

Sec. 8-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings below ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized agent. An insurance company or other agent acting on behalf of a vehicle owner with respect to authorization of repairs.

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~~Automotive rebuilders.~~ Any person who, primarily or incidentally, wholly or part time, engages in, ~~conducts, or carries on~~ the public business of buying, selling, offering for sale, consigning to be sold, trading or otherwise ~~dealing with the public in or operating as a public dealer in used, or secondhand or salvage titled motor vehicles or trailers for the purpose by the method or plan of rebuilding or dismantling of wrecked or salvage titled motor vehicles or trailers or of dismantling, wrecking, disassembling and selling the dismantled wrecks or the disassembled parts or accessories thereof to the public.~~

~~Automotive repair facility.~~ Any person who engages in, ~~conducts or carries on~~ the public business of repairing motor vehicles or motor vehicle trailers, or both. This term includes a mobile automotive repair business. Automotive repair facility. Any person who engages in, conducts or carries on the public business of repairing motor vehicles or motor vehicle trailers, or both, including a mobile automotive repair business and a dealer in motor vehicles that repairs motor vehicles or trailers; provided, however, that this term does not include i) a fleet repair operation that exclusively services fleet-owned vehicles, ii) a person who engages in automotive repair solely for the purpose of recreation or education and not for any commercial purpose, or iii) an educational repair facility that does not provide repairs or services to the general public.

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Collision repair facility. Any automotive repair facility that is engaged in the public business of repairing or replacing the nonmechanical exterior or interior body parts of a damaged motor vehicle.

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Consent Automotive storage lot facility operator. Any person who engages in, conducts or carries on the public business of storing motor vehicles, including

wrecked, damaged, or ~~and~~ repossessed motor vehicles; provided however that this term does ~~shall~~ not include those who store new motor vehicles pending the retail sales thereof nor those who own or operate lots or garages for the hourly or daily parking of motor vehicles. The term also does ~~shall~~ not include any facility that is required to be licensed pursuant to the Vehicle Storage Facility Act (Chapter 2303 of the Texas Occupations Code ~~article 6687-9a, Texas Revised Civil Statutes~~), unless the facility—in addition to keeping vehicles parked or stored without the owners' consent, as authorized by a license granted thereunder—keeps vehicles parked or stored with the owners' consent.

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Dealer in motor vehicles. Any person who, ~~publicly engages in, conducts, or carries on~~ the public business of buying, selling, offering for sale to the public, consigning to be sold to the public, trading or otherwise dealing in motor vehicles or motor vehicle trailers, or both; provided, however, that this term does not include a person who repairs or stores disabled, wrecked or salvage titled motor vehicles, with and to the public.

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Mechanical repair facility. Any automotive repair facility that is engaged in the public business of making mechanical-related repairs to motor vehicles or motor vehicle trailers, or both.

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Used automotive parts recycler. Any person who engages in the public business of keeping or storing discarded, abandoned, junked, wrecked, worn out, salvage titled or otherwise disabled motor vehicles, including but not limited to cars, trucks, tractor trailers and buses, for the purpose of disassembling, dismantling, cutting up, stripping or otherwise wrecking those motor vehicles to extract therefrom parts, components or accessories for sale, for export or for use in an automotive repair or rebuilding business.

Sec. 8-17. Automotive board.

(a) There is hereby created an automotive board consisting of thirteen 44 members appointed by the mayor and confirmed by the city council. The mayor shall designate the member to be chairman. Each of the thirteen ~~eleven~~ positions shall be numbered and filled as follows:

- (1) Position number one shall be filled by a new car dealer.
- (2) Position number two shall be filled by a used car dealer.
- (3) Position number three shall be filled by a wholesale parts and accessories dealer.
- (4) Position number four shall be filled by a new and used automobile retail parts dealer.
- (5) Position number five shall be filled by a service station or gasoline station operator.
- (6) Position number six shall be filled by a person who owns and operates a vehicle storage lot.
- (7) Position number seven shall be filled by a person who is not related within the first or second degree by consanguinity or affinity to any person who holds any interest in or is employed by any automotive business of a type that is subject to regulation under this chapter and is situated in the county.
- (8) Position number eight shall be filled by a person who owns and operates a collision repair facility ~~an automotive repair facility~~.
- (9) Position number nine shall be filled by a person who owns and operates a used automotive parts recycler or an automotive rebuilder ~~an automobile wrecking and salvage yard~~.
- ~~(10)~~ Position number ten shall be filled by a person who owns and operates a mechanical repair facility.
- ~~(11)~~ Position number eleven shall be filled by a person who is not related within the first or second degree by consanguinity or affinity to any person who holds any interest in or is employed by any automotive business of a type that is subject to regulation under this chapter and is situated in the county.
- ~~(12)~~ Position number twelve ~~ten~~ shall be filled by a member of the legal department of the city designated by the city attorney, who shall be an ex officio member only.

(1314) Position number thirteen 44 shall be the chief of police or a his duly authorized representative from ~~assigned to~~ the automobile dealers detail, who shall serve as secretary of the automotive board and shall be an ex officio member only.

(b) Appointments to positions created hereunder shall be made on or before January second of each year and shall take effect on that date. Each member of the board shall serve for a term of one year and until his successor has been appointed and qualified. Any appointed member of the board shall be subject to discharge and removal from his position on the board at any time by the mayor.

(c) Each member of the automotive board shall receive \$25.00 per diem for his services while attending meetings of the automotive board, and each member of the board who is employed by the city shall receive the same compensation as other members of the board for attending those meetings not held during, or which continue beyond, his regular working hours. To the extent permitted by law, per diem payments to the board members shall be made out of the auto dealers' fund.

(d) Six ~~Five~~ members of the automotive board (excluding ex officio members) present at any meeting shall constitute a quorum for the transaction of all business of the board, and a majority vote of those members of the board present at any meeting shall prevail. The board shall hold not less than one nor more than three regular meetings each calendar month, provided that additional meetings may be conducted if required in order to meet deadlines imposed by law or by any contract to which the city is a party.

(e) No entity that is subject to regulation under this chapter, including a parent, affiliate, partner or subsidiary thereof, shall be permitted to have more than one representative on the automotive board at any given time. No person who is a member of the automotive board shall be related within the first or second degree by consanguinity or affinity to any other person who is a member of the automotive board. For purposes of this subsection, "representative" includes an owner, officer, employee or other representative.

**Sec. 8-22. Automotive repair facility display and recordkeeping requirements
Purchase or sale of vehicles, parts, etc., when identification marks
are removed, changed, etc.**

(a) An automotive repair facility shall prominently display and have available for inspection the following documentation, as applicable, in the areas of its business premises that are accessible to the public:

- (1) A valid and current automotive repair facility license;
- (2) A valid certificate of occupancy;
- (3) A work order authorization or repair estimate form;
- (4) All storage costs;
- (5) The maximum labor rates for any repair for which the facility charges an hourly rate;
- (6) A storage lot license;
- (7) A certificate of garagekeepers and liability insurance with a policy limit of not less than \$300,000.00;
- (8) A Texas sales tax permit; and
- (9) A certificate of registration, if the automotive repair facility is a collision repair facility.

(b) If a vehicle owner or authorized agent authorizes an automotive repair facility to perform repair work on a motor vehicle, the automotive repair facility shall maintain a record of the work order authorization, repair estimate or final invoice associated with that repair work for two years following the later of the date the work order authorization or repair estimate is provided to the vehicle owner or authorized agent or the date the final invoice is provided to the vehicle owner or authorized agent.

(c) If the total amount of repair work performed on a motor vehicle will exceed \$100.00, exclusive of any fee paid to another entity not owned by or affiliated with the automotive repair facility in connection with the towing of a motor vehicle, the automotive repair facility shall obtain the vehicle owner's or the authorized agent's signature or a facsimile or electronic signature thereof on a work order authorization or repair estimate prior to initiating any repair on the motor vehicle.

(d) The following information shall be included in the record associated with repair work performed on a motor vehicle:

- (1) The name, address, telephone number and automotive repair facility license number of the automotive repair facility;

- (2) The name, address and telephone number of the vehicle owner and of any authorized agent identified by the vehicle owner;
- (3) If more than 20% of the repair work has been subcontracted to be performed off-premises, a notation on the final invoice indicating the specific repair work that has been subcontracted, provided, further, that the automotive repair facility shall maintain a record of the name, address and telephone number of the person who performed the work;
- (4) The date of a work order authorization, repair estimate or final invoice associated with the repair work;
- (5) The year, make, model, odometer reading (if a reading can be obtained), license plate number and vehicle identification number of the motor vehicle;
- (6) A description of the vehicle owner's or authorized agent's request for repairs to or concerns about the motor vehicle;
- (7) The estimated labor charges based on a flat rate, an hourly rate, or a combination of the two;
- (8) An itemized estimate of the total repair costs, including administrative fees or teardown fees, if any;
- (9) The estimated charges for shop supplies or for hazardous or other waste removal;
- (10) The charges for daily storage of the motor vehicle, as applicable; and
- (11) A space for an initialed notation indicating that the vehicle owner requests the return of replaced parts. Unless otherwise provided by law or by the terms of a warranty, for any repair made to a motor vehicle that is incapable of being operated or is otherwise unsafe to operate due to an accident, as that term is defined in section 8-101 of this chapter, if the vehicle owner has requested the return of replaced parts, the automotive repair facility shall return replaced parts to the vehicle owner within a period of time not to exceed seven days from the date that repair of the motor vehicle has begun. For any other repair made to a motor vehicle, if the vehicle owner has requested the return of replaced parts, the automotive repair facility shall return replaced parts to the vehicle owner upon completion of the repair work.

For purposes of this subsection, a "record" consists of the set of documents associated with a repair, including a work order authorization, repair estimate, final invoice and other related documents.

(e) If the cost of repairs exceeds the amount of a work order authorization or repair estimate authorized by the vehicle owner or authorized agent pursuant to subsection (c) by the greater of \$100.00 or ten percent of the amount of the work order authorization or repair estimate, then prior to completing the repairs, the automotive repair facility shall obtain written approval (which may be in electronic or facsimile form) from the vehicle owner or an authorized agent.

(f) A vehicle owner or authorized agent may grant to an automotive repair facility a written waiver (which may be in electronic or facsimile form and shall include the vehicle owner's or the authorized agent's signature or a facsimile or electronic signature thereof) of the requirements of subsections (c) and (e) of this section, provided, however, that this subsection is not applicable to any repair made to a motor vehicle that is incapable of being operated or is otherwise unsafe to operate due to an accident, as that term is defined in section 8-101 of this chapter. A waiver granted under this subsection must include the following statement in at least 14 point font size bold type, with a signature line next to the statement: "I understand that my signature is required so that this automotive repair facility may obtain verbal approvals associated with the repair of this motor vehicle, pursuant to Section 8-22(f) of the Code of Ordinances of the City of Houston."

An automotive repair facility that obtains a waiver under this subsection shall maintain a record of the waiver, any oral work order authorization or repair estimate provided and any verbal authorization obtained pursuant to that waiver for two years following the date that an oral work order authorization or repair estimate is provided to the vehicle owner or authorized agent. A record of waiver, oral work order authorization or repair estimate and verbal authorization shall contain the information required by subsection (d) of this section. Signature of a waiver pursuant to this subsection does not constitute a waiver of the automotive repair facility's obligation to obtain authorization from the vehicle owner or authorized agent prior to the performance of work on the subject motor vehicle.

(g) If the total amount of repair work performed on a motor vehicle will exceed \$100.00, exclusive of any fee paid to another entity not owned by or affiliated with the automotive repair facility in connection with the towing of a motor vehicle, an automotive repair facility or one of its employees commits an offense if the automotive repair facility or employee:

- (1) Makes any repair or assesses any cost that has not been expressly authorized in writing (which may be in electronic or facsimile form) by the vehicle owner or an authorized agent, except as provided in subsection (f);
- (2) Alters any vehicle owner contract, work order authorization, repair estimate, final invoice, or other document without the written authorization (which may be in electronic or facsimile form) of the vehicle owner or an authorized agent, except as provided in subsection (f);
- (3) Fails to provide a vehicle owner a copy of a final invoice requiring the vehicle owner's or authorized agent's signature upon completion or cancellation of the repair work; or
- (4) Fails to provide a vehicle owner a copy of any other document requiring the vehicle owner's or authorized agent's signature upon request of the vehicle owner.

(h) An authorized agent that is an insurance company or an employee thereof commits an offense if, in connection with the repair of damage to a motor vehicle covered by an automobile insurance policy, the authorized agent or employee:

- (1) Solicits or accepts a referral fee or gratuity in exchange for referring a vehicle owner or third-party claimant to an automotive repair facility to repair the damage;
- (2) States or suggests, either orally or in writing, to a vehicle owner that the vehicle owner must use a specific automotive repair facility or an automotive repair facility identified on a preferred list compiled by an authorized agent for the damage repair or parts replacement to be covered by the policy; or
- (3) Restricts the right of a vehicle owner or third-party claimant to choose an automotive repair facility by requiring the vehicle owner or third-party claimant to travel an unreasonable distance to repair the damage.

(i) Any record required to be maintained under this section shall be kept in written form or in an electronic recordkeeping system.

~~It shall be unlawful for any person to purchase, sell or exchange in the city any motor vehicle, motor vehicle trailer, motor vehicle accessories and tires or motor vehicle parts from or on which any of the original manufacturer's identification numbers, or other original marks of identification, shall have been removed, obliterated, defaced, or changed, unless there shall be filed with the chief of police or his duly authorized~~

~~representative, prior to and within five days of the date of such sale, purchase or exchange, a full description of the property involved and the reason for or explanation of the removal, obliteration, defacement or changing of identification numbers or marks, such description to be in writing and duly sworn to before a notary public.~~

Sec. 8-26. Other required records.

(a) Every person who, as dealer, ~~shall~~ makes any sale, purchase, transfer or exchange of either a new or used motor vehicle, or new or used motor vehicle trailer, in the city shall keep a ~~permanent, written record~~ of any and all transfers and assignments, if any, made by the ~~such~~ person, or chattel mortgages, liens or notes covered by or secured by lien upon those ~~such~~ motor vehicles or motor vehicle trailers. ~~The, such record shall include the following information:~~

- ~~(1) The, to show the name and address of each transferee; and~~
- ~~(2) A, description of the mortgage, lien or note transferred and of the property affected thereby, including the motor number, model and license number of the motor vehicle or trailer therein involved.~~

~~It shall be required that the person selling the car has a valid government issued ID, and that all information is recorded off of such ID.~~

(b) Every licensee under this article who ~~shall~~ repossesses any motor vehicle or trailer or forecloses any lien or mortgage upon any motor vehicle shall keep a ~~permanent, written record thereof, and of each such repossession or foreclosure; that includes the following information:~~

- ~~(1) The, stating the name of the mortgagor or lienholder;~~
- ~~(2) The, the amount of indebtedness, principal, interest and other items, if any, separately;~~
- ~~(3) The, the date and manner of foreclosure, whether by suit or private sale; and~~
- ~~(4) The, the description of the property repossessed or foreclosed upon, including the motor number, model and license number of the motor~~

vehicle or trailer therein involved, and the name and address of the purchaser thereof.

(c) ~~Every licensee~~ Each person to whom a license is issued under this article ~~who deals to deal~~ in secondhand or used motor vehicle parts or accessories shall keep ~~at all times in the place of business of such licensee~~ a written record of, secondhand and used motor vehicle accessories and parts except tires, purchased by the licensee or deposited for any purpose with such licensee, and of each motor vehicle or motor vehicle trailer purchased or received by such person for the purpose of rebuilding or dismantling the same. With respect to accessories and parts, the ~~record inventory~~ shall include any item that constitutes a "major component part" as defined in section 501.0914 of the Texas Transportation Code, or a "component part," ~~"front end assembly," "tail section," "interior component part," "minor component part," or and~~ "special accessory part" as those terms are defined in section 2302.251 of the Texas Occupations Code ~~article 6687-2 of the Texas Revised Civil Statutes~~. Additionally, the record shall include any other part or parts that are regularly the subject of trade by automotive parts thieves as determined by regulation promulgated by the automotive board; and supported by clear and convincing evidence that there is recurring ~~reoccurring~~ theft of the same type of part, provided that; any such automotive board regulation that adds additional parts shall expire on the second anniversary of its adoption unless extended by the automotive board, and again supported by clear and convincing evidence that there is recurring ~~reoccurring~~ theft of the same type of part.

The Such record shall include the following information:

- (1) The vehicle identification number must show the motor number and license number of all motor vehicles or trailers transferred unto the licensee;
- (2) An ~~and an~~ accurate description in the English language of the secondhand or used motor vehicle parts or accessories article purchased or deposited, the vehicle identification number of the motor vehicle from which the parts or accessories were removed, the amount of money paid for same or loaned thereon, and the time of purchase, transfer, or deposit thereof;
- (3) The, ~~showing the~~ name, age, sex, signature, if any, residence, race, and approximate height and weight of the person from whom the licensee ~~so~~ acquired the property;
- (4) A, ~~and shall include a~~ photograph depicting the ~~showing the~~ face of such transferor or seller ~~together~~ with the secondhand or used motor vehicle parts or accessories article ~~so~~ purchased and a thumbprint of the ~~such~~

transferor or seller, provided that if a licensee acquires an entire motor vehicle or trailer ~~is acquired from the person who is the owner of the motor vehicle or trailer~~, then in lieu of the aforesaid photograph and thumbprint, the buyer shall ~~may~~ obtain and maintain a copy of the seller's vehicle title and. ~~It shall be required that the person selling the car has a valid government issued ID, and that all information is recorded off of such ID. Such written record must also include the vehicle identification number of the motor vehicle or the trailer; and~~

- (5) A. ~~Such written record must also include a unique identification inventory number which corresponds to a transaction and has been attached to the motor vehicle or trailer and to the secondhand or used motor vehicle parts or accessories purchased by the licensee. Such written record shall be kept in book form or in an approved computerized format. The record must include the part description and a unique inventory number or motor vehicle identification number from which the part came.~~

(d) It is an affirmative defense to prosecution under this ~~section subsection~~ that both the transferor and the transferee are city and/or state licensed dealers in used parts and used accessories and that the transfer was documented in full compliance with ~~State Law 6687-2~~ Chapter 2302 of the Texas Occupations Code requesting the name of the business that the motor vehicle or motor vehicle part is purchased from and the Texas Certificate of Inventory number or federal taxpayer identification number and the record must include the part description and a unique inventory number or motor vehicle identification number from which the part came. It is also an affirmative defense to prosecution under this section that the transferee is a city licensed dealer in used parts and used accessories and that the transferor is a person who conducts a similar business in another jurisdiction who caused the parts or accessories to be delivered to the transferee by commercial freight line or common carrier and the transferee documented the inventory number kept by the transferor for the part under Texas state law, if the transferor resides in Texas, or obtain the transferor's federal taxpayer identification number if the transferor resides outside the State of Texas. The provisions of this ~~section subsection (e)~~ are in addition to any applicable state law, including but not limited to ~~article 6687-2 of the Texas Revised Civil Statutes~~ Chapter 2302 of the Texas Occupations Code. Records forms promulgated hereunder shall be designed to include any state requirements that are also applicable in order to avoid any duplication of records. Any violation of this section that also constitutes a violation of state law shall be punishable as provided by the applicable state law.

(e) A person who sells a motor vehicle, motor vehicle trailer, or a secondhand or used motor vehicle accessory or part to a licensee under this section must have a valid government issued ID from which the licensee shall record the required information.

(f) Any record required to be maintained under this section shall be kept at the place of business of the licensee in written form or in an electronic recordkeeping system.

Sec. 8-30. Used automotive parts recyclers, automotive rebuilders and Automobile wrecking and salvage yards automotive repair facilities.

(a) *Definitions:*

Automotive business dealing in used parts and used accessories ~~means as used herein shall mean~~ any lot or tract of land used for the purpose of carrying on the trade of a "used parts and used accessories dealer," as defined in this chapter.

Automotive repair facility ~~means as used herein shall mean~~ any lot or tract of land used for the purpose of carrying on the trade of an "automotive repair facility," as defined in this chapter.

Automotive rebuilder ~~means any lot or tract of land used for the purpose of carrying on the trade of an "automobile rebuilder," as defined in this chapter.~~

Used automotive parts recycler ~~means Automobile wrecking and salvage yard as used herein shall mean~~ any lot or tract of land used for the purpose of carrying on the business or trade of a an "used automotive parts recycler automotive rebuilder," as defined in this chapter, ~~or any lot or tract of land whereon three or more discarded, abandoned, junked, wrecked, worn out or otherwise disabled automotive vehicles, including but not limited to autos, trucks, tractor trailers and buses, are kept or stored for the purpose of disassembling, dismantling, cutting up, stripping or otherwise wrecking such automotive vehicles to extract therefrom parts, components or accessories for sale or for use in an automotive repair or rebuilding business.~~

Solid ~~as used herein in reference to a fence~~ means shall mean a fence constructed and maintained so that the outer surface thereof is continuous and without interstices, gaps, spaces or holes. This shall not be construed to prohibit any spaces or gaps left by a properly constructed and maintained chain link fence with strips or slats as hereinafter provided.

Stored ~~means as used herein shall mean~~ placed on or left on property.

(b) *Compliance.* All lots and tracts of land used for the purpose of carrying on the business or trade of ~~an automotive wrecking and salvage yard~~ a used automotive parts recycler, or an automotive rebuilder, or an automotive repair facility or an automotive business dealing in used parts and used accessories shall comply with the requirements of this section.

(c) *Removal of flammable liquids from vehicles.* All gasoline, gasohol, and diesel fuel shall be completely drained and removed from any junked, wrecked or abandoned automotive vehicle before the vehicle is stored at a ~~placed in any automotive wrecking and salvage yard~~ used automotive parts recycler, or ~~yard operated by an~~ automotive rebuilder or automotive repair facility in the city. All flammable liquids drained from any vehicle in ~~the such~~ yard shall be stored in a safe manner and in strict accordance with the Fire Code of the city.

(d) *Fencing wall requirements.* Each area utilized for the keeping or storing of used automotive parts and/or used accessories by an automotive business dealing in used parts and used accessories or each area that is utilized for the keeping, storing, dismantling, cutting up, stripping or otherwise wrecking of any discarded, abandoned, junked, wrecked or otherwise disabled automotive vehicles upon any used automotive parts recycler, automotive rebuilder ~~automotive wrecking and salvage yard~~ or any automotive repair facility within the city shall be completely surrounded and enclosed by a solid fence or wall as follows:

- (1) Any side of ~~the such~~ yard ~~that which~~ extends generally parallel to, and within one hundred (100) feet of any public street right-of-way shall be enclosed ~~bounded~~ by a solid fence or wall at least eight feet in height.
- (2) All sides of ~~the such~~ yard not included in (d)(1) above shall be enclosed ~~bounded~~ by a solid fence or wall at least six feet in height.

(e) *Construction, maintenance of fence or wall.* Every fence or wall herein required shall be constructed and maintained as follows:

- (1) All fences shall be constructed of wood, masonry, corrugated sheet metal, chain link, or any combination thereof; provided, however, that any one side of a used automotive parts recycler, automotive rebuilder ~~an automotive wrecking and salvage yard~~ or automotive repair facility shall be enclosed ~~bounded~~ by a fence or wall constructed of only one of the above materials.
- (2) Chain link fences shall be constructed of galvanized chain link fencing with wood or metal slats or strips run through all links of the chain link fence.

- (3) All fences or walls shall extend downward to within three inches of the ground and shall test plumb and square at all times.
- (4) All fences or walls shall be constructed in compliance with all applicable provisions of the Construction Code.

(f) *Use of wall, door or building as part of fence or wall.* Any part of a fence or wall required by subsection (d) ~~hereof~~ may consist in whole or in part of a solid wall and door, or walls and doors of any completely enclosed building on the said premises, if the such wall or door meets all construction requirements hereinabove set forth.

(g) *Gates at openings in enclosure.* Openings in the prescribed enclosure ~~that~~ which are necessary to permit reasonable access to ~~said~~ used automotive parts recyclers, automotive rebuilders ~~automotive wrecking salvage yards,~~ automotive repair facilities or automotive businesses dealing in used parts and used accessories shall be equipped with a solid gate or gates, constructed and maintained in accordance with the requirements for a fence or wall hereinabove set forth. ~~Gates~~ Such gates shall be closed and securely locked at all times, except during normal business hours.

(h) *Use of premises outside enclosure.* It shall be unlawful for any owner, operator, his agents or employees, to display, store or work on any junked or wrecked automotive vehicle, or the parts, accessories or junk therefrom outside of or above the herein required fence or wall. It is a defense to prosecution under this subsection that the actor has established and is using one unfenced rectangular area not exceeding ten feet by 100 feet in maximum dimensions on upon the premises to display dismantled component parts or accessories for sale, which parts and accessories are stored and arranged in compliance with all other applicable provisions of this section. The display area authorized in the foregoing affirmative defense may also be utilized for the display for sale of whole motor vehicles, whether wrecked or damaged ~~or not~~, provided that the operator of the premises also holds an automotive dealer's license for vehicle sales at the premises. Nothing in this subsection shall be construed to authorize the use of any public street or other public property for the sale or display of any merchandise in contravention of section 40-8 of this Code.

(i) *Arrangements of vehicles, parts and materials.*

- (1) All automotive vehicles, parts and other materials located in or on the premises of any used automotive parts recycler, automotive rebuilders, ~~automotive wrecking and salvage yard~~ or automotive repair facility or automotive business dealing in used parts and used accessories in the city shall be arranged so as to allow reasonable access to, and inspection

of, the premises by authorized fire, health, neighborhood protection and police officials of the city.

- (2) All automotive vehicles, parts and materials stored in any used automotive parts recycler, automotive rebuilder ~~automotive wrecking and salvage yard~~, automotive repair facility, or automotive business dealing in used parts and used accessories must be stored at least six inches above the surface of the yard. A motor vehicle stored in its normal upright position shall be deemed to be stored in compliance with the foregoing requirement if all portions of the body floor plan of the vehicle are situated at least six inches above the lot surface, regardless of the height of wheels, tires, brake components, axles and suspension components that are attached in their normal manner to the vehicle and regardless of the height of wheels, tires or other devices used to elevate the vehicle.

It is an affirmative defense to prosecution under this item (2) that the vehicle's parts and materials were in process of disassembly and were situated within a "disassembly area" designated ~~upon an automotive wrecking and salvage yard~~ a used automotive parts recycler or automotive rebuilder pursuant to item (3), below, at the time of the alleged offense.

- (3) Each duly licensed used automotive parts recycler or automotive rebuilder ~~automotive wrecking and salvage yard~~ may file with the automotive board a plat or legal survey of its said yard accurately setting forth under oath the dimensions and size of the yard thereof, exclusive of all covered improvements and out buildings utilized as part thereof and in connection therewith. ~~The Such~~ plat or legal survey shall also accurately depict all adjoining public thoroughfares. Each ~~such~~ yard filing a ~~such~~ plat or legal survey may designate upon the such plat or legal survey an accurately delineated open area not to exceed 20 percent of the unimproved area within the yard, or 21,780 square feet within the yard, whichever designation is smaller, as a "disassembly area." Upon approval of the such plat or legal survey and designated "disassembly area" by the automotive board, the duly licensed yard operator may use the such area for the active disassembly of wrecked vehicles in the usual course of yard business. A true copy of the such approved plat or legal survey and designated "disassembly area" shall be displayed at all times upon the premises of business for review by any peace officer of the State of Texas or the neighborhood protection official of the city.

(j) *Control of vegetation.* It shall be unlawful for the owner or operator of a used automotive parts recycler, automotive rebuilder ~~an automotive wrecking and salvage~~

yard, automotive repair facility or automotive business dealing in used parts and used accessories to allow grass or other vegetation to grow to a height of more than nine inches above the ground

(k) *Watershed.* No used automotive parts recycler, automotive rebuilder ~~automotive wrecking and salvage yard~~, automotive repair facility or automotive business dealing in used parts and used accessories shall be located on top of a watershed.

(l) *Compliance with regulations and ordinances.* All used automotive parts recyclers, automotive rebuilders ~~automotive wrecking and salvage yards~~, and all automotive repair facilities and all automotive businesses dealing in used parts and used accessories must at all times be in full compliance with all city ordinances regarding health and safety, including specifically without limitation, all requirements of the Fire Code, and with all state regulations regarding hazardous waste disposal, including specifically without limitation, all requirements promulgated by the Texas Commission on Environmental Quality.

(m) *Improved surface.* All portions of lots or tracts of land used in the operation of a used automotive parts recycler, an automotive rebuilder ~~an automotive wrecking and salvage yard~~, an automotive repair facility or an automotive business dealing in used parts and used accessories must have an all-weather surface of concrete, asphalt, blacktop, stone, macadam, limestone, iron ore, brick pavers, gravel or shell of ~~the~~ such composition and drainage as to enable the safe and effective movement of motor vehicles upon all portions of the lot, both under their own power and under tow, at all times regardless of prevailing weather conditions.

(n) *Violations and penalties.* Failure by any person to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of the owner or operator of a used automotive parts recycler ~~an automotive wrecking and salvage yard~~, an automotive rebuilder, automotive repair facility or an automotive business dealing in used parts and used accessories under this Code. It shall be unlawful for any person to fail to comply with any applicable provision of this section.

(o) *Vehicles stored less than 30 days for repairs.* For automotive repair facilities, it is an affirmative defense to prosecution under subsections (c) and (d), above, that a wrecked or disabled vehicle stored thereupon is owned by a person other than the owner of the automotive repair facility and is being stored at the automotive repair facility for the purpose of its repair at the automotive repair facility and that the vehicle has been stored upon the automotive repair facility for 30 days or less at the time of the alleged offense.

Sec. 8-31. Penalty.

Unless otherwise provided, any person who violates any provision of this article, regardless of whether the person holds a license issued pursuant to this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$200.00 nor more than \$500.00; provided, however, if the person is convicted of an offense under this article that is also a violation of the penal laws of the state, the person shall be subject to the penalties set out in the penal laws for the offense.

A used parts and accessories seller commits a separate offense for each sale of used parts ~~and/or~~ used accessories made without a valid salesman's license. The offense shall be punishable by a fine of not less than \$200.00 nor more than \$500.00 than for each transaction.

Sec. 8-32. Administrative fees and teardown fees.

(a) It shall be unlawful for any owner, operator, his agents or employees to charge any vehicle owner an administrative fee in excess of \$50.00. For purposes of this subsection, "administrative fee" means a fee assessed for the processing of paperwork on a motor vehicle being repaired.

(b) It shall be unlawful for any owner, operator, his agents or employees to charge any vehicle owner a teardown fee in excess of the manufacturer standards established in the most recent version of an estimating guide for motor vehicle components and labor hours, including a guide published or otherwise maintained by CCC Pathways, Mitchell, Audatex, or AllData. For purposes of this subsection, "teardown fee" means a fee assessed for the removal of a motor vehicle component to determine the extent of damage associated with that motor vehicle component.

(c) Any person alleging a violation of this section shall file a sworn complaint in the municipal court.

Sec. 8-58. Fees.

(a) The following schedule shall constitute the license fees payable for each of the respective licenses issued under this division, all of which fees shall be payable to the chief of police:

	Initial License Fee	Renewal License Fee
(1) Dealer in new motor vehicles	\$330.00	\$310.00
(2) Dealer in used motor vehicles	\$120.00	\$100.00
(3) Wholesale automotive jobber and supply dealer	\$220.00	\$200.00
(3) Retail supply dealer	\$170.00	\$150.00
(4) Automotive rebuilder and dismantler	\$610.00	\$590.00
(4) Used automotive parts recycler	\$610.00	\$590.00
(6) Automotive parts rebuilder	\$220.00	\$200.00
(7) <u>Consent Automotive storage lot facility operator</u>	\$330.00	\$310.00
(8) Automotive repair facility	\$490.00	\$470.00
(9) Used parts and used accessories dealer	\$380.00	\$360.00
(10) Body shop facility with storage privileges	\$510.00	\$470.00

(b) Fees on all licenses issued during any calendar year shall be paid in advance to the chief of police.

(c) Any combination license may be issued for any combination of the businesses governed by this article, upon payment of the appropriate fee as herein provided, after application for the such license has been made and approval has been granted by the automotive board pursuant to the terms of this division. The following schedule of combination license fees shall apply and shall be payable to the chief of police in lieu of separate licenses for two or more classes of business conducted by the licensee:

	Initial License Fee	Renewal License Fee
(1) A dealer in new vehicles, used vehicles, and parts and accessories, new or used, or both	\$500.00	\$460.00
(2) A dealer in used vehicles and parts and accessories, new or used, or both	\$500.00	\$460.00
(3) A person engaged in the business of wholesale automotive jobber and supply dealer and in the business of retail supply dealer	\$390.00	\$350.00

(d) A dealer who inadvertently obtains duplicate licenses for the same address under subsections (a) and (c) shall be entitled to a refund for the such duplication; provided, the city shall retain \$40.00 for handling the refund.

(e) Upon disapproval by the automotive board of any license issued hereunder, the applicant (by requesting same in writing) shall be entitled to a refund of money paid the city; provided, the city shall retain \$40.00 for handling the refund.

(f) No license issued pursuant to the provisions of this division may be renewed more than 30 days after the date of its expiration. If a license had expired and not been renewed within 30 days, the applicant may apply for a new license as an initial applicant. The fee for ~~such~~ a new license shall be the fee set out for an original license.

(g) It shall be unlawful for any person to operate a business for which a license under this division is required without first obtaining a license therefor.

Sec. 8-61. Display.

(a) A license issued under this division shall be displayed in a conspicuous place in the office of each place of business maintained by the licensee.

(b) The license number of an automotive repair facility license issued under this division shall be included in print or internet advertisements for the automotive repair facility and printed on work order authorization, repair estimate and final invoice forms utilized by the automotive repair facility.

(c) The city shall maintain a list of all licensed automotive repair facilities on its website and shall update that information on a quarterly basis.

Sec. 8-91. Purpose; relationship to other provisions.

(a) Pursuant to the provisions of this division, an automotive repair facility that primarily functions as a body shop may qualify to obtain a license as a body shop facility with storage privileges. A holder of that license shall, subject to compliance with this division, be entitled to function as both an automotive repair facility and a consent an automotive storage lot facility operator under this article so that a storage fee may be imposed for vehicles that are stored with the owner's consent pending their repair at the body shop or other disposition. The holder of a body shop facility with storage privileges license shall not be required to also hold an automotive repair facility license or a consent automotive storage lot facility's operator's license for operations at the covered premises in compliance with this division.

(b) A body shop facility with storage privileges that is licensed under this division is not required to comply with the land use requirements established in section 28-34 of this Code. However, it is the intent of city council in adopting this article that the article cannot be used to circumvent the 300-foot land use restrictions that apply therein to any storage lot, whether in existence at the time of adoption of this article or created thereafter.

(c) Nothing contained in this division shall be construed to preclude an automotive repair facility, whether primarily operating as a body shop or not, that is situated in a location that complies with section 28-34 of this Code from obtaining a license under the state Vehicle Storage Facility Act or a private storage lot authorization under article III of this chapter, as applicable, and conducting vehicle storage operations thereunder.

(d) Nothing contained in this division shall be construed to preclude any automotive repair facility, whether primarily operating as a body shop or not, from storing vehicles without imposing a fee for the service as authorized in section 8-30 of this Code.

(e) All provisions of this article that apply to automotive repair facilities shall also apply to a body shop facility with storage privileges license holder, except that the license holder may not store vehicles as provided in section 8-30(o) of this Code.

Sec. 8-92. Licensing requirements.

In order to obtain a body shop facility with storage privileges license, the applicant must demonstrate:

- (1) That on the premises where the licensed facility will be situated, the applicant operates a body shop that is operationally equipped with one or more frame machines, an estimating system, two or more fully equipped body repair bays and one or more city permitted vehicle paint booths, which equipment shall be situated within enclosed structures.
- (2) That the licensed facility may not derive more than 25 percent of all income from fees charged specifically for storage of vehicles on the premises.
- (3) That, in addition to the vehicle storage area required under item (5), below, the operator has, upon the premises, not less than five parking spaces for every 1,000 square feet of gross floor area, as required for an auto repair establishment under chapter 26 of this Code.
- (4) That the premises abuts a major thoroughfare and will take access to the premises for all purposes relating to the operation of the body shop and the storage of vehicles from the major thoroughfare, provided, however, that any body shop facility with storage privileges that commenced operations on or after December 27, 1999, in compliance with this subsection may continue to operate at its premises notwithstanding a subsequent reclassification of the abutting major thoroughfare to a lower classification of public street.
- (5) That the premises has an enclosed all-weather-improved surface parking area not larger than seven and one-half marked parking spaces per 1,000 square feet of gross floor area, measured and construed in the same manner provided in chapter 26 of this Code, that will be utilized as its vehicle storage area. The area shall be enclosed in the same manner described in section 8-30(e) of this Code, provided that if the premises abuts any deed restricted property and the deed restrictions require a particular type of fence, then the fence shall also conform to the style required in the abutting property's deed restrictions. The vehicle storage area shall be located on the same tract or parcel of land where the body shop is situated or a contiguous tract or parcel of land. For this purpose, "contiguous" shall include an abutting tract or parcel and shall also include a tract or parcel that is situated directly across the major thoroughfare from which the body shop takes it access. For these purposes, the term

directly across means that 50 percent or more of the tract frontages on the opposite sides of the major thoroughfare are parallel.

- (6) That signs are conspicuously posted at each public entrance to the premises setting forth the hours of operation and the amount of any daily vehicle storage fee imposed.

Sec. 28-34. Location of automobile storage lots, used automotive parts recyclers or lots used for open storage by automotive rebuilders ~~automobile wrecking and salvage yards~~ and lots used for open storage by metal recyclers/secondhand metal dealers.

(a) *Prohibition.* It shall be unlawful for any person to operate or cause to be operated within 300 feet of an existing church, school, or residence:

- (1) An ~~an~~ automobile storage lot, whether licensed as an automotive storage lot pursuant to chapter 8 of this Code or as a vehicle storage facility pursuant to the Vehicle Storage Facility Act (Chapter 2303 of the Texas Occupations Code article 6687-9a, Texas Revised Civil Statutes);
- (2) A used automotive parts recycler, ~~an automotive wrecking and salvage yard~~ as defined in chapter 8 of this Code;
- (3) A lot used for open storage by an automotive rebuilder as defined in chapter 8 of this Code;
- (4) A, ~~a~~ lot used for open storage by a metal recycler/secondhand metal dealer, ~~all~~ as defined in chapter 7 of this Code; or
- (5) Aa lot used for open storage by a used parts and used accessories dealer as defined in chapter 8 of this Code, ~~within 300 feet of an existing church, school, or residence.~~

The 300 foot measurement required under this section shall be made on the basis of land uses in existence at the time that the original permit or license application for the facility is filed and at the time of any expansion of the size of the property used for the facility. A facility that is lawfully in operation shall not become unlawful because a church, school, or residence is subsequently established within 300 feet of the facility and, provided that the facility remains continuously in operation without cessation for a

period of ~~180~~ 90 or more consecutive days, the permit or license for the facility may, subject to compliance with other applicable laws, nevertheless be renewed or transferred."

(b) *Definitions and standards:*

~~(6)–Boundary of operations. The~~ Shall be the fence line limiting the portion of a larger lot or tract to be used as the business operation area for the business requiring licensure under this Code. The boundary of operations and the fence shall be shown on a legal (or official) survey filed with the application for license and must be fenced according to the applicable standards of this Code. The fence shall be shown on the survey. The survey shall additionally show each route that will be used for vehicular ingress or egress to the business operation area. If the ingress or egress will not be exclusively taken from one or more public streets that abut the business operation area, then each route of vehicular ingress or egress must be included within the surveyed and fenced boundary of operations. This definition is applicable to automobile storage lots, used automotive parts recyclers, lots used for open storage by automotive rebuilders ~~automobile wrecking and salvage yards~~, and lots used for open storage by metal recyclers/secondhand metal dealers only and has no effect on any other person or business required to be licensed by the city.

~~(1)–Church.~~ A structure where a society of persons who profess a religious belief regularly assemble for religious worship or religious instruction and which is exempt from ad valorem taxes.

~~(5)–Measurement of 300 feet. The~~ Shall be in a straight line from the property line or (at the applicant's request) from the boundary of operations of the automobile storage lot, used automotive parts recycler, a lot used for open storage by an automotive rebuilder ~~automobile wrecking and salvage yard~~, or lot used by a metal recycler/secondhand metal dealer to the property line of the church, school or residence.

~~(4)–Open storage.~~ Materials stored upon a lot not within an enclosed structure.

~~(3)–Residence.~~ Any structure which, at the time that ~~of~~ the application for a license is filed, is being used as a dwelling place for residential purposes, whether single-family or multifamily. A structure located on a lot or tract of land used as an automobile storage lot, used automotive parts recycler, lot used for open storage by an automotive rebuilder, ~~automobile wrecking and salvage yard~~

or lot used for open storage by a metal recycler/secondhand metal dealer shall not be considered a residence within the terms of this definition.

~~(2)~~ *School.* A public or private elementary, junior high or ~~and~~ high school.

(c) *Existing structure.*

- (1) The terms of this section shall apply to all existing licensed automobile storage lots, used automotive parts recyclers, lots used for open storage by automotive rebuilders ~~automobile wrecking and salvage yards~~, and lots used for open storage by metal recyclers/secondhand metal dealers, from and after December 22, 1982, and to all lots used for open storage by a used parts and used accessories dealer, from and after December 22, 1993. Any owner or operator of an automobile storage lot, used automotive parts recycler, a lot used for open storage by an automotive rebuilder, ~~automobile wrecking and salvage yard~~ or lot used for open storage by a metal recycler/secondhand metal dealer, which as of December 22, 1982, and any owner or operator of a lot used for open storage by a used parts and used accessories dealer, which as of December 22, 1993, is located within 300 feet of a church, school or residence shall, within 30 days of the date specified above, as applicable, make application with the appropriate licensing department for a special permit that indicates that the holder of the permit is located within 300 feet of a church, school or residence. It shall be unlawful to own or operate an automobile storage lot, used automotive parts recycler, a lot used for open storage by an automotive rebuilder ~~automobile wrecking and salvage yard~~, a lot used for open storage by a metal recycler/secondhand metal dealer or a lot used for open storage by a used parts and used accessories dealer within 300 feet of a church, school or residence without first procuring the special permit required by this subsection.
- (2) Subject to compliance with other applicable laws, including chapters 7 and 8 of this Code as applicable, a special permit may be transferred to another owner. Application shall be made to the department responsible for issuing the permit, ~~whether the police department or the administration and regulatory affairs department,~~ and the permit shall be executed by both the transferor and the transferee. ~~If in the event that the use of the premises is suspended at any time for a period of 90 or more consecutive days, then the special permit shall expire. This, and this provision shall not be construed to allow the transfer of a special permit that has so expired.~~ A special permit may be revoked for failure to comply with any

applicable law, regulation, or statute relating to the licensing or other regulation of the business.

- (3) If improvements upon any lot covered by this subsection are destroyed or damaged as a result of fire, explosion, weather or other Act of God in excess of 50 percent of the value of the then-current market value of the improvement based on the current city tax rolls, the ~~such~~ improvement shall not be rebuilt or otherwise reconstructed. Nothing in this subsection shall be construed to prohibit the minor repair or routine maintenance of any existing improvements.
- (4) No holder of a special permit shall be entitled to expand or otherwise enlarge the business by adding additional improvements or land or to make a new investment thereto; provided, however, that this restriction on the addition of improvements shall not apply to improvements made in order to comply with any state or local ordinance, statute or regulations.
- (5) If a licensed automobile storage lot, used automotive parts recycler, a lot used for open storage by an automotive rebuilder ~~automobile wrecking and salvage yard~~, or a lot used for open storage by a metal recycler/secondhand metal dealer or a used auto parts and used accessories dealer holds a valid special permit under this subsection, then it shall not be placed in violation of this section, or become ineligible for a renewal of a permit or license, or be required to obtain a special permit, due to the subsequent construction or placement of a church, school or residence within 300 feet of the location of the ~~such~~ licensed business.

(d) *Newly annexed areas.* Persons owning or operating automobile storage lots, used automotive parts recyclers, lots used for open storage by automotive rebuilders ~~automobile wrecking and salvage yards~~, lots used for open storage by metal recyclers/secondhand metal dealers, and used parts and used accessories dealers situated in areas that are newly annexed into the corporate limits of the city after the dates specified in subsection (c) above, as applicable, may apply for and be granted special permits in the same manner provided for existing owners or operators under subsection (c), above. The application for the special permit must be filed within 30 days following the effective date of the annexation of the area where the lot or yard is situated. Special permits issued under this subsection and holders thereof shall be subject to all of the same restrictions imposed under subsection (c) with regard to other special permits and holders thereof, provided that the effective date of the annexation of the area where the lot or yard is situated shall apply in lieu of the applicable date specified in subsection (c) above, in any determination made with regard to the special permit or business operated thereunder. The provisions of this subsection shall not be

available to the operator of any premises unless the premises was open for a business subject to regulation under this section on the date of first publication in a newspaper of general circulation of the notice of annexation hearings under Section 43.052 of the Local Government Code or unless the operator had, on or before that date, leased or purchased the property and had actually commenced improving it for the express purpose of establishing the regulated business.

(e) *Reserved.*

(f) *Improvement of specially permitted facilities.*

(1) Notwithstanding the provisions of item (4) of subsection (c), above, the planning commission may authorize the improvement of a specially permitted facility that is regulated under this section in accordance with this subsection. An application for improvement of a specially permitted facility shall be made to the planning official in a form prescribed by the director of planning and development and shall include:

- a. A nonrefundable fee of \$200.00; and
- b. A statement of the specific facts and reasons that the applicant believes warrant the authorization, which shall address each of the criteria of item (4) of this subsection.

The director shall review ~~cause~~ each application to be reviewed and provide ~~shall cause~~ a staff report regarding the application to be provided to the commission prior to the meeting at which the application will be considered. The commission shall schedule the consideration of each application for a meeting of the commission and shall instruct the applicant and the director to give ~~cause~~ notice to be given as provided in items (2) and (3) of this subsection.

(2) Notice of the commission meeting at which the application will be considered shall be given in both English and Spanish at the expense of the applicant by:

- a. The publication of notice, in a form to be prescribed by the director, in a newspaper of general circulation in the city, at least 15 days before the date of the commission meeting;
- b. The mailing of notice, at least 15 days before the date of the commission meeting, to the owners, as shown on the most recently

approved tax roll, of each tract or parcel of property that is situated in whole or in part within a distance of 300 feet from the boundaries of the property that is the subject of the request for a transfer application;

- c. The mailing of notice, at least 15 days before the date of the commission meeting, to all civic associations registered with the planning and development department whose boundaries include all or a portion of the area situated within 300 feet of the property that is the subject of the transfer application; and
 - d. The posting of notice upon a sign on the property for which the improvement is requested, giving notice of the application and the date of the commission meeting. The director shall prescribe the dimensions of the sign and shall establish criteria for the location of the sign. If the property for which the application is made fronts on or has access to more than one public street, the director may require placement of more than one sign on the subject property upon a finding that more than one sign is necessary to provide adequate notice. The sign or signs shall be posted 72 hours after the director gives notice for their posting to the applicant, provided that the sign shall be posted at least 15 days prior to the date of the hearing.
- (3) The applicant shall provide the following information to the director at the time specified by the director:
- a. A certified list of the property owners to whom notice must be given pursuant to item (2) of this subsection; and
 - b. For each property owner and registered civic association to whom notice must be given pursuant to item (2) of this subsection:
 - 1. One stamped envelope addressed to each property owner and registered civic association; and
 - 2. One copy of the notice of the public hearing in the form prescribed by the director.

The applicant shall also provide proof to the director that the required newspaper notices have been timely published and that the required sign(s) have been posted and maintained for the required time period.

- (4) The applicant and any member of the public may address the commission and present evidence or comments regarding the application at the meeting at which it is considered. The burden shall be upon the applicant to show by a preponderance of the credible evidence that the applicant is entitled to the granting of the application. Following the receipt of evidence and comments, the commission shall consider the matter and shall grant the application if it determines that each of the following criteria exists:
- a. The improvement will not substantially increase the vehicular traffic on any street that is not a major thoroughfare. In making this determination, the commission shall consider whether the facility takes its primary access from a major thoroughfare and whether it has rail or waterborne access for the receipt and shipment of materials.
 - b. The improvement will not have a negative effect upon the appearance of the community in which it is situated. In making this determination, the commission shall consider the applicant's plans for perimeter fencing and landscaping as well as the appearance of any structures, equipment, or other features of the facility that may be visible from the exterior.
 - c. The facility, by virtue of its activities, does not pose a substantial risk of adverse health effects, unlawful noise, fire, explosion, or other nuisance conditions, and the proposed improvements will not increase those risks. In making this determination, the commission shall consider the prior operating history of the facility.
 - d. There exists upon the property a capital investment of at least \$500,000.00 current book value in facilities and equipment.
 - e. The facilities and equipment upon the property were placed for the operation of the facility for which the authorization is sought and may not readily be adapted to other uses that are not subject to regulation under this section or be removed to another location.
 - f. The granting of the application will not be injurious to the public health, safety, and welfare.

The commission may condition its granting of the application, ~~if granted,~~ upon the applicant's installation and maintenance of buffer zones, trees,

shrubs, special fences, or other improvements to reduce noise or improve the external appearance of the property if it determines that the action is desirable to protect the public health, safety, and welfare. Any such requirement shall be consistent with the purpose of causing the use of the applicant's property to be as harmonious as practicable with the use of other nearby properties.

- (5) The applicant or any person to whom notice is required to be given under part b. or c. of item (2) of this subsection may appeal, provided that the person attended and participated in the commission meeting, either in person or through an authorized representative. Appeals shall be to the city council and shall be governed by rule 12 of the city council rules of procedure (section 2-2 of this Code). Notice of an appeal must be filed in the city secretary's office by the tenth day following the rendition of the commission's decision on the application. The commission shall cause each meeting or portion thereof at which an application is to be considered to be videorecorded. Notwithstanding any provision of rule 12 to the contrary, any required transcript for an appeal to the city council may be prepared from the video recording. An appeal shall not suspend the action of the commission pending the decision of the city council.

(g) The licensing department may extend the filing period for a special permit upon demonstration to the director by clear and convincing evidence that the facility was in fact in operation on the effective date and that the applicant's failure to timely file was based upon an error or misunderstanding and not the result of conscious indifference to the requirements of this section.

(h) The provisions of this section are not applicable to the premises of a body shop facility with storage privileges operating under a valid license issued under division 4 of article II of chapter 8 of this Code.