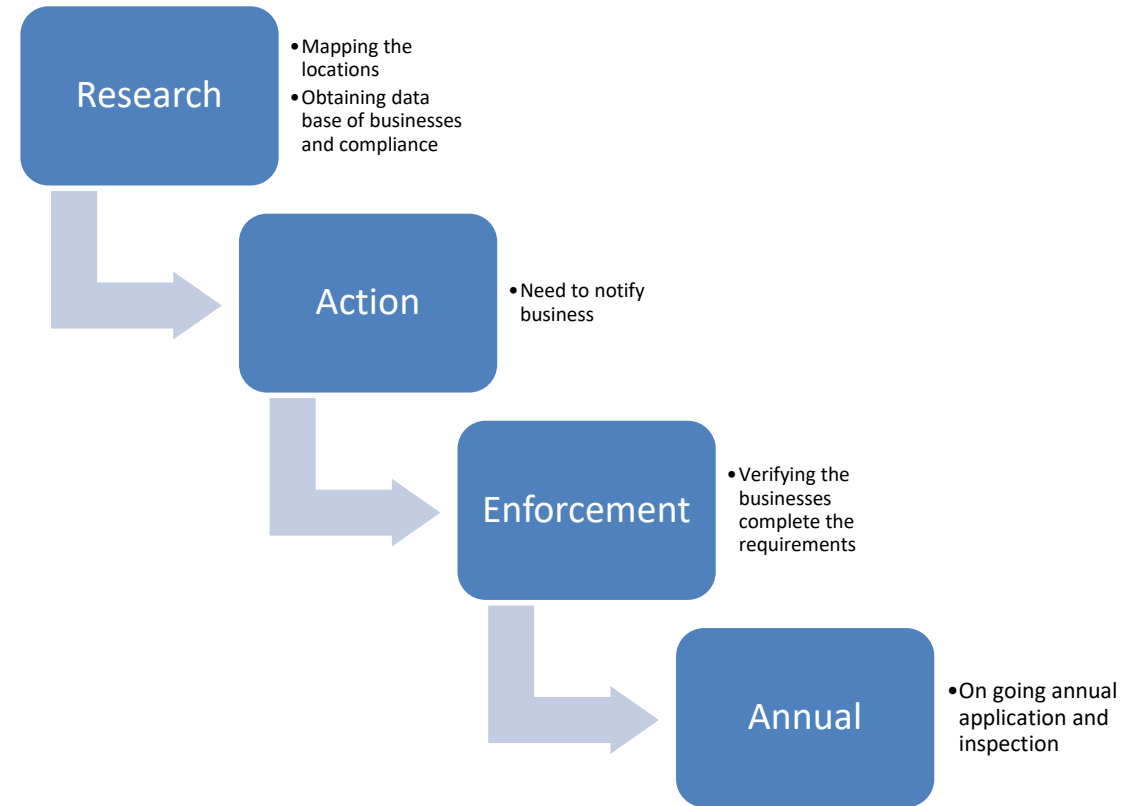
# Current Hurdles

- Work with other County Departments and make sure businesses are in compliance with all county regulations.
  - County Attorney's Office
  - Engineering
  - Environmental Health
  - Sherriff's Office



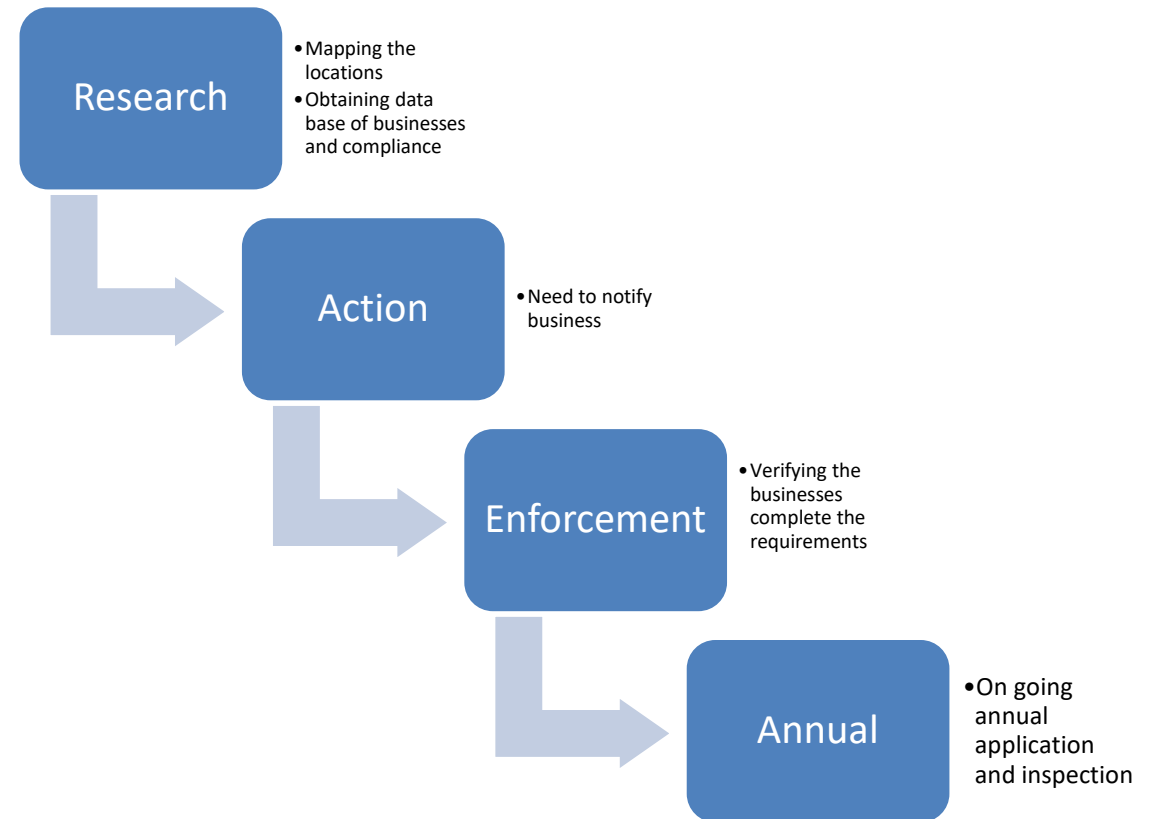
# Staffing and Management

- In the first two months, it would consume one administrative personnel to send out notice and collect all required paperwork for all of the existing businesses impacted by the new order.
- Within two months, an inspector would be needed to make locations and verify the 249 (and others not accounted for by state license) and also hand deliver the notice of regulations that certified mail was not successful.



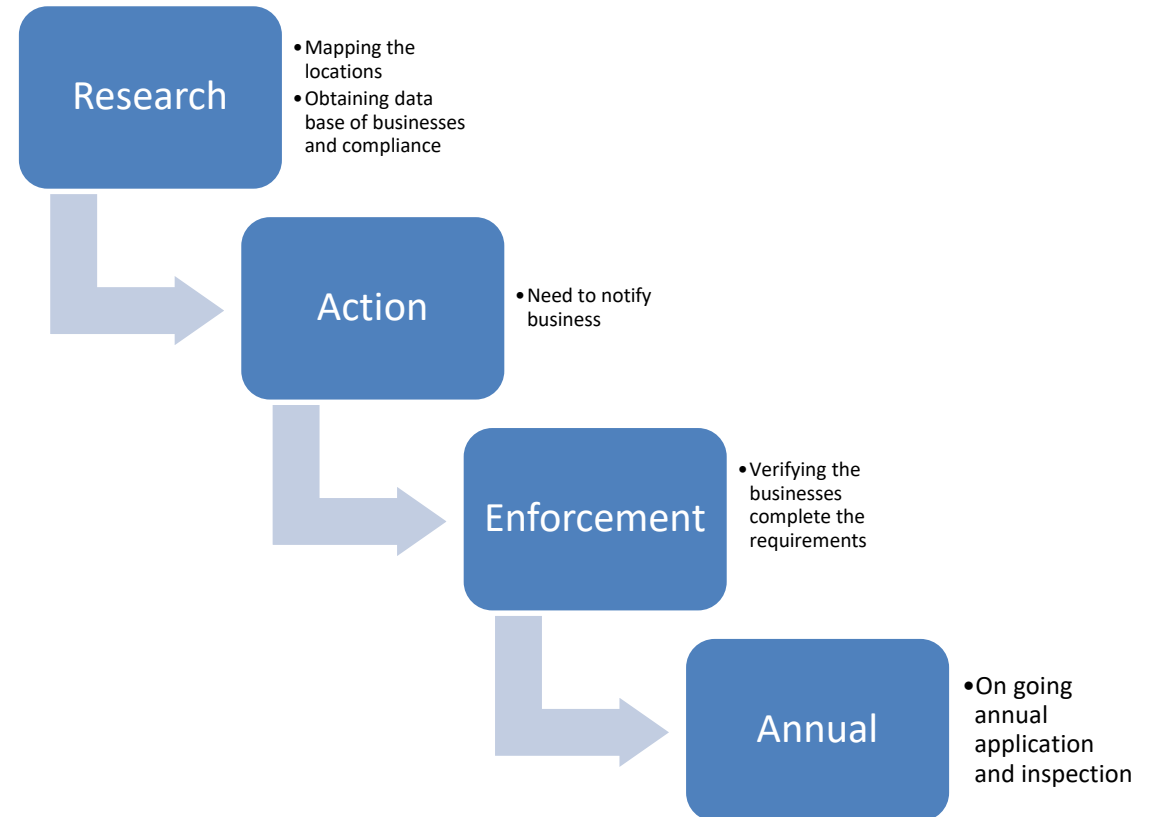
# Staffing and Management (Cont.)

- After the six month and enforcement on the businesses that are not meeting the minimum requirements will require a daily inspection/enforcement. (The amount of work and inspections needed can not be calculated and depends on the number of businesses that comes in compliance within the first six months.)
- **Staff increase**: two inspectors and then can re-evaluate after the first six months when the deadline passes.



# Staffing and Management (Cont.)

- “Unknowns” regarding staffing:
  - Officers would be required to make court appearances regarding each case.
  - Officers would be required to make any of the hearings regarding the variances or injunction



# Key Dates

## **November 1, 2017**

- Visual Aesthetics requirement will be enforced and weekly document of compliance of each business will begin. A weekly list will be provided to County Attorney office for non-compliance businesses.

## **January 1, 2018**

- Application due date. All open businesses must have completed application and required documents including be in full compliance with aesthetics. A current list will be provided of all businesses impacted by county ordinance. Any salvage or junk yard not having approved application will be turned over to the County Attorney office for an injunction.

Questions?