

Junkyards and Recycling Businesses Review & Recommendations

City of Fort Myers, Florida — Draft, November 2015

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1. Introduction

1-a Study Background

Fort Myers is the regional business center for Lee County and southwest Florida, making it the logical location for businesses and municipal services that benefit from a central location with regard to customer base, workforce, and transportation. The map on the cover shows 15 active recycling businesses that have chosen locations in or near the City of Fort Myers.

Regrettably, some of these businesses are located in or close to residential areas, a completely unacceptable situation. Others are in full view from major roads. In 2002, the city adopted a “no new or expanded junkyards” policy to keep the situation from deteriorating further. Despite considerable effort over many years, very little progress has been made relocating junkyards from the most unfortunate locations.

The annexation of 1,500 acres of lightly regulated unincorporated land in 2003 provided Fort Myers an opportunity to address part of the junkyard situation. Unfortunately, the city’s well-intentioned effort to protect private property rights in the annexed area had the unexpected result of giving greater protection to junkyards in residential areas than in industrial areas. Public discussions about junkyards have devolved into skirmishes over technicalities rather than focusing on what is in the best interest of the city’s residents and businesses.

To resolve the multiple technical and policies issues surrounding junkyards and recycling businesses, in April 2015 the City of Fort Myers authorized Spikowski Planning Associates to conduct a comprehensive analysis. The detailed recommendations in this report are a result of that analysis.

This report begins by summarizing the evolution of junkyards across the country during the past century. The recent and current situation in Fort Myers is then described. New approaches for regulating junkyards and recycling businesses are presented and explained, with references to proposed changes to the Fort Myers Comprehensive Plan, Land Development Code, and other city codes.

Appendix B contains the specific code changes that would carry out the policy initiatives described in this report and resolve various technical conflicts. These changes can be adopted by the City Council through the public hearing process.

1-b Evolution of Junkyards

Re-using discarded products and recycling the remainder has a long history. In recent decades these processes have reached new levels of complexity; recycling efforts have become part of a global supply chain of recovered materials, subject to its inherent strong rewards and high risks.

In recent memory, junkyards often stockpiled unwanted goods on the cheapest possible land, often just beyond the urban fringe or in areas whose residents had little political or economic power. Those junkyards often became eyesores, or at worst, actual hazards due to dangerous conditions, odors, and vermin. Unusable material was sometimes burned or buried on-site, leading to a public association between junkyards and landfills.

Junkyards full of abandoned vehicles emerged across the country in the 1920s. Following the flush of prosperity after World War II, junkyards became a pervasive blight across the countryside. The number of junked cars surpassed the ability of operators to manually tear them apart. Steel mills no longer wanted to melt down car hulks that had any copper left in them. The resulting surplus of vehicles was a major impetus for the 1965 Highway Beautification Act, proposed by President Johnson to tame what he called the “unsightly, beauty-destroying junkyards and auto graveyards along our highways.”



When junked cars were worthless...

When junked cars are valuable...

By the 1970s, shredding machines were emerging as an option for mechanically breaking down unwanted vehicles and then separating their steel from copper, brass, aluminum, and stainless steel, all of which have economic value once separated. The remaining material, typically 25% of a vehicle, is a flammable waste product called shredder residue that must be carefully discarded, typically in municipal landfills.

Even well-maintained shredders are noisy and complex industrial machinery that should not be operated in or near residential areas. The same is true for other equipment used by recycling businesses: cranes, loaders, crushers, shears, balers, loggers, grinders, etc.



diagram of shredder

Once shredders became widely available, the surplus of abandoned vehicles became a valuable commodity and they were gradually collected and processed. Fluids, batteries, tires, and mercury switches were removed and the remainder was shredded into small sortable pieces. It took until the 1990s in some areas to process the backlog of abandoned vehicles; in other areas it took a decade longer. These same shredders are also used to break down other complex products such as household appliances and to convert old tires into re-usable material.

Recycling businesses constantly adjust to meet changing local and global demands. They have become active large-scale industrial uses that are best suited to urban industrial parks where a quick turnover of large volumes of recycled materials can be accommodated. The nature and profitability of these businesses are such that prior standards for locating them are no longer acceptable.

1-c Junkyards in Fort Myers

Fort Myers has regulated the use of land through zoning since 1959; Lee County has done the same since 1962. Regulation of junkyards and recycling businesses has been lax, partly because they were located in remote areas and partly because these businesses typically grew over time in increments small enough to escape official notice. A fundamental requirement, that junkyards be physically screened from view, was a city regulation as early as 1961.

A 1978 article from the Fort Myers News-Press described the situation at that time and indicated how lax enforcement had been (see Appendix A). Some of the problems described no longer take place, for instance the open dumping and burying of trash, but others are virtually unchanged and some have worsened.

Beginning in 2000 Fort Myers has experimented with a variety of serious restrictions on new, expanded, and relocated junkyards and recycling businesses, as described in Recommendation D. Twice the city has imposed a moratorium while regulatory changes were considered. New rules were imposed in 2002, including a ban on the visibility of material over screening walls and a requirement that all existing junkyards and recycling businesses be retrofitted with a landscaped visual screen within twelve months.

In 2003, 1,500 acres of land were annexed into the city, resulting in additional rules for the annexed land as described in Recommendations A and G.

In November 2015, Fort Myers voters approved a charter amendment to require a voter referendum before any new or expanded junkyard or recycling businesses could proceed (see Recommendation C).

Despite all of these efforts, the results are unsatisfactory. Neighborhoods are continually damaged by the immediate presence of junkyards that seemingly will be there forever. Existing junkyard owners fight any attempt to allow competition, keeping the new better standards for junkyards seen across the country from reaching Fort Myers. City officials try to navigate between conflicting pressures, but the results are mostly to maintain a barely civil truce in the council chambers and to freeze existing conditions in the community.

Problems begin with the terminology the city applies to these businesses. The definition of “recycling” is extremely broad, holding businesses with different impacts to identical standards. The city’s definition of “junkyard” is limited to yards where parts are salvaged from vehicles before the cars are ground up elsewhere so their materials can be recycled, yet this pejorative term obscures the

fact that salvaging usable parts from junked cars is a socially and economically important function, as are all most other functions of recycling businesses.

Since 2001, the city’s policy has been to ban new and expanded junkyards, despite Fort Myers having ample industrial land to accommodate these businesses, especially after the 2003 annexation of much of the best heavy industrial land in Lee County. This restriction sounds draconian, but the only political or legal challenges have been to enforce the rule more strictly.

The impulse behind the city’s policy is understandable, especially given the burden that a number of businesses have placed on existing neighborhoods and the absence of obvious solutions. However, this rule has not accomplished the city’s goal of removing blight – in fact it has frozen the blight in plain view, in residential areas and along major roads. The recommendations in this report offer better approaches for planning and regulating these businesses.



Looking south at existing junkyards at Henderson Av. and Edison Av.

2. New Approaches for Fort Myers

2-a Summary of New Approaches

This report proposes new approaches to regulating junkyards and recycling businesses. Nine separate steps are summarized below, with references to a fuller description of each step in the remainder of this report. Appendix B details the specific code changes that would carry out these policy initiatives.

A. Remove annexation preference from Comprehensive Plan

The comprehensive plan currently protects junkyards and recycling businesses in residential areas if they had been annexed into the city. This protection comes at the expense of the surrounding neighborhoods and should be repealed from the comprehensive plan.

See section 2.a of this report

Comprehensive Plan: Policies 1.8 & 1.17

D. Better rules for relocated and new yards

The blanket prohibition on new junkyards has cemented the status quo in neighborhoods that deserve far better. Fort Myers has heavy industrial districts that, with proper regulations, are better locations for junkyards and recycling businesses.

See section 2.d of this report

Land Development Code: 118.3.3.D.1.d

B. Update junkyard & recycling terminology

City regulations address junkyards and recycling businesses separately, but the distinction is difficult to distinguish. The old terminology should be replaced with new definitions that describe the major types of recycling businesses now operating in the city.

See section 2.b of this report

Land Development Code: 118.3.3.D.1.a

E. New process for special-use permits

Junkyards and recycling businesses can have significant impacts on their surroundings; they deserve a different approval process than the 'PUD' process which was designed for residential developments. The city should require special-use permits for expanded, relocated, and new recycling businesses.

See section 2.e of this report

Land Development Code: 98.3.17

C. Better rules for existing yards

Existing yards that are not in industrial areas and are not being relocated in the immediate future need to be retrofitted to reduce their incompatibility with their surroundings. Complete visual screening around their perimeter is the highest priority.

See section 2.c of this report

Land Development Code: 118.3.3.D.1.c

F. Fix obsolete list of recycling businesses in existing code

The tenuous distinction between junkyards and recycling businesses is muddied further by a list in the Land Development Code. Ten businesses are listed as junkyards although only five arguably meet the definition; five others are listed as recycling businesses. This list is obsolete and needs to be updated.

See section 2.f of this report

Land Development Code: 118.3.3.D.1.b

G. Remove annexation preference from Land Development Code

The land development code currently protects junkyards and recycling businesses in residential areas if they had been annexed into the city, using similar language to that found in the comprehensive plan. That protection should be eliminated from the land development code as well.

See section 2.g of this report Land Development Code: 98.4.6.c

H. Closer coordination with state laws

Fort Myers requires licenses for “secondary metals recyclers” even though this license essentially duplicates regulations at the state level. The Fort Myers code should incorporate the latest state regulations on record-keeping and stolen goods and no longer require a duplicative license.

See section 2.h of this report City Code: 18-272

I. Clarify relationship between business tax receipts and zoning

All businesses pay the city a business tax each year. The receipt issued by the city is sometimes misunderstood to be a license to conduct business or evidence of zoning conformity. Steps should be taken to avoid such misunderstandings and to prevent these receipts from being used against the city by businesses that are operating illegally or are no longer in operation.

*See section 2.i of this report Land Development Code: 118.3.3.D.1.c
City Code: 82-164*

2-b New Approach to Comprehensive Plan

A. Remove annexation preference from Comprehensive Plan

The annexation of 1,500 acres of unincorporated land into the city in 2003 provided an opportunity to address some aspects of junkyards and recycling businesses in Fort Myers because Lee County had been regulating land use there in a haphazard manner. For instance, Lee County allowed yards to expand even though they were in or adjoining residential areas and did not have proper zoning to expand. See photos of existing conditions on the next page.

Most annexations are straightforward because they are relatively small in size and all owners of the land are requesting the annexation. The 2003 annexation was unusual because it was so large that it would have been impossible to obtain consent from all landowners. Annexation was possible only because the state legislature specifically authorized it, on the condition that the city and county could agree on the terms through an interlocal agreement and that residents of the enclaves would support the annexation in a referendum.

Fort Myers was required to assign zoning districts and categories on the future land use map within two years after annexation, a difficult endeavor given the very large size of the annexed land and its murky regulatory history. During this process, the city added a well-intentioned Policy 1.17 into the Comprehensive Plan to protect private property rights in the annexed area. Unfortunately, this policy at least arguably gives overly favorable protection to junkyards in residential areas just because they were on land being annexed — at the clear expense of the adjoining residential areas — and potentially to the detriment of competing businesses in the city that are properly located in industrial areas.

At a minimum, the city needs to eliminate any inference that the comprehensive plan intended to protect junkyards at the expense of neighborhoods or to favor junkyards on annexed land over junkyards on previous city land. There is no reasonable public policy basis for either position.

The most troublesome language in Policy 1.17 can be read to imply that existing junkyards or recycling businesses on annexed land may be approved for expansion through the PUD (Planned Unit Development) process even though junkyard expansions are strictly forbidden by Chapter 118 of the Land Development Code. A logical extension to that interpretation is that Policy 1.17 overrides any other part of the Land Development Code.

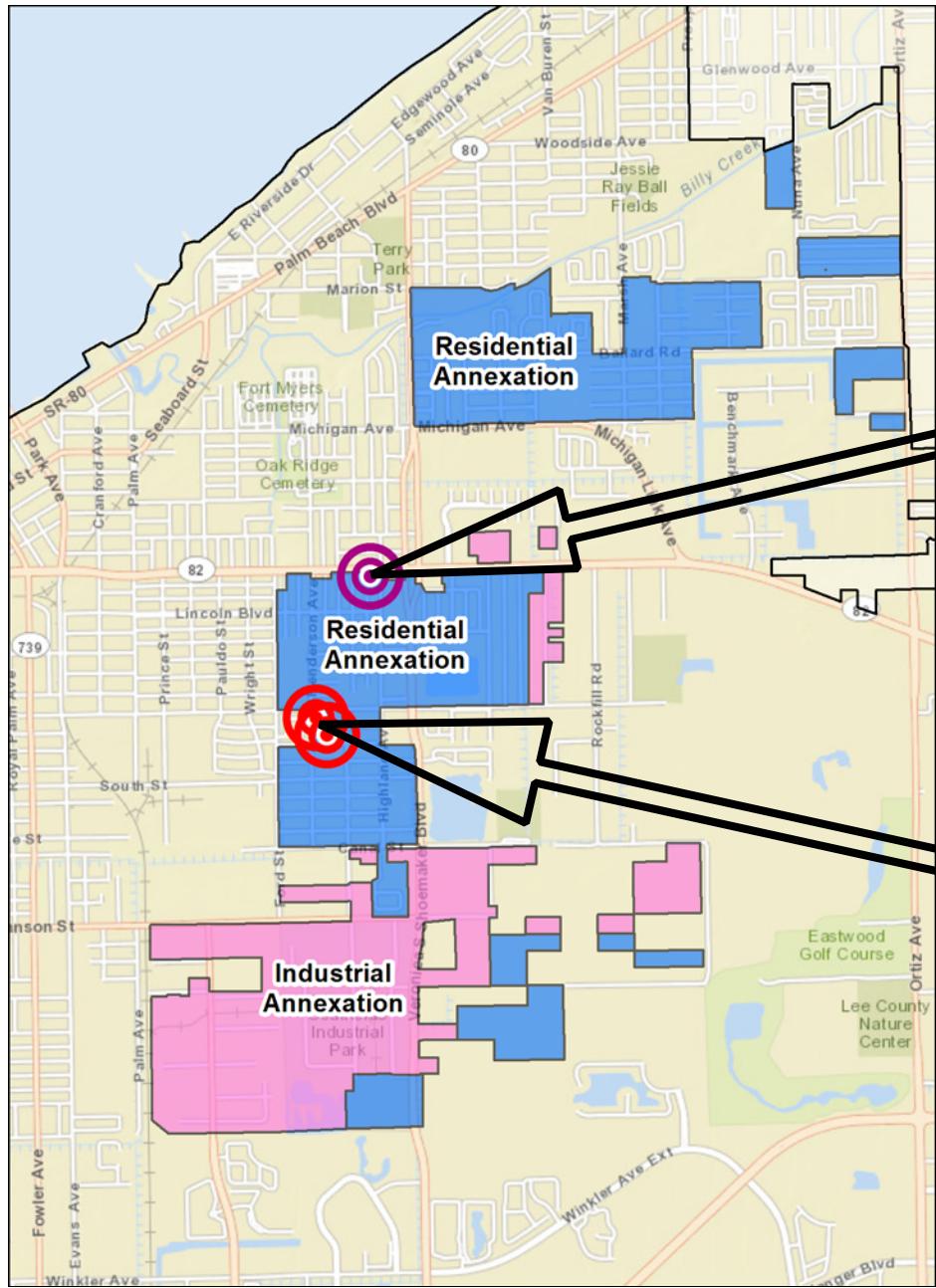
Regulatory language of this nature, if necessary at all, belongs in the city's Land Development Code, not in the Comprehensive Plan. Because similar language was later added to Chapter 98 of the Land Development Code, the code's internal conflicts can be corrected there rather than keeping potentially conflicting language in two different regulatory documents.

The best course of action is for the city to eliminate Policy 1.17 entirely, and to eliminate Map B-1 which is referenced in Policy 1.17.

At the same time, Policy 1.8 should be modified to clarify the distinction between the Industrial (IND) category on the Future Land Use Map and the two zoning districts assigned to IND land: IL (Industrial Light) or IH (Industrial Heavy). The Land Development Code establishes standards and allowable uses for each zoning district. Other language in this policy regarding the Planned Unit Development process in industrial areas should be eliminated as it has never been implemented in the Land Development Code and presents potential conflicts.

The following specific changes to the Comprehensive Plan are recommended:

Policy 1.17: To protect the existing uses and existing structures or the previously granted Lee County development approvals of the properties annexed as part of the Dunbar/Belle Vue Annexation area, a separate map (see Map B-1) to the Future Land Use Map shall designate areas where structures and uses that were in legal existence on or before December 21, 2005 under Lee County Land Use regulations covering the entire property involved, will be considered to have a right to operate as an existing structure/use vested with the City of Fort Myers. These structures/uses may be continued indefinitely, remodeled or replaced. No increase in the number of dwelling units shall be allowed. Any expansion to these existing uses and/or structures (excluding recycling/junkyard uses, as defined by the City Land Development Regulations—Land Development Regulations), shall be considered a special non-conformity, and such expansion shall be granted by Conditional Use Approval. Any expansion to an existing junkyard or recycling center may only be by approval of the expansion through the Planned Unit Development process.”



Junkyards & recycling businesses in residential annexation areas



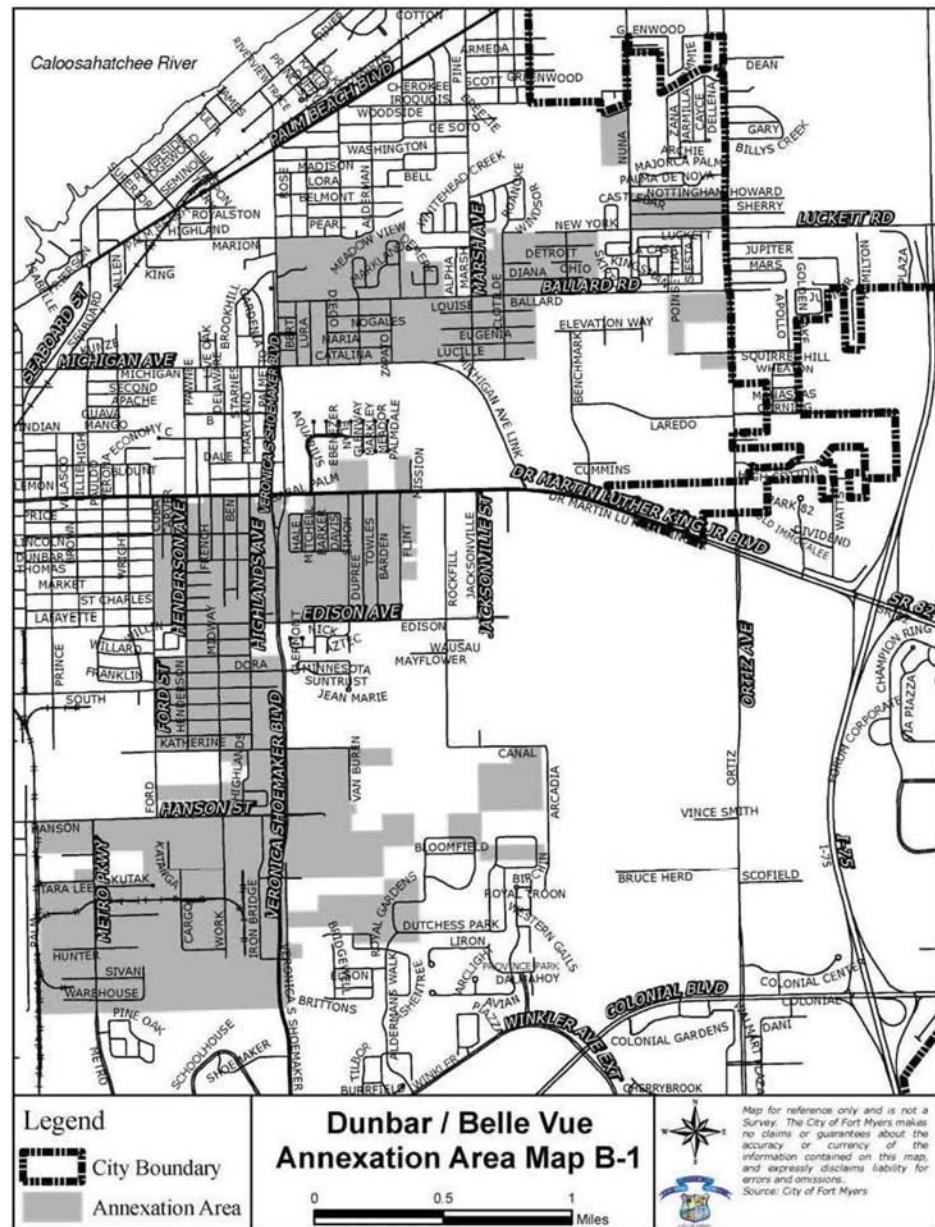
Allied Recycling, viewed from the north



Auto Parts Salvage & Affordable Auto Salvage, viewed from the south

Policy 1.8: Designate areas on the Future Land Use Map as Industrial (IND) that are areas integral to strengthening the City's economic base and future growth. These are the areas to which the City looks for expanded job opportunities, investments and production opportunities, and a balanced and sufficient tax base. These areas have special location requirements, including transportation needs (e.g., air, rail, interstate access, and immediate access to arterial roadways); industrial levels of water, sewer, fire protection; and are centrally located to reduce employee commuting distances. The Industrial areas contain research and development, laboratories, industrial activities, commercial and office uses; selective land use mixtures of industrial, manufacturing, research, and development, laboratories and office uses supporting the preceding uses; and properly buffered recreational uses. The Industrial (IND) areas are zoned either IL (Industrial Light) or IH (Industrial Heavy); the Land Development Code establishes standards and allowable uses for each zone. Expansion to heavy industrial uses in light industrial zones will require site plan and use approval through the Planned Unit Development process. Special consideration will be given to projects incorporating Leadership in Energy Efficient Design (LEED) standards. Residential uses are not permitted. New development or substantial expansion of exiting industrial adjacent to incompatible land use districts may be approved through the Planned Unit Development process. Residential uses are not permitted on land within this land use district. Development intensities are limited to a floor area ratio of one (1 FAR).

~~Map B-1—“Dunbar Annexation Area” [delete map entirely]~~



2-c New Approaches to Land Development Code

B. Update junkyard & recycling terminology

City regulations address junkyards and recycling businesses separately, even though the distinction between the two can be difficult to distinguish.

The general distinction is that a **Junkyard** can store inoperable and wrecked vehicles for short or long periods and can dismantle and sell parts from them. **Recycling** businesses cannot store inoperable vehicles and must dispose of a majority of the materials they acquire within one year. However, local recycling businesses routinely begin the process of converting vehicles back into raw materials for later reuse, which could be considered ‘dismantling.’

The tenuous distinction between junkyards and recycling businesses is muddled further by a listing in the Land Development Code of fifteen specific businesses. Ten are listed as junkyards even though only a few meet the definition of junkyard; five others are listed as recycling businesses (further details are provided with Recommendation F). This listing contradicts the explicit definitions in the code, in some cases because the nature of the business has changed, but more often for no apparent reason.

The current definitions in Chapter 142 of the current Land Development Code are as follows, with key wording highlighted:

Junkyard means an **open area** where waste, used or secondhand materials are bought, sold, exchanged, salvaged, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, cloth, paper, rags, bags, plumbing or electrical fixtures or appliances, tires, batteries, bottles, glass, **inoperable vehicles and auto parts, automobile wrecking and automobile wrecking yard.**

Recycling means 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 new products. **A majority of the materials must be demonstrated to be sold, used, or reused within one year.** The materials are not hazardous wastes and have not been recovered from solid wastes which are defined as hazardous wastes under F.S. § 403.703, and rules promulgated pursuant thereto. Recycling may include scrap processors who from a fixed location, utilizes machinery and equipment for processing and manufacturing iron, steel,

nonferrous metals, plastic, glass and paper into prepared grades and whose principle products are scrap iron, scrap steel, nonferrous scrap metal, scrap plastics, scrap glass and scrap paper for sale for remelting, refining, smelting and remanufacturing purposes. **Recycling does not include automobile wrecking and automobile wrecking yards.**

Automobile wrecking and automobile wrecking yard means the dismantling, crushing, shredding, or disassembling of used motor vehicles or trailers, or the storage, sales or dumping of dismantled, partially dismantled, obsolete, or wrecked motor vehicles or trailers, or their repairs. (See also: Junkyard)

The definition of “junkyard” dates back many decades, except for the final clause: “automobile wrecking and automobile wrecking yard.” The definition of “recycling” is much newer, but is quite convoluted; except for the final sentence, it has considerable overlap with the definition of junkyard.

Good regulations begin with clear definitions; this is an ideal time to add new definitions into the Land Development Code that describe the major types of recycling businesses now operating in the City of Fort Myers.

The following definitions should be added to the Land Development Code to replace the current definitions of junkyard, recycling, and automobile wrecking:

Auto salvage yard means an open area where end-of-life vehicles have their fluids drained and are then stored so that parts can be salvaged and resold before the remainder of the vehicle is moved off the premises to be recycled into secondary metals.

Construction/demolition yard means an open area where waste material from construction and demolition sites is sorted, disassembled, crushed, or otherwise processed to separate salvageable material from material requiring disposal.

Impound lot means a outdoor facility capable of storing more than 50 towed vehicles until such time as the vehicles are recovered by their owners or resold.

Mulch yard means an open area where cut trees, vegetative debris, or wood scraps are ground up and processed for resale as mulch, compost, and similar products.

Paper yard means a facility that sorts and processes scrap paper for subsequent conversion by paper processing mills into new paper products.

Scrap yard means a facility that sorts and processes scrap metals and other scrap material for subsequent resale to become secondary metals or other products. A scrap yard may process vehicles but does not hold vehicles on the premises in anticipation of selling parts. Scrap yards that use a shredder to process scrap material must be explicitly approved by the city to operate a shredder and may not stockpile shredder residue at the scrap yard.

Shredder means industrial equipment that grinds scrap metal into small pieces and mechanically sorts the pieces into recyclable metal streams while diverting unusable material for disposal off-site.

Shredders are an integral part of a scrap yard but need to be defined and authorized separately because adding a shredder creates additional impacts.

Aerial photographs of local businesses in each category are shown below.



Construction/demolition yard



Auto salvage yard



Impound lot



Mulch yard



Scrap yard



Paper yard



Shredder

C. Better rules for existing yards

A number of junkyards and recycling businesses in Fort Myers are in unfortunate locations. Some are in residential areas; others are exposed on major thoroughfares; and others are inadequately separated from adjoining lower-intensity businesses.

The Land Development Code allows legally existing uses and structures to remain in place indefinitely and does not subject them to new regulations such as fencing or buffering requirements or new locational standards. However, these uses cannot be enlarged and are not encouraged to survive.

To qualify for this lenient treatment, an existing use must meet the “non-conforming” requirements in Chapter 98. If a nonconforming use ceases for as little as 30 days, its nonconforming status ends immediately. Nonconforming structures cannot even be moved on the lot.

The Land Development Code contains internal conflicts that complicate this issue. Despite the very strict nonconforming requirements in Chapter 98, Chapter 118 is exceptionally generous to existing junkyards and recycling businesses, even those that don’t qualify as nonconforming uses.

As a result, poorly located junkyards and recycling businesses have no incentive to improve or relocate; this is doubly true on annexed land. In fact, by being protected from competition, the current rules further solidify the status quo. Improving a yard or attempting to expand or relocate it exposes owners to considerable risk and expense due to all the regulatory hurdles the city has put in place to keep new yards from duplicating the mistakes of the past.

A more sensible planning and regulatory approach would reverse the incentive structure that now applies to poorly located yards. For instance:

1. Yards wishing to remain in place should be required to make “remedial improvements” within two years to soften impacts on adjoining streets and properties, and then be required to relocate within seven years.
2. Yards wishing to expand in any way should also be allowed to apply to do so if they are willing to meet all “new regulations” for the entire operation as part of the expansion (at present, junkyards are categorically forbidden from doing so).

3. Active yards that are willing to relocate and meet all new regulations should be allowed to apply to do so. As a condition of approval, the previous yard would be required to close entirely.

The “new regulations” should be the same rules that would apply to new junkyards and recycling businesses, as described below under Recommendation C and summarized as follows:

- ▶ New yards can never be placed in or near neighborhoods
- ▶ New yards can never be exposed on major thoroughfares.
- ▶ New yards can only be considered on land zoned Heavy Industrial.

The “remedial improvements” would soften community impacts but cannot be expected to make a poorly located yard permanently acceptable. For instance:

- ▶ Some yards are in residential neighborhoods. Even the highest-quality buffering and screening cannot make industrial uses compatible with residential neighborhoods.
- ▶ Other yards are completely exposed on major thoroughfares. If these yards are on large parcels, the active uses could be moved far enough back to allow other businesses to separate them from the thoroughfare. If the parcel is not large enough to do that, high-quality screening and buffering will help but is unlikely to ever make a yard permanently acceptable at that location.

Perimeter screening is an important remedial improvement for a poorly located yard. A tall concrete wall with landscaping on the outside provides excellent screening around the rear and sides, but could be extremely unsightly in a neighborhood or near a major thoroughfare unless it is heavily landscaped.

A wall of very dense vegetation could be acceptable, but vegetation must be correctly designed planted, irrigated, and maintained over time. Two examples are found along Dr. Martin Luther King Jr. Boulevard, one surrounding Forestry Resources near Michigan Avenue. Another is combined with a fence across the street in front of an expansion to the Manheim automobile auction. In both cases, access to those facilities is from side streets so the screening runs the entire length of the highway frontage. If access weren’t available from side streets, the screening would not be effective.

A perimeter screening requirement has been in city codes since 1961. In 2001, city codes demanded that screening that had yet to be installed be completed within 12 months. Yet in 2015, many yards in Fort Myers are still operating without proper screening.

Other yards have installed screening but its effectiveness has been limited, either because the screening is unsightly or not opaque, or the screening only partially surrounds the business, or scrap piles are visible above the screening, or the screening is missing along street frontages or customer parking lots. Sometimes customer parking lots are used to store equipment or scrapped vehicles that should be screened from view.

The perimeter screening rules need to be improved and applied rigorously so that every yard operating in Fort Myers is properly screened.

Improved signage is another important remedial improvement. Junkyards and recycling businesses depend on regular customer visits like all other businesses; visibility to customers is no more or less important to them. There is no reason for the city to allow substandard signage for junkyards or recycling businesses or to allow display of junk to serve as signs.

These remedial improvements are temporary in nature. To avoid other types of improvements to junkyards and recycling businesses that would further extend the economic life of business that need to be relocated, the city needs to differentiate between minor internal improvements that would be allowed during the remaining life of the yard and major investments that would not be allowed. Allowable minor improvements would include the installation of routine recycling equipment for baling, crushing, logging, and fluid removal, along with other minor improvements that would clearly benefit the surroundings. Unacceptable major improvements would include construction or installation of new structures or a shredder anywhere on the site.

During the two-year period for remedial improvements and the seven-year period for relocation, the city would strictly enforce all current codes and make other efforts as necessary to close or relocate the most poorly located yards. Business tax receipts would be marked as "temporary" until the remedial improvements have been completed, and as "transitional" for the duration of the seven-year period.

Operators who wish to remain on the existing site past the seven-year period would be required to modify their operations to meet the new regulations and at the same time upgrade their contiguous recycling businesses to those same standards whether or not those businesses are located on the same block or an

adjoining block or located inside or outside city limits. Any expansion to the existing operations must meet the same standards.

The detailed regulations to carry out these recommendations would be placed in section 118.3.3.D.1.c of the Land Development Code, replacing the existing language in 118.3.3.D.1.d and 118.3.3.D.f.

In November 2015, Fort Myers voters approved a charter amendment regarding junkyards and recycling businesses. The ballot language read as follows:

Proposed Charter amendment No. 1 prohibits new junk yards or recycling centers or expansion of existing junkyards or recycling centers except as approved by referendum unless the City is required by law to grant such approval without referendum.

The charter amendment would have no effect on the proposals just described to require remedial improvements for existing yards. The amendment is consistent with the proposals for relocating yards if the yards were relocated outside the City of Fort Myers. However, if the yards were relocated within the city, or expanded on their current sites in conformance with the new regulations, the charter amendment would require voters to approve the relocation or expansion in another referendum.

Recent state legislation has greatly restricted the ability of any Florida city to require a citizen referendum before approving specific development proposals. The courts may invalidate the effectiveness of the 2015 charter amendment on that basis. Unless invalidated, another referendum will be required before each existing junkyard or recycling center can be relocated or expanded.

D. Better rules for relocated and new yards

Since 2000, Fort Myers has experimented with a variety of serious restrictions on new, expanded, and relocated junkyards and recycling businesses. The chart below summarizes those restrictions.

2000-2001 Moratorium Rules:

JUNKYARDS:

- No expansions

RECYCLING BUSINESSES:

- No expansions
- No new recycling businesses

Post-Moratorium Rules (2002):

JUNKYARDS:

- No expansions (same rule)
- No new junkyards (new rule)
- Relocations to light/heavy industrial (new rule)

RECYCLING BUSINESSES:

- Expansions on heavy industrial (now allowed)
- New indoors on certain heavy industrial (now allowed)

Post-Annexation Rules (2008):

JUNKYARDS:

- Same junkyard rules on non-annexed land
- On annexed land, existing junkyards require PUD approval for expansion

RECYCLING BUSINESSES:

- Same recycling rules for non-annexed land
- On annexed land, existing recycling businesses require PUD approval for expansion

2015-2016 Moratorium Rules:

JUNKYARDS:

- No new or expanded junkyards for one year
- Junkyard on annexed land may propose relocation to IH zoning: no size increase, no new uses, PUD approval required

RECYCLING BUSINESSES:

- No new or expanded recycling businesses for one year
- Recycling on annexed land may propose relocation to IH zoning: no size increase, no new uses, PUD approval required

Most of these restrictions were reactions to immediate problems. These restrictions have generally succeeded in avoiding new problems but not in improving or removing existing problems. These restrictions have essentially cemented the status quo despite a clear consensus in the community that the status quo is not acceptable under these circumstances:

- ▶ When junkyards are in or near residential neighborhoods
- ▶ When junkyards are exposed on major thoroughfares

Most of the previous restrictions were blunt instruments that were applied uniformly across the City of Fort Myers. These restrictions distinguished between new businesses and expansions and relocations of existing businesses; between annexed land and land previously in the city; and by potential approval processes. However, the most important distinction was never applied to junkyards, and only occasionally applied to recycling businesses: the proposed location of the facility. Fort Myers has always relied on its zoning process to ensure that incompatible uses are not placed close to each other.

With some important modifications, the zoning process can do the same for junkyards and recycling businesses. The following changes to the Land Development Code should be required:

1. **NEVER IN OR NEAR RESIDENTIAL NEIGHBORHOODS:** To ensure that recycling businesses are never again placed in or near residential neighborhoods, new and relocated yards should only be considered in heavy industrial areas, and even then separated 300 feet from any non-industrial land.
2. **NEVER EXPOSED ON MAJOR THOROUGHFARES:** To ensure that recycling businesses are never again exposed on major thoroughfares, new and relocated yards should be separated by 300 feet from major thoroughfares.
3. **EVALUATED WITH A RIGOROUS PUBLIC PROCESS:** To ensure that impacts from future recycling businesses, even those that meet rigorous new standards, are fully evaluated by city officials and the entire community before a decision is made, all applications should be evaluated through a rigorous public process before a final decision is made by the City Council.

Each of these changes are described on the following pages.

D.1 – BETTER RULES: Never In or Near Residential Neighborhoods

Recycling businesses belong in industrial areas, never in or near residential neighborhoods.

The City of Fort Myers identifies industrial areas in two ways: a broad Industrial (IND) category on the Future Land Use Map in the city's Comprehensive Plan, and the two zoning districts assigned to IND land: IL (Industrial Light) or IH (Industrial Heavy).

Recycling businesses belong in the most intense zoning district, IH, and even there should not be placed immediately adjoining land not designated IND. The city's classifications are shown on the map below, with a proposed 300-foot separation area shown from any land not designated IND.

TECHNICAL NOTES: The Land Development Code began using a new system in 2008 to assign allowable uses of land to zoning districts. Previously, each district contained its own list of allowable uses. The 2008 code combines similar uses into “use categories”; individual zoning districts describe which “use categories” are allowed in that zoning district.

For instance, there are currently five industrial use categories (see 118.3.6.E):

- ▶ E-1: Wholesale trade
- ▶ E-2: Light industrial
- ▶ E-3: Warehouse and distribution
- ▶ E-4: Heavy industrial
- ▶ E-5: Waste-related service

There are two industrial zoning districts: IH (Industrial Heavy) and IL (Industrial Light):

- ▶ IH allows all five industrial use categories (E-1 through E-5)
- ▶ IL allows only E-1, E-2, and E-3 except for outdoor storage

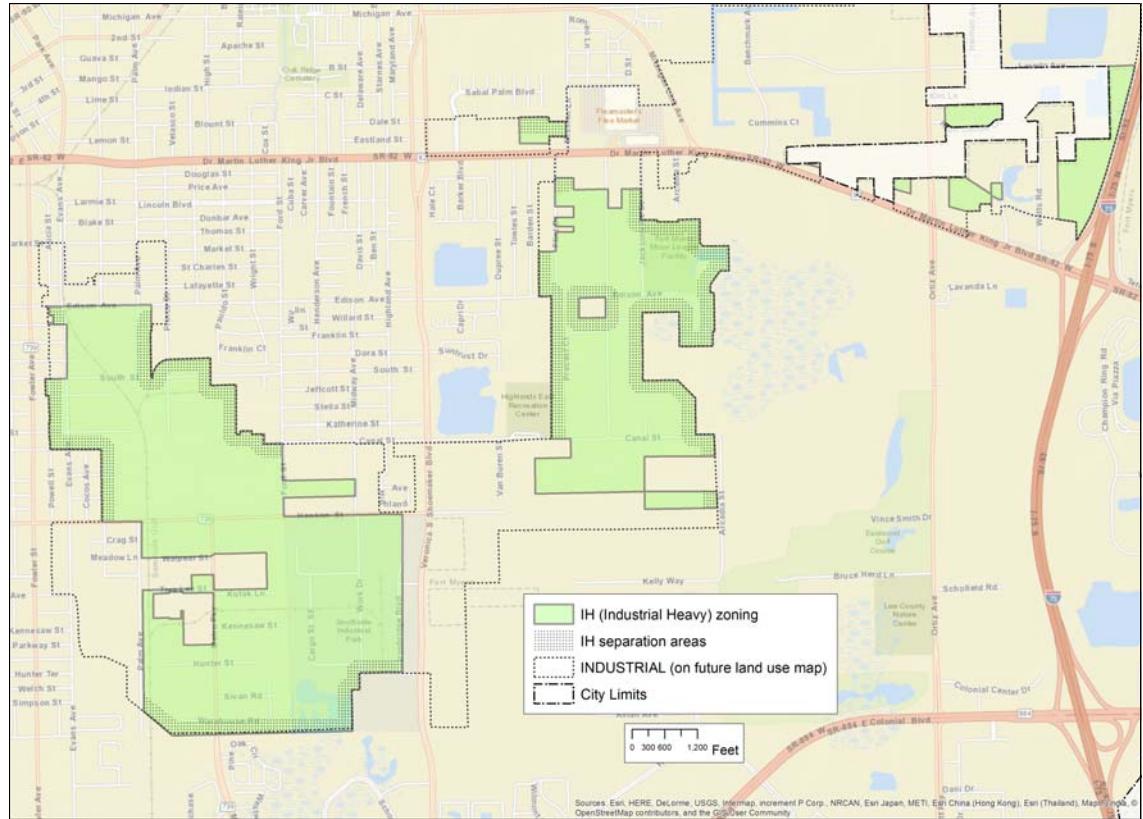
The Land Development Code contains tables that assign these uses (see 118.3.2.B.). Numerous exceptions are included in these tables and in the use categories; in practice, this conceptually simple system can be difficult to interpret.

At present, junkyards and recycling businesses are mentioned in the E-4 use category. That language is convoluted and adds further

mystery to the very specific rules for junkyards and recycling businesses found in 118.3.3.D.1. For instance, category E-4 allows “scrap metal processors” and “secondary materials dealers” but forbids recycling facilities and salvage yards — unresolvable contradictions.

Another contradiction is found in the use table where junkyards are listed as allowable in IH zoning even though new junkyards are forbidden by 118.3.3.D.1.e and 18.3.3.D.4.

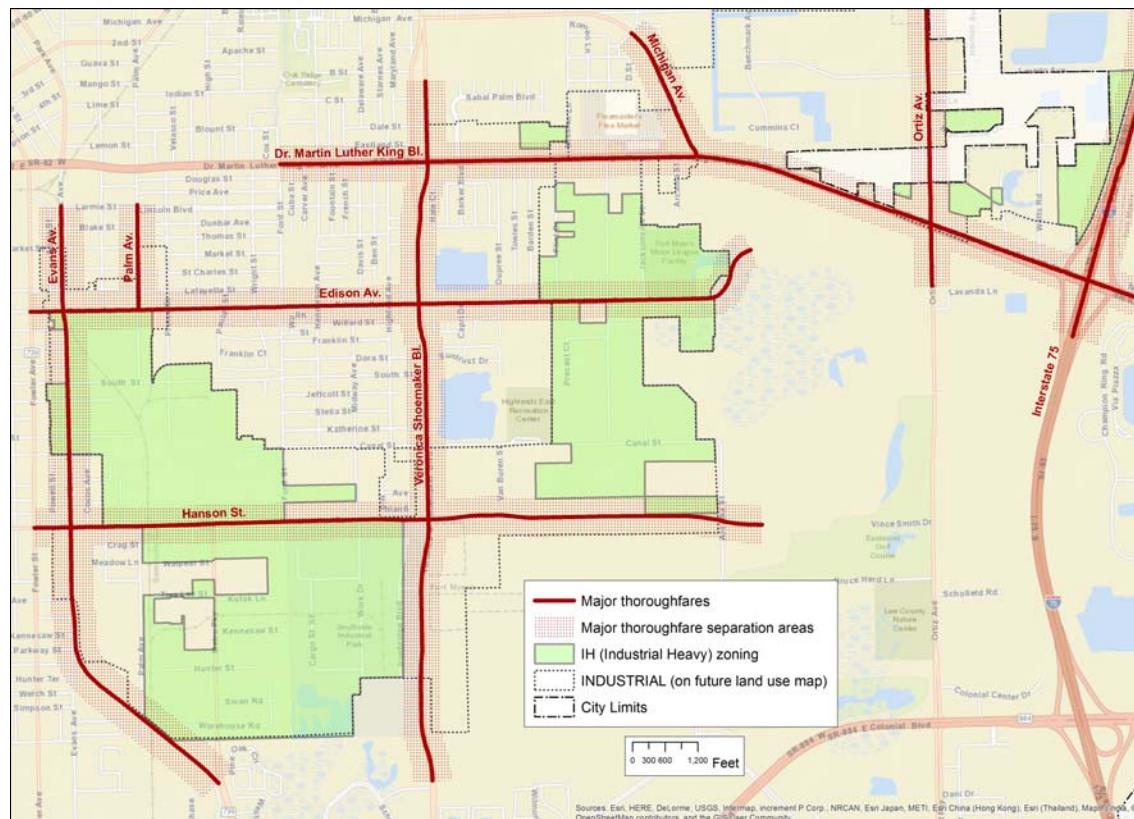
An important step in improving the code would be to remove junkyards and recycling businesses from category E-4 and create a new category “E-6” for all seven types of recycling businesses, using the new terminology described on the previous pages. The rules for the E-6 use category would then be closely coordinated with revisions to the use tables and to 118.3.3.D.1.



D.2 – BETTER RULES: Never Exposed on Major Thoroughfares

The inner workings of new and relocated recycling businesses should never be exposed on major thoroughfares. The map below suggests major thoroughfares that should be protected and the approximate width of a 300-foot separation area on each side of those thoroughfares.

Certain portions of recycling businesses should be allowed to operate in the separations areas: fully enclosed buildings, customer parking lots, stormwater detention areas, and landscaped or natural open spaces. The remainder of the recycling business must be fully screened from view. Related or unrelated businesses that are allowed in the zoning district could operate in the separation areas.



D.3 – COMPOSITE MAP

A single map on the next page shows all the separation areas, IH zoning, and recycling PUD zoning previously granted by the City of Fort Myers.

D.4 – BETTER RULES: Evaluated With a Rigorous Public Process

Recommendation E below describes a rigorous public process for evaluating proposals for relocated, expanded, and new recycling businesses. This process would be specifically tailored for heavy industrial uses and would include the new standards of approval proposed in this report. All site-specific details would be evaluated and accepted or rejected. The City Council would make a decision on each application, following a recommendation from the Planning Board.

D.5 – Referendum requirement

The charter amendment approved by voters in November 2015 will require a referendum before any new or expanded junkyards or recycling centers can be constructed anywhere in Fort Myers unless the courts invalidate the referendum requirement (see previous discussion regarding the charter amendment).

D.6 – Better rules for related businesses

Some land uses are similar to the seven types of recycling businesses but are different enough to be classified separately.

At present, a “recycling drop-off facility” is listed separately on the use table in 18.3.2. This use is permitted in the IH zoning district and allowable by conditional use in the CG, CI, and IL zoning districts. A recycling drop-off facility should be permitted in the IL zoning district without requiring conditional use approval.

Many “borrow pits” were dug throughout Fort Myers to obtain fill dirt for new construction. If the edges were properly cleaned and sculpted, these pits are often mistaken for natural lakes. As the city expanded, these lakes have often been filled with construction and demolition debris, such as broken concrete and asphalt, and then the land has been reused for urban purposes.

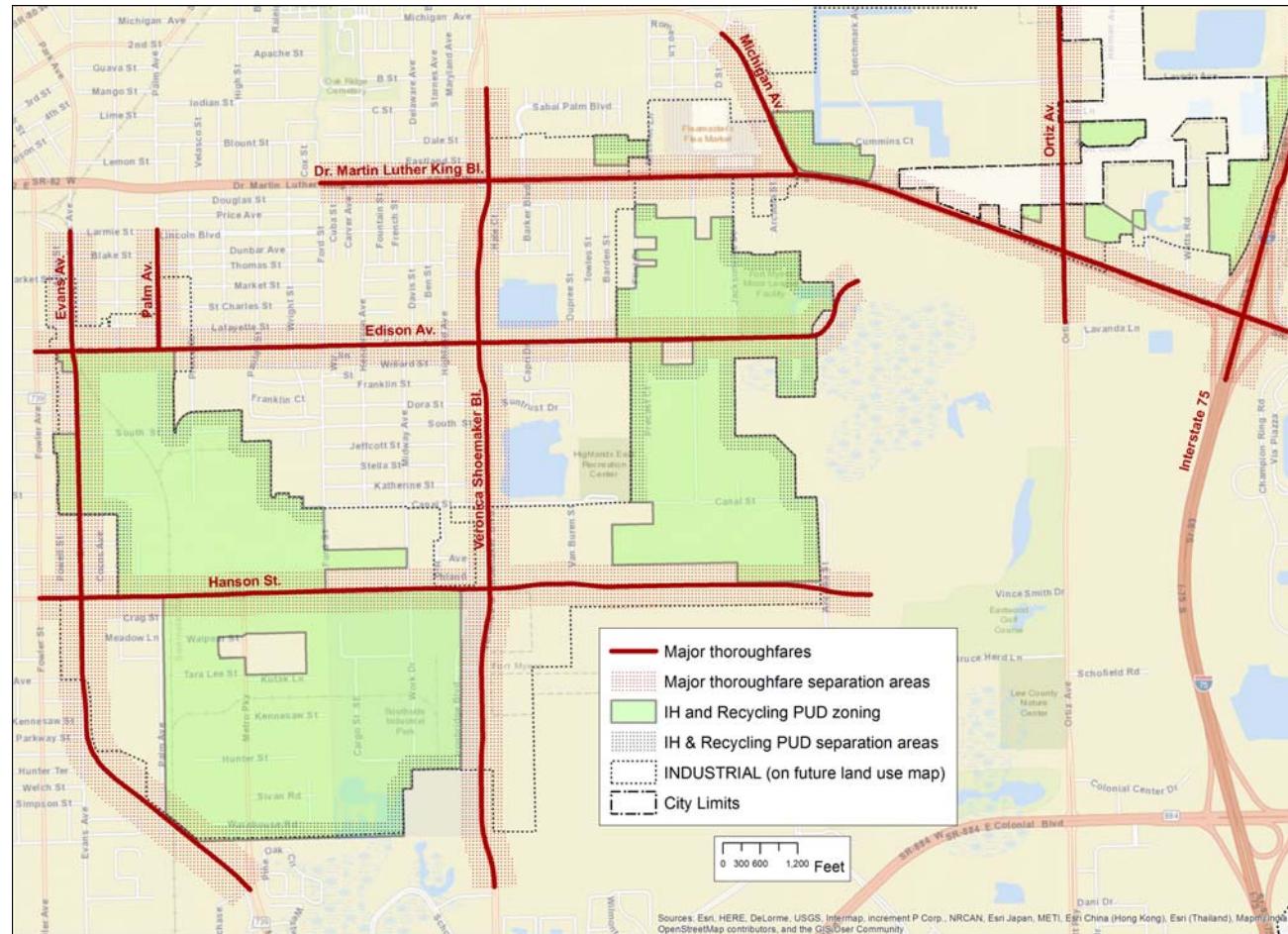
A much larger combined operation is run by Lee County; debris is sorted at the resource recovery facility in Buckingham and unusable material is buried at the county's regional solid waste disposal facility in Hendry County.

The State of Florida regulates the operation (but not the location) of every facility that recycles or disposes of construction and demolition debris. However, there are no state regulations on the disposal of “clean debris,” a more restrictive category of material.

However, the location of fill operations are subject to local zoning laws. The current Fort Myers regulations are unclear. According to the Land Development

Code, a “construction landfill” is allowed where the E-5 use category is permitted, meaning land zoned IH (Industrial Heavy) — even though that zoning may be deleterious to the surrounding neighborhoods after a small lake has been filled.

A better approach for regulating borrow pits in urban areas would be to require a specific approval before a lake could be filled with clean debris. This approval would establish ground rules such as security, hours of operation, how many months the filling can continue, and post-filling restoration of the site. After this approval expires, land uses would be limited to those allowed by the site's zoning district. This approval should be granted by the city council as a special-use permit, the process this report recommends for permanent recycling businesses.



E. New process for special-use permits

All recent approvals of junkyards and recycling businesses have been made by rezoning property through the PUD (planned unit development) process. This process allows extended public review of proposals that may have major impacts. Two public hearings are required, one before the Planning Board and the other before the City Council.

Rezoning to the PUD zoning district includes approval of a specific site plan and imposition of special conditions that apply to that particular property. These conditions allow the city and the applicant to resolve site-specific details and mitigate potential impacts.

Despite the many advantages to this PUD process, there are drawbacks as well:

- ▶ The city's current PUD regulations are poorly suited for industrial uses. These regulations were clearly intended for mixed-use and master-planned residential developments, not heavy (or even light) industrial uses. The city's PUD regulations do not contain proper standards for approval, adding a level of legal vulnerability to the city's approvals.
- ▶ The PUD process is generally optional for applicants but is sometimes required for industrial uses by policies in the city's Comprehensive Plan or in the Land Development Code:
 - ▶ Policy 1.17 implies that expansion to existing junkyards or recycling businesses may be allowed on annexed land through the PUD process (see also 98.4.6.B.6 in the code).
 - ▶ Policy 1.8 would allow heavy industrial uses to expand in light industrial zones if approved through the PUD process.
 - ▶ Policy 1.8 would also allow new and expanded industrial uses adjacent to incompatible land use districts if approved through the PUD process.
- ▶ In Fort Myers, PUD is an actual zoning district that replaces the prior zoning on a property. This is generally the best approach for PUD regulations, but it would eliminate the use of IH zoning as a precondition for junkyards and recycling businesses because the land would no longer be zoned IH. The heavy-industrial vs. light-industrial distinction is integral to implementing the recommendations in this report.

The recommended approach for considering junkyards and recycling proposals is to establish a new PUD-like process in the Land Development Code. This process would be specifically tailored for heavy industrial uses and would include the new standards of approval proposed in this report.

This new process would allow consideration of junkyards or recycling businesses only on land already zoned IH (Industrial Heavy) or being rezoned to IH. If approved, a specific extra use would be allowed and extra requirements would be imposed to mitigate impacts. The process would duplicate the extensive public review now given to PUD applications. The property's zoning would remain IH; the new approval would be in addition to IH rules, similar to the way an overlay or a conditional use can be granted without changing a property's zoning.

The Land Development Code assigns the Board of Adjustments to make decisions on "conditional uses"; some years ago, junkyard expansions were considered through that process. The City Council had no authority whatever, which made that process unsuitable for considering proposals with impacts as significant as junkyards and recycling businesses could have.

A better approach would be to establish a new process that would authorize "special-use permits" to be granted by the City Council after considering the Planning Board's recommendation and listening to comments from the public. This is the same level of public review now followed for PUD applications.

This new process should be added into Chapter 98 of the Land Development Code in a new section 93.3.17.

F. Fix obsolete list of recycling businesses in existing code

As discussed earlier under Recommendation B, fifteen specific businesses are identified in the Land Development Code (section 118.3.3.D.1). Ten businesses are listed as “existing junkyards,” even though only a few arguably meet the code’s definition of junkyard. The lists are presented here with updated parcel numbers:

a. Existing junkyard identification. Existing junkyards are identified as follows:		
1) A&D Scrap Material Inc. , 3066 Cranford Av.	25-44-24-P2-0170E.0010	
2) Glen Fox , 4871 Dr. Martin Luther King, Jr. Bl.	21-44-25-P2-00100.021A	
3) Glen Fox , 4981 Dr. Martin Luther King, Jr. Bl.	21-44-25-P2-00100.0220	
4) Damron Auto Parts , 5001 Dr. Martin Luther King, Jr. Bl.	21-44-25-P2-00100.0230	
5) Allied Recycling Inc. , 3770 Veronica S. Shoemaker Bl.	29-44-25-P1-00104.0080	
6) P & S Auto Salvage Inc. , 3800 Veronica S. Shoemaker Bl.	29-44-25-P1-00104.008A	
7) Allied Recycling Inc. , 3460 Dr. Martin Luther King, Jr. Bl.	19-44-25-P2-0140A.0010	
8) Auto Parts Salvage Inc. , 2419 Henderson Av.	19-44-25-P2-00926.0010	
9) Affordable Auto Salvage Inc. , 3312 Edison Av.	19-44-25-P2-00927.0100	
b. Existing recycling business operation identification. Existing recycling business operations are identified as follows:		
1) Garden Street Paper Products , 2998 South St.	19-44-25-P4-00010E.0020	
2) Waste Corporation of Florida, Inc. , 4251 Michigan Link	17-44-25-P3-000061.0040	
3) C.M. Gray Scrap Metals , 2803 Lafayette St.	19-44-25-P1-000315.0100	
4) Reynolds/American Alum. Recycling , 2203 Cleveland Av.	24-44-24-P3-000402.0010	
5) Forestry Resources, Inc. , 4259 Michigan Link	17-44-25-P3-200061.0020	
6) Any new recycling business operation permitted after March 18, 2002		

These lists make no distinction as to which junkyards are on land annexed in 2003 and which were already in the city. For reference purposes, the five businesses that are on annexed land are shown here in italics; those five were added to this list in 2008. Five other businesses are listed as recycling businesses; two are no longer in operation (shown above with information struck). A sixth was approved in 2010 and 2011 (DS&S Construction Materials on Jacksonville Street). DS&S is the only permitted recycling business on annexed land.

The first lists of this type appeared in an earlier junkyard moratorium ordinance adopted in 2000. That list included junkyards 1) through 4) and recycling businesses 1) through 5) plus the Allied Recycling facility on Veronica S. Shoemaker Bl. south of Hanson St.

The purpose of these lists was to identify existing businesses within city limits that were subject to a moratorium that prohibited expansion of junkyards and recycling businesses for one year and prohibited any new recycling businesses.

When the moratorium expired in 2002, these lists remained in the Land Development Code (without the Allied Recycling facility). The moratorium rules were modified to allow junkyard relocations on light or heavy industrial zoning and to allow new and expanded recycling businesses on heavy industrial zoning.

After annexation, the rules were modified for annexed land, as discussed in Recommendations A and G. The junkyard list in the Land Development Code was expanded in 2008 to include junkyards 5) through 9), even though 5) through 7) were operating as recycling businesses, not junkyards. The lists have remained in the Land Development Code unchanged since 2008.

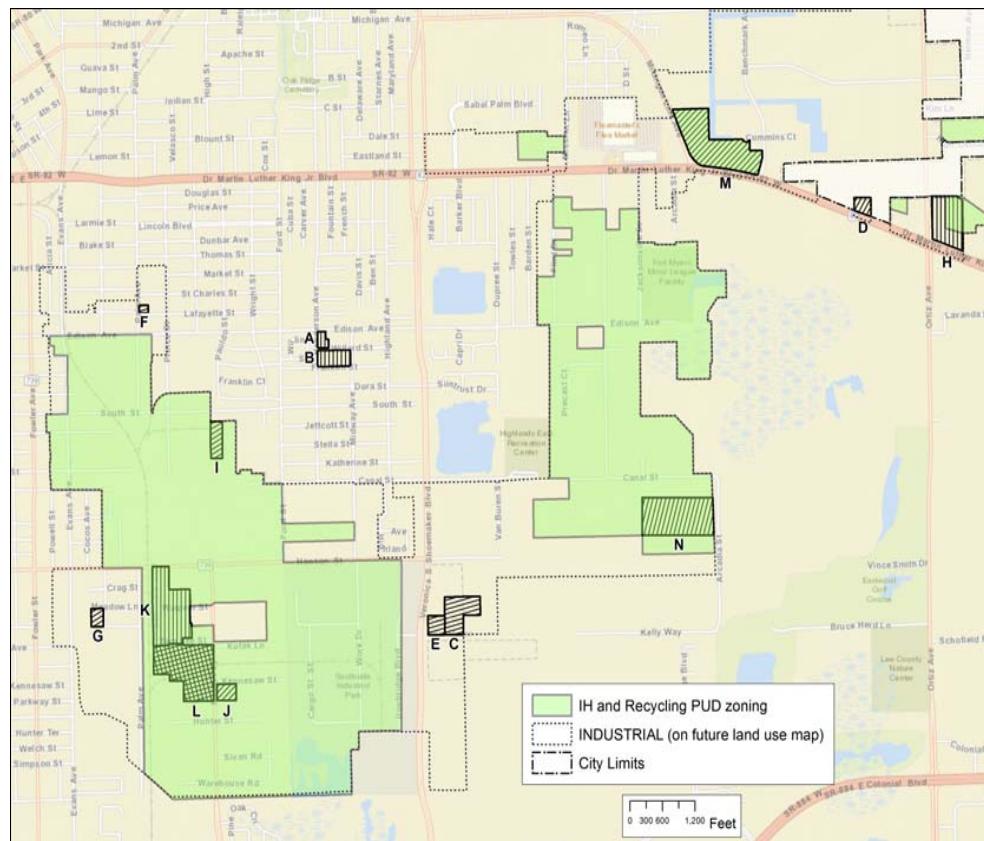
These lists have value only to the extent that the Land Development Code gives special privileges to existing junkyards and/or recycling businesses or imposes special restrictions on them. The current code does not include such lists for any other uses of land in the city.

The current lists create a number of problems:

- ▶ The distinction between junkyards and recycling businesses does not match the definitions in the Land Development Code.
- ▶ The lists include an address and STRAP (parcel) number for each business, but those are imprecise ways of identifying what land is included and where the business is located on the identified parcel.
- ▶ The lists are not current. Several parcel numbers are incorrect; many others include land no longer being used for junkyards or recycling businesses. DS&S Construction Materials hasn’t been added to the recycling business list.

The current lists in the Land Development Code should be corrected and updated to match the recommendations in this report, as shown on the next page. A map showing each active recycling business is also provided to more clearly delineate the land used for each business; this map also shows the extent of “Industrial Heavy” (IH) zoning plus PUD zoning previously granted for specific recycling businesses. The map also shows the Fort Myers city limits and the “Industrial” (IND) designation on the Future Land Use Map in the city’s Comprehensive Plan.

<u>BUSINESS NAME</u>	<u>STREET ADDRESS</u>	<u>TYPE</u>	<u>ACRES</u>	<u>ZONING</u>	<u>FLUM</u>
A Affordable Auto Salvage	3312 Edison Avenue	Auto Salvage Yard	1.2	CG	RLD
B Auto Parts Salvage	2419 Henderson Avenue	Auto Salvage Yard	3.8	CG	RLD
C Allied Recycling	3770 Veronica Shoemaker Bl.	Scrap Yard	7.8	MU & IL	IND
D Alligator Towing & Recovery	4871 Dr. Martin Luther King Bl.	Impound Lot	1.9	IL	IND
E FPT Fort Myers	3800 Veronica Shoemaker Bl.	Scrap Yard	2.3	IL	IND
F West Coast Recycling	2803 Lafayette Street	Scrap Yard	0.5	IL	IND
G A&D Scrap Materials	3066 Cranford Avenue	Paper Yard	3.2	IL	IND
H LKQ Fort Myers	5001 Dr. Martin Luther King Bl.	Auto Salvage Yard	10.6	IL & IH	IND
I Garden Street Paper Products	2998 South Street	Paper Yard	3.1	IH	IND
J Metro Mulch	3401 Old Metro Parkway	Mulch Yard	2.3	IH	IND
K Garden Street Iron & Metal	2804 Hanson Street	Auto Salvage Yard	16.2	PUD	IND
L Garden Street Iron & Metal	3350 Old Metro Parkway	Scrap Yard & Shredder	26.3	PUD	IND
M Forestry Resources	4353 Michigan Avenue Link	Mulch Yard	19.3	PUD	IND
N DS&S Construction Materials	2901 Jacksonville Street	Construction/Demolition	19.3	PUD	IND



G. Remove annexation preference from Land Development Code

As discussed earlier under Recommendation A, the Comprehensive Plan currently contains a policy that seems to give overly favorable protection to junkyards in residential areas just because they were on land being annexed, an unfortunate policy that should be repealed.

That policy's language was also incorporated into Chapter 98 of the Land Development Code in 2008 as follows:

98.4.6.B.6: Vesting of uses and structures in the Belle Vue and Dunbar annexation areas. Uses or structures in the Dunbar/Belle Vue annexation area as shown on the Dunbar/Belle Vue Annexation Map D on page 39, that were in legal existence and compliant with the Lee County land use regulations on or before December 21, 2005, shall be considered vested in the city. Similarly, in the Dunbar/Belle Vue annexation area, previously granted Lee County development approvals as of December 21, 2005, shall be vested pursuant to those approvals and the county land use regulations as of December 21, 2005.

- a. Structures located in the area shown on Map D on page 39 may be replaced or remodeled as built and uses may be continued indefinitely until such time as the **occupational license** is not renewed. The city shall maintain an inventory of the **licensed** structures and uses. In order to preserve vesting, a property owner with an existing structure that is to be demolished must apply for building permits to rebuild the structure within one year of its demolition. The rebuilt structure shall comply with city land development regulations with regard to living area, setbacks, parking spaces, and landscaping.
- b. Existing structures or uses shall be considered a special nonconformity and any expansion shall be required to seek approval through the conditional use process. No increase in dwelling units is permitted. The fees for conditional uses shall be waived.
- c. Any expansion to an existing junkyard or recycling center shall be required to seek approval through the planned unit development process.

As to junkyards, this vesting language contradicts the following clear language in Chapter 118 of the code (118.3.3.D.1):

- c. **Conflicting provisions.** Where these regulations conflict with other Land Development Code requirements, these use standards shall apply.
- d. **Existing junkyard operations regulated.**
 - 1) Existing junkyard operations identified in paragraph a. above are prohibited from expansion.
 - 2) For purposes of this section, the term "expansion" means the physical expansion or enlargement of the geographic boundaries of a site. Such term shall not mean additional construction or buildings.

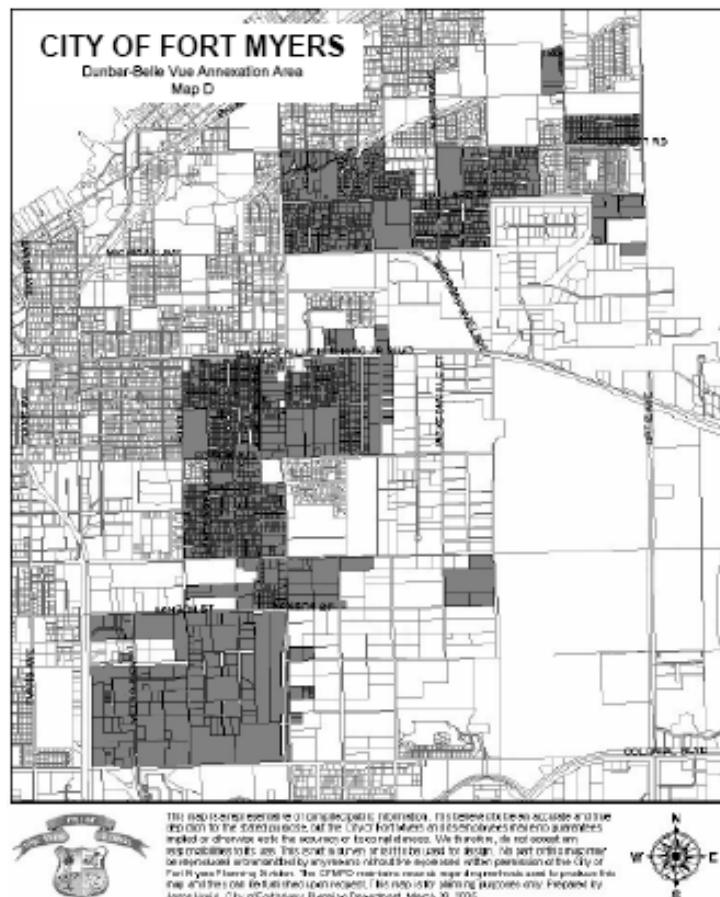
Such contradictions are sometimes intentional, for instance to allow land uses that were legal at one time to continue even after new rules would prohibit those uses. However, to complicate matters even further, the code's explanation of such "nonconforming uses" also makes it clear that they may not be expanded:

98.4.4: Nonconforming Uses of Land. Where nonconformities in use of land have been created based on adoption of this code or amendments thereto, the nonconforming use of land may be continued as long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the time it became nonconforming. No such nonconforming use shall be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the time it became nonconforming.
- B. If any such nonconforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations that are at that time applicable.

These internal conflicts in the Land Development Code must be resolved. The most straightforward course is to eliminate the section that created the conflicts in the first place: 98.4.6.B.6. This deletion is also logical from a policy perspective because the “annexation preference” policy is concurrently being eliminated from the Comprehensive Plan (see Recommendation A), and the language in 98.4.6.B.6.a about occupational licenses is obsolete and could be confused with business tax receipts (see Recommendation I). Land uses that no longer comply with regulations will still receive the same protection in the annexed areas as apply in the rest of the city.

Map D on page 39 should also be eliminated as it serves no purpose other than to identify the land covered by 98.4.6.B.6.



2-d New Approaches to Other City Codes

H. Closer coordination with state laws

Fort Myers has additional regulations for junkyards and recycling businesses in Chapter 18 of the city's code. Chapter 18 contains local business regulations that apply to utility franchises, door-to-door solicitors, sidewalk cafes, and pedicabs, plus some non-zoning regulations for "secondhand dealers" and "secondary metals recyclers":

- ▶ **Secondhand dealers** include pawnbrokers, junk dealers, and precious metal dealers, but not dealers in antiques, books, office furniture, clothing, coins, or cars. (See Division 2 of Chapter 18.)
- ▶ **Secondary metals recyclers** include scrap yards. "Secondary metals" in an industrial term meaning raw metal that was produced from refined scrap metal instead of having been produced from ore. Scrap yards begin the process of converting unwanted metal products by sorting them into prepared grades, then crushing, baling, or shredding them for transport and further processing into "secondary metals." (See Division 3 of Chapter 18.)

Fort Myers' Chapter 18 regulations are quite similar to those found in Chapter 538 of the Florida Statutes and Chapter 12A-17 of the Florida Administrative Code. The state requires these businesses to allow inspections, hold potentially stolen goods, and maintain detailed records of sellers and transactions. The city has similar rules, which it also applies to pawnbrokers and precious metals dealers. The city issues licenses to businesses, whereas the state simply registers the businesses. The city enforces its rules through code enforcement while the state provides criminal penalties.

These regulatory systems create a number of problems with regard to junkyards and recycling businesses:

- ▶ **Terminology.** The state's terminology is based on the output ("secondary metals"), and the city sensibly uses this same terminology for its similar rules in Chapter 18. However, the city's Land Development Code (Chapters 98 through 142) defines land uses based on potential impacts to their neighborhood, resulting in two separate systems for classifying the same businesses.

- ▶ **Licensing.** State law simply requires these businesses to register while Chapter 18 requires these businesses to obtain a license from the city. In practice, the city no longer issues these licenses; this requirement should be eliminated from the code.
- ▶ **Preemption.** In 2012, the legislature adopted section 538.28 which says that any local government regulation "relating to the purchase or sale of regulated metals property of the registration or licensure of secondary metals recyclers is void"; however, pre-2012 regulations remain valid and can be amended to incorporate new state rules.
- ▶ **Business taxes.** Compounding the licensing dilemma, all businesses intending to operate in the city must pay a small tax each year. The receipt for this business tax can be confused with a license, or as confirmation of zoning compliance. See Recommendation I. for a further discussion of business taxes for junkyards and recycling businesses.

In light of these complications, Fort Myers should repeal most of Chapter 18's Division 3 because the city's substantive requirements duplicate those of the state, and the issuance of city licenses to secondary metals recyclers would create more problems than it solves. In its place, Division 3 should instead adopt state law and rules by reference and declare that registration with the state constitutes registration with the city. The city should then enforce these rules through its normal code enforcement process, potentially leading to revocation of the right to operate in the city. Criminal prosecution of violations, as provided in state law, would remain available.

To clarify the relationship between the state's terminology and the city's terminology, the term "secondary metals" should be included in the Land Development Code and defined as follows: "**Secondary metal** means raw metal ready for re-use that was produced by refining scrap metal rather than being produced from ore."

I. Clarify relationship between business tax receipts and zoning

Businesses intending to operate in Fort Myers must pay a small tax to the city each year; this tax generated \$1.8 million of revenue for Fort Myers in 2013. Chapter 82 of the city's code governs this program and includes a fee schedule for over 500 types of businesses. Junkyards and recycling businesses pay \$50 per year for each business location. Businesses pay a similar tax to Lee County.

This "local business tax" is authorized by Chapter 205 of the Florida Statutes to be paid "for the privilege of engaging in or managing any business, profession, or occupation." State law does not require that the business actually be in operation when the tax is paid and does not require evidence that the business would be allowed at the business location. Essentially the business tax can be paid just to show intent to operate a business; in practice it is sometimes paid as inexpensive paperwork that may be useful to a business in future code enforcement proceedings.

When the business tax is paid, the city issues a business tax receipt (BTR). This receipt is sometimes misunderstood as a license to operate the business. This misunderstanding originated when this tax was authorized by the state as an "local occupational license tax"; that terminology was eliminated by the legislature in 2006.

A business tax receipt is also sometimes misunderstood as confirmation of zoning compliance. When the business tax is first paid for a new business, the city makes a determined effort to assess compliance with zoning and fire safety regulations. However, in subsequent years, a renewal BTR is issued routinely when the tax is paid. Reconfirming compliance with all regulations each year would be an impractical task that would cost far more than the tax generates; this is because businesses often change from year to year, and city regulations change frequently as well.

The city has attempted to minimize misunderstandings about the meaning of a BTR in the following ways:

- ▶ Through 2014, the city's letter that accompanied a BTR included this statement: "This receipt is NOT a license to conduct business. It is ONLY a Receipt for Business Taxes paid for FY 2014-2015." (The 2015 letter did not include that statement.)
- ▶ The actual BTR includes this statement: *Any violation of applicable chapter of the City Code of Ordinances will cancel and nullify this receipt."

Despite these efforts, a BTR is sometimes still misunderstood to mean a license to conduct business or evidence of zoning conformity. Each year the city routinely reissues BTRs to businesses that may be violating city zoning because the use has changed, the business has expanded, city rules have changed, the zoning never was correct, or the business no longer exists or never did exist. The city can end up in the awkward position of challenging the right to operate a business at a particular location after having issued a business tax receipt to the business at that very location.

To minimize these problems, the following changes are recommended to Chapter 82:

1. Chapter 82 should state that the City of Fort Myers accepts payment of the business tax as intent to operate in the named category; the city may decline to accept payment because of apparent noncompliance with zoning or other city regulations; and acceptance of a business tax payment does not confirm regulatory compliance or confirm actual operation of business at that site.
2. Chapter 82 should be amended to replace the "junkyard" and "recycling business" terminology with the terminology added to the Land Development Code (see Recommendation B). The business tax rate should be based on gross sales like other retail and wholesale businesses. Renewal of business tax receipts in 2016 should use the new terminology and be issued with the qualifications that will be required by section 118.3.3.D.1.c

The following changes are recommended to documents issued by the city:

3. On the city's letter that accompanied a business tax receipt, reinstate the prior disclaimer: "*This receipt is NOT a license to conduct business. It is ONLY a Receipt for Business Taxes paid for FY 2014-2015.*"
4. The actual business tax receipt should include these statements:
 - a. "*This receipt indicates payment of the business tax as required by Chapter 82 of the City Code. This receipt does not indicate verification of zoning compliance or actual operation of the stated business at this address.*"
 - b. "*Any violation of applicable city ordinances and regulations will cancel and nullify any privileges conferred by this receipt.*"

APPENDIX A: News-Press Article from 1978

By JOHN PERRY
News-Press Staff Writer

Black homeowners in Fort Myers sometimes wonder where their public officials have gone.

As taxpayers, they help pay the salaries of planning and zoning staffs in the courthouse and city hall.

But as homeowners they see their hard won investments undermined by sprawling junkyards, obnoxious wildcat dumps and overgrown lots that have become garbage pits.

They know about the laws against such things. They know about the officials who are supposed to monitor such conditions. They know something is wrong.

In an era when local governments are legally committed to monitor and preserve the quality of life in their jurisdictions, one of the most densely populated, potentially valuable sections of Fort Myers, the area known as Dunbar, is the county's dumping ground.

When proponents of urban renewal or community redevelopment talk about upgrading the Dunbar community, they often run head-on into that stiffnecked protector of private property rights, the grandfather clause.

These are clauses in zoning codes that say local governments cannot force a property owner to stop using his land as he was prior to the day the code was adopted. The original usage is allowed to continue.

Grandfather clauses are designed to protect property owners from arbitrary government decree. But in some parts of the black community of Fort Myers, the clauses also have served to perpetuate, among other things, junkyards that act as rusty anchors to property values.

"The problem with some of these continuing uses," said Ted Bower, who is preparing the city's comprehensive land use plan, "is that they continue and continue and continue."

The public officials and private entrepreneurs who are trying to renovate and redevelop the black community knock heads with the grandfather clause every day.

"Economic development is contingent on one thing," said Richard Hallan, the city's director of community redevelopment. "The capability of an individual to make money off it. And the money has just not been invested."

Hallan and others explain the process as a simple, economic fact of life: Money will not be invested in the black community until there is a better than even chance the property will increase in value over the years. And that is not likely to happen to property which has a junkyard nearby.

But there is a catch to the grandfather dilemma, which several landowners and some county officials appear to have ignored...

That is the stipulation that any nonconforming use (one that is not permitted under the zoning classification) which is allowed to continue, must comply with existing laws and cannot later be expanded.

In other words, grandfathered junkyards are not supposed to get any bigger after the day the zoning code is adopted.

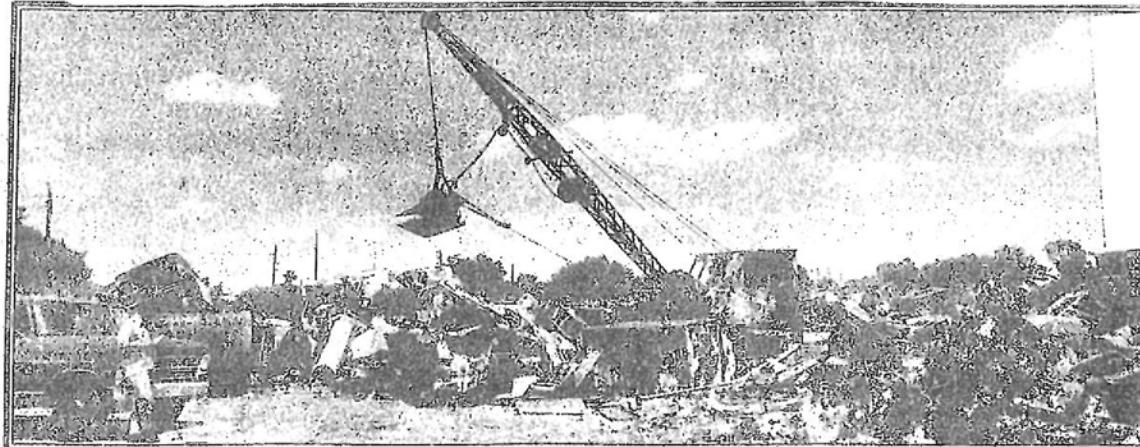
At least one junkyard has been getting bigger, according to a review of zoning maps, and there may be others.

Not only have some yards expanded, but at least two in the Dunbar community also are in obvious violation of laws that say junkyards must be enclosed by an 8-foot fence.

Besides that, there are several illegal dumps, apparently spontaneous in origin and seemingly permanent in nature, that are just as harmful to property values as the junkyards and far more hazardous to residents.

The officials who are empowered to attack these conditions are largely overworked and have fallen behind in efforts to "clean up" the black community. The task itself appears to have a low priority with city and county officials.

FMNP Dec 3-11, 1978



News-Press/Thomas A. Price

The Junkyard It's many families' next door neighbor

growing impatient. In recent weeks the number of cars appear to have increased.

"It's a junkyard, that's what it is," Brown said. "right there in the middle of a business district."

Irving Williams, owner of Stop and Swap, argues that he and the other junkyard operators have been doing the county a favor all these years, collecting and disposing of junked cars. They say it is unfair to change the ground rules after two decades.

"Besides," Taylor said, "they (black homeowners in the area) knew the junkyard was there when they built; the junkyard was there for years and years and years."

That conflicts with the recollection of Idelle Wil-

iams of 3249 Franklin, who lives with her husband Calvin in a four-bedroom home across the street from Williams' junkyard.

She is a retired school teacher; he's a construction laborer. Like many black couples, they have spent more than a decade completing, bit by bit, their well-kept, expensive-looking home.

They bought the land in 1962, said Mrs. Williams (who is not related to the junkyard owner) partly because of the pond across the street. During the ensuing years, they watched the expansion, but said they received no notice of the county's approval. They never had a chance to protest.

"There was a very beautiful pond out there," Mrs. Williams said, nodding toward the junkyard. "Instead of being a pond, it turned into being a junkyard. If I had to do it again, I'd never have moved here. It really was a beautiful pond."

Today, more than two years after the spate of letters, and nearly a decade after the county commission

An obnoxious stench arose and dead fish floated to the surface. Residents in the area circulated a petition, Mrs. Pryor said, until a county official told them the lake would be filled in by the owner.

"Me and my neighbors, we tried to stop them," Mrs. Pryor said. "There used to be fish in there and alligators and we used to love it out here. We've been living here 15 years and it has never been dirty before. I was mad, myself, with it."

The lake is located on Henderson Avenue, one block from Irving Williams' Stop and Swap, in the same residential area. County zoning official Mowry says the body of water is being filled in with the approval of the Dunbar Coalition because it is a health hazard.

Throughout the day, extra large dump trucks rumble up and down the small streets, where children often are at play, and unload tons of construction debris. The debris rumbles out of the trucks with a loud whoosh, causing clouds of dust to float over nearby homes.

After the trucks leave, old men pick through the droppings and young children roam about the piles. There is no fence around the mess. Periodically, a bulldozer shoves piles of the waste into the body of water. The stench is noticeable for several blocks.

Mowry said Payne has been given a two-year permit to fill the pond with construction debris.

Mrs. Edith Payne, who helps operate the trucking business, said Payne truck's dump only clean fill, and that other, unauthorized private and commercial dumpers are causing the problem. She says it will likely take another year to fill in the pond.

"It's not a dump," she said. "It's a landfill. It's a bad situation because it is dangerous as it is."

And so that is what Mrs. Pryor has for a backyard: a pond that has become a wild cat landfill. One official said it is obvious the pond behind the Pryor's house has become as much of a land fill as the county's Buckingham site. In fact, for dumpers in south Fort Myers, it's a shorter drive. And the price is right.

Whether enclosed or not, the junkyards and illegal dumps harbor vermin

Consider Irving Williams' Stop and Swap Auto Salvage at 2818 Henderson Ave., the granddaddy of the Dunbar junkyards, and its growth from a small mom-and-pop operation to the largest junkyard in Southwest Florida.

When the Lee County Commission adopted the zoning code in 1962, Williams' junkyard, on Henderson Avenue between Willard and Franklin Streets, took up about as much space as a convenience store, sitting on the corner of a block that consisted largely of a body of water. He was allowed to continue operation under the grandfather clause.

Leaving through aerial photos of the neighborhood taken during the last 15 years, it is obvious the junkyard soon acquired the characteristics of a virulent cancer, spreading rapidly over the entire block, filling in the lake, and hopping to adjacent parcels of land.

The expansion continued and continued and continued and by 1972, according to the aerial photos, reached its current three-block span.

Although they had seldom raised a voice in the past, by the summer of 1976, blacks had begun to demand some "clean up" measures. After a series of confrontations, county officials took aim on Dunbar junkyards.

It required very little research to confirm that Williams had ignored the prohibition against expansion.

County Zoning Administrator Don Molloy dutifully began proceedings under a section of the zoning code that says "No junkyard shall be established or expanded without a permit from the county commission."

After a flurry of letters, however, the situation became awkward for the well-meaning officials. It turned out that one of their five bosses, County Commissioner Doug Taylor, was almost entirely responsible for the expansion because it had occurred while Taylor was county zoning administrator.

Certainly, Williams' attorney, John F. Stewart, was quick to note in a subsequent letter to Molloy that, "Mr. Taylor informed us that the enlargement of Mr. Williams' junkyard was done with his approval and under the direction of Mr. George Blust, also formerly of your department."

"... Further, it was Mr. Taylor's recollection that this enlargement occurred prior to the adoption of the present regulations and thus comes under the grandfather clause."

Molloy responded with a letter that said in part, "Mr. George Blust (who has since died) was not employed until after the regulations were enacted and (neither) Mr. Taylor nor Mr. Blust had the authority to grant the enlargement, unless approved by the county commission."

Molloy might also have invited Stewart to examine the aerial photos which clearly show the junkyard's largest growth occurred after the 1962 code adoption.

"That is no place for a junkyard," Molloy said recently, "I think junkyards are probably one of the most distasteful things as far as a (residential) area that can be done."

Among those affected by the junkyard are tenants in the Southwest Village Annex housing project, which is across the street in one direction, the Franklin Park Middle School, which is across the street in another direction, and residents of the nearby Schoolview Homes Subdivision.

Nevertheless, because Williams had the implied or expressed permission of the county (and Taylor) to ignore the zoning laws, it was too late to do anything except ask Williams to put a fence around the sprawling mass of junked cars.

"I don't think it was my permission," Taylor said recently. "I think it was the commission's permission. I'm sure it was a special permit. I'm sure it was."

adopted a provision that requires junkyards to be fenced, Stop and Swap still is only partially enclosed.

County Zoning Inspector Harry Mowry, who is acting building director, explained that the current policy is to "work with" businessmen such as Williams.

"Do you know how much it would cost to build a fence around that?" Mowry said. "Ten thousand dollars! That's money. You gotta work with the guy, because he's doing it. We are constantly after him and he's constantly trying to improve it."

The county has been "working with" another family with the last name of Williams (although they are not related to Irving Williams) who operate GJW Glass Works, a scrap iron and metal salvage operation at 3420 Anderson Avenue. They maintain a junkyard near the intersection of Highland Street and Anderson.

There is no fence around parts of their junkyard on Highland. It once was about as large as the Stop and Swap yard, but in recent years has been reduced in size.

Nearby black residents and businessmen say the owners of the GJW Glass Works salvage operation have expanded to a parcel of heavily-weeded land on Anderson Avenue, just across the street from their office.

GJW officials argue that they always have used that land for junk. They say it was grandfathered in.

County officials say they are not sure, because the aerial photographs of that parcel taken during the 1960s are not clear.

On that strip of land, though, hefty piles of rusting pipe have been stored for several months, further annoying nearby businessmen. There is no fence around the heavily weeded lot.

Obviously, an eight-foot fence is expensive. Yet it is almost impossible to calculate the cost of junkyards to neighboring homeowners, in terms of the depreciation of their investments or what economists call "social costs."

Sometimes, even the best efforts of zoning officials seem fruitless.

City zoning officials have been trying for nearly three years to have David James erect an acceptable fence around his hole-in-the-wall junkyard operation at 3123 Anderson Avenue, which sticks out like a sore thumb even on that dilapidated thoroughfare.

James, who was allowed to continue his operation under the zoning code's grandfather clause, seldom has more than a handful of rusting junked cars on his lot.

The businessman received his first notice from city officials Sept. 9, 1976. The officials asked him to comply with city regulations by putting an eight-foot fence around the yard.

Without consulting city building officials, James put sheets of corrugated metal around a portion of the yard. City officials say the sheet metal, which has since rusted, is not acceptable.

"He put up a damn corrugated metal fence that looks worse than the cars," said City Zoning Inspector George Brown.

James, who is 73 and has operated his junkyard since the 1930s, got his second notice in June of 1977. Officials asked him to erect a fence that conformed with standards in the building and zoning codes. Since then, nothing has changed.

"They are just doing their job," James says. "When a person is right, he's right and when he's wrong, he's wrong and I realize that: I'm trying to do all I can to get it cleaned up. If my health was good, I would have had it."

Brown and others have been sympathetic, but are

last time county officials focused on the black community, was during the 1976 cleanup campaign. Zoning officials say they were successful in getting many of the lots cleared, but that some of the areas deteriorated rapidly.

The county has a lot mowing or clearing ordinance on the books, officials say, but it's not being enforced because of a tight budget.

"We have an ordinance in existence," said Acting Building Director Mowry. "It works. The problem with it now is we are under a moratorium for spending. There are just no funds."

A survey of vacant lots in the black community which, in general, are owned by absentee land owners, indicates there is no moratorium on the growth of weeds.

Whether enclosed or not, the junkyards and illegal dumps harbor rats, snakes and other vermin in alarm numbers, according to a block-by-block rodent survey of the Dunbar area recently completed by the Lee County Health Department. And the effects are not confined to the black community.

The team of sanitarians found, according to their report, "rapidly expanding metropolitan areas in which there are sections of substandard housing, un-contained garbage and accumulations of junk; all of which contribute to the support of rodent populations. The rodents and their supportive conditions are important factors in the spread of diseases throughout the county."

Mrs. Ella Mae Pryor can show you a dramatic example of an "accumulation of junk." She has been watching one grow behind her home for more than two years. People tell her there is nothing to be done about it.

She and her husband Jim have lived in a well-kept, white house with red-trim at 3300 Dora Street for 15 years. They decided to buy the house from developer Ken Atkinson several years ago, primarily because of a large, well-stocked lake behind the house.

The Pryors used to sit with friends in the back yard, look out over the lake and catch fish for dinner.

But about two years ago, the dump trucks started coming. They were owned by James G. Payne and Sons and each day the drivers dumped piles of wood, concrete and other construction debris into the lake.

Soon, other free-lance junk dumpers started showing up, unloading mattresses, appliances, old lumber and all manner of garbage.

The block of land, which includes the pond, is about the same size as the block where Williams maintains Stop and Swap. He, too, filled in a pond.

The pond behind Pryor's house is owned by an Georgia family and currently is assessed at \$1,220, according to 1977 records. Williams' land is assessed at \$28,900.

It seems fair to assume that with each new truckload of debris, the block of land becomes more valuable to the Georgia family.

"The pond was there and we wanted to get it filled in," Mowry said. "We were anxious to get it filled in because of health hazards and it was done at the instigation of the Dunbar Coalition."

Dunbar Coalition President Pat McCutcheon said the process is taking much longer than promised.

"That was two years ago," he said.

Richard Sapp, chairman of the Lee County Mental Health Association and director of the drug abuse unit, happens to own a four bedroom, \$60,000 home across the street, which he and his wife built over a period of two years.

Sapp was raised in the black community of Fort Myers and recalls when the pond behind Mrs. Pryor's home was a natural attraction.

"People used to fish there all the time," Sapp said. "If they were going to leave it as a natural pond, it would have been real nice. But they started polluting it and all the fish died. Then it became a health hazard."

Henry Isaac, a 31-year-old construction foreman, lives across the street from Sapp in his recently-built version of a Cape Coral contractor's latest three bedroom model. He wants to know how much longer it will take to fill in the pond.

"It's terrible," Isaac said. "The way they've got it, it's an eyesore. If they are going to do it, then they oughta go ahead and do it, instead of doing it a little at a time."

Mrs. Pryor and her husband, who represent the sort of single family homeowners experts say are the best long term answer to the Dunbar area housing problems, are planning to move. They say they don't want a landfill in their backyard.

The Pryors might be surprised to learn that Lee County Zoning regulations are intended to "promote real property rights and . . . the best use of land, for preservation, protection, development and conservation of natural resources."



Tot plays at her home across from a junkyard

News-Press/Thomas A. Price

APPENDIX B: Proposed Code Changes

Appendix B contains the specific code changes that would carry out the policy initiatives described in this report and resolve various technical conflicts. These changes can be adopted by the City Council through the public hearing process.

Proposed additions to the code are underlined. Proposed deletions are ~~struck through~~. Except in Section 1, proposed additions and deletions are also **highlighted**.

Ordinance Section	Code Section	Subject Matter
1	<u>118.3.3.D.1</u>	Recycling business standards
2	<u>118.3.1.B</u>	Special-use permits
3	<u>118.3.2</u>	Special-use permits in the LDC Use Table
4	<u>118.3.3.D</u>	Industrial use standards
5	<u>118.3.5.H</u>	Filling former borrow pits
6	<u>118.3.6</u>	Industrial use categories
7	<u>118.3.7.D.2.b</u>	General outdoor storage
8	<u>98.2.1.A</u>	City Council and the Land Development Code
9	<u>98.2.2.C</u>	Planning Board powers and duties

10	<u>98.3.1.I</u>	Withdrawal of applications
11	<u>98.3.2.B</u>	Disclosure requirements
12	<u>98.3.13.B.</u>	Quasi-judicial procedures
13	<u>98.3.17</u>	Special-use permits
14	<u>98.4.6.B.6</u>	Vesting of uses in annexation areas
15	<u>122.4.21</u>	Development permits
16	<u>142, Article 2</u>	Defined terms
17	<u>18-221</u>	Definitions
18	<u>18-223</u>	Business tax required
19	<u>18-224</u>	License application
20	<u>18-231</u>	Signs
21	<u>18-262</u>	Definitions
22	<u>18-264 (was 272)</u>	State registration
23	<u>18-265</u>	Compliance required
24	<u>18-266</u>	Business tax required
25	<u>82-134</u>	Business tax levied
26	<u>82-164</u>	Business tax receipts
27	<u>82-205</u>	Business tax fee schedule

APPENDIX B: Proposed Code Changes

SECTION 1. The City of Fort Myers Land Development Code is hereby amended to replace Subsection 118.3.3.D.1 - Junkyards and Recycling Business Operations' with the new language below (Chapter 118 - 'Land Use Regulations'; Article 3 - 'Permitted Land Uses'; Section 118.3.3 - 'Use Standards'; Paragraph D - 'Industrial Use Standards'); Subparagraph 1 - 'Junkyards and Recycling Business Operations':

D. Industrial use standards, including recycling businesses.

1. Recycling businesses.

a. Terminology for recycling businesses. Seven types of recycling businesses are defined in this code. These seven types are grouped into an industrial use category in subsection 118.3.6.E.6 and are defined as follows:

Auto salvage yard means an open area where end-of-life vehicles have their fluids drained and are then stored so that parts can be salvaged and resold before the remainder of the vehicle is moved off the premises to be recycled into secondary metals.

Construction/demolition yard means an open area where waste material from construction and demolition sites is sorted, disassembled, crushed, or otherwise processed to separate salvageable material from material requiring disposal.

Impound lot means a facility capable of storing more than 50 towed vehicles until the vehicles are recovered by their owners or resold.

Mulch yard means an open area where cut trees, vegetative debris, or wood scraps are ground up and processed for subsequent resale as mulch, compost, and similar products.

Paper yard means a facility that sorts and processes scrap paper for subsequent conversion by paper processing mills into new paper products.

Scrap yard means a facility that sorts and processes scrap metals and other scrap material for subsequent resale to become secondary metals or other products. A scrap yard may process vehicles but does not hold vehicles on the premises in anticipation of selling parts. Scrap yards that use a shredder to process scrap material must be explicitly approved by the city to operate a shredder and may not stockpile shredder residue at the scrap yard.

Shredder means industrial equipment that grinds scrap metal into small pieces and mechanically sorts the pieces into recyclable metal streams while diverting unusable material for disposal off-site.

Prior to 2016, this code defined only two types: recycling businesses and junkyards. Paragraph D.1.b. identifies businesses in operation in 2016 and their new designations under this code. Municipally-owned horticulture recycling and processing facilities are treated separately by this code, as are recycling drop-off facilities.

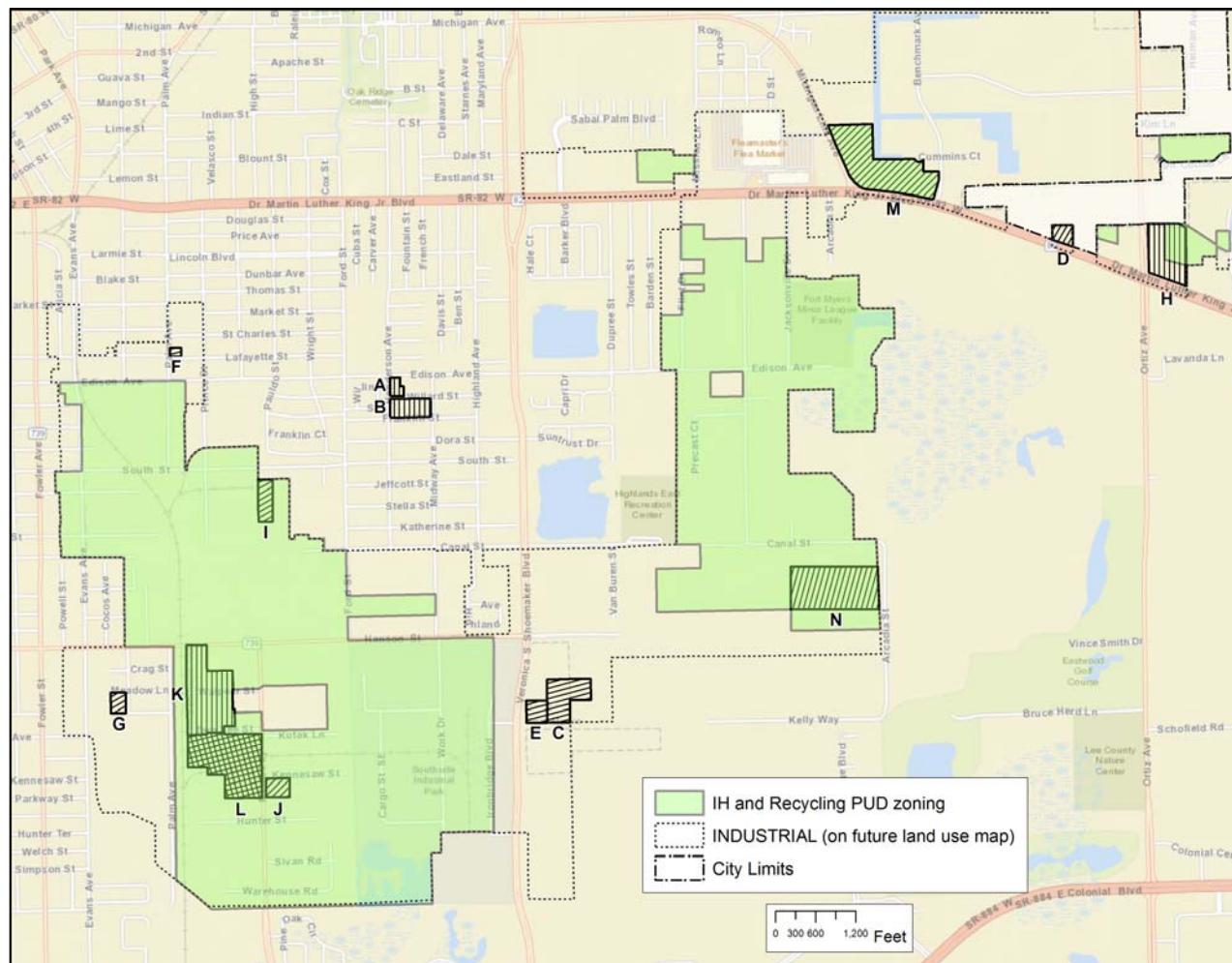
b. Existing recycling businesses. Existing recycling businesses within the City of Fort Myers are identified here to properly categorize each business and ensure that appropriate standards are applied. This information is accurate through *[insert adoption date]*.

- 1) List of existing recycling businesses.** Table A includes business names and addresses, business type, acreage, zoning district(s), and Future Land Use Map designation(s).
- 2) Map of existing recycling businesses.** Map A shows the location and boundaries of each business along with the extent of “Industrial Heavy” (IH) zoning plus PUD zoning previously granted for specific recycling businesses. Also shown are outlines of the Fort Myers city limits and the “Industrial” (IND) designation on the Future Land Use Map in the city’s Comprehensive Plan.

Table A

<u>BUSINESS NAME</u>	<u>STREET ADDRESS</u>	<u>TYPE</u>	<u>ACRES</u>	<u>ZONING</u>	<u>FLUM</u>
A Affordable Auto Salvage	3312 Edison Avenue	Auto Salvage Yard	1.2	CG	RLD
B Auto Parts Salvage	2419 Henderson Avenue	Auto Salvage Yard	3.8	CG	RLD
C Allied Recycling	3770 Veronica Shoemaker Bl.	Scrap Yard	7.8	MU & IL	IND
D Alligator Towing & Recovery	4871 Dr. Martin Luther King Bl.	Impound Lot	1.9	IL	IND
E FPT Fort Myers	3800 Veronica Shoemaker Bl.	Scrap Yard	2.3	IL	IND
F West Coast Recycling	2803 Lafayette Street	Scrap Yard	0.5	IL	IND
G A&D Scrap Materials	3066 Cranford Avenue	Paper Yard	3.2	IL	IND
H LKQ Fort Myers	5001 Dr. Martin Luther King Bl.	Auto Salvage Yard	10.6	IL & IH	IND
I Garden Street Paper Products	2998 South Street	Paper Yard	3.1	IH	IND
J Metro Mulch	3401 Old Metro Parkway	Mulch Yard	2.3	IH	IND
K Garden Street Iron & Metal	2804 Hanson Street	Auto Salvage Yard	16.2	PUD	IND
L Garden Street Iron & Metal	3350 Old Metro Parkway	Scrap Yard & Shredder	26.3	PUD	IND
M Forestry Resources	4353 Michigan Avenue Link	Mulch Yard	19.3	PUD	IND
N DS&S Construction Materials	2901 Jacksonville Street	Construction/Demolition	19.3	PUD	IND

Map A



c. Standards for certain existing recycling businesses.

- 1) Applicability.** The standards in paragraph D.1.c apply to existing recycling businesses except for those businesses with “Industrial Heavy” (IH) zoning or with PUD zoning previously granted for the recycling business.
- 2) Remedial standards.** By *two years after adoption*, each of these businesses must meet the following remedial standards:
 - a) Screening.** Recycling businesses must screen from public view their active operations, which include all outdoor storage of materials, equipment, or vehicles. Certain areas do not need to be screened: fully enclosed buildings, customer parking lots, stormwater detention areas, and landscaped or natural open spaces. Any material or any vehicle other than a customer vehicle that is visible from eye level (five feet above ground) on any street within 500 feet of the nearest portion of the screen for longer than 21 continuous days will be deemed a violation of this code, whether the visibility is due to inadequate screening, openings in the screen, material being visible above the screen, or customer parking lots being used for storage.
 - i. Screening wall with landscaping.** A solid screening wall at least 6 feet tall must surround and fully screen all active operations. Walls may be increased up to 15 feet (including any berm below the wall) and dense vegetation may be allowed to grow above the wall to block the view of stacked material or vehicles. All new and replacement walls must be reinforced concrete panels with columns every 15 feet or more and a decorative finish on the outside of the panels; these walls must be set back at least 15 feet from every street right-of-way and from every property line adjoining non-industrially zoned land. This setback is to accommodate a Type B buffer yard outside the wall which must be planted with the specified number of shrubs and maintained in accordance with chapter 138. The wall and buffer vegetation must comply with the intersection visibility requirements in chapters 118 and 134, which may require portions to be angled or set back more than 15 feet.
 - ii. Alternative screening methods.** An equivalent screening system may be substituted for the solid screening wall if approved by the community development director, for instance a vegetative screen of trees and shrubs that completely blocks the view of active operations. The trees and shrubs required to create an opaque vegetative screen would replace the number of trees and shrubs that chapter 138 specifies for a Type B buffer yard.
 - b) Signs and outdoor displays.** All signs and outdoor displays must comply with all current codes regardless of when the signs or outdoor displays were installed (see chapter 126 for signs and section 118.3.7 for outdoor display).
 - c) Outdoor storage.** Outdoor storage at recycling businesses is deemed part of the active operations and therefore must be fully screened from public view.

- d) Business taxes.** Until these remedial standards have been met, each business tax receipt issued for these businesses will indicate that the receipt is temporary only and the receipt will contain a reference to these remedial standards and the deadline for their completion. After the remedial standards have been completed, each business tax receipt will indicate that the receipt is transitional only and may expire after the period provided in paragraph D.1.c.4).
- 3) Expansion.** These businesses may not expand unless they obtain the same approval that the City of Fort Myers requires in paragraph D.1.d for new and relocated recycling businesses and at the same time commit to upgrading all contiguous and nearby recycling businesses to those same standards, whether or not those businesses are located on the same block or an adjoining block or located inside or outside city limits. Businesses outside city limits must be annexed into the city. In this context, the term "expand" means any of the following:
- a) The physical expansion or enlargement of the geographic boundaries of a previously approved site.
 - b) Expansion of the use onto additional portions of the previously approved site.
 - c) Adding an unauthorized use anywhere on the site.
 - d) Construction or installation of new structures or a shredder anywhere on the site, except that the remedial screening and signage improvements required by paragraph D.1.c.2 are permitted, as are the installation of routine recycling equipment for baling, crushing, logging, and fluid removal along with other minor improvements that the community development director concludes will clearly benefit the surroundings.
- 4) Mandatory compliance with current standards.** By /seven years after adoption, each of these businesses must either have relocated in conformance with the paragraph D.1.d standards or must have upgraded at their existing locations to meet those same standards. Both options require special-use permits from the city as provided in paragraph D.1.d.

d. Standards for new and relocated recycling businesses.

1) Use assignments. This code requires specific types of approval for any new or relocated recycling business. Those requirements are contained in the Permitted Use Table (subsection 118.3.2.B) that assigns the industrial use category for recycling businesses (subsection 118.3.6.E.6). The required approvals are summarized as follows:

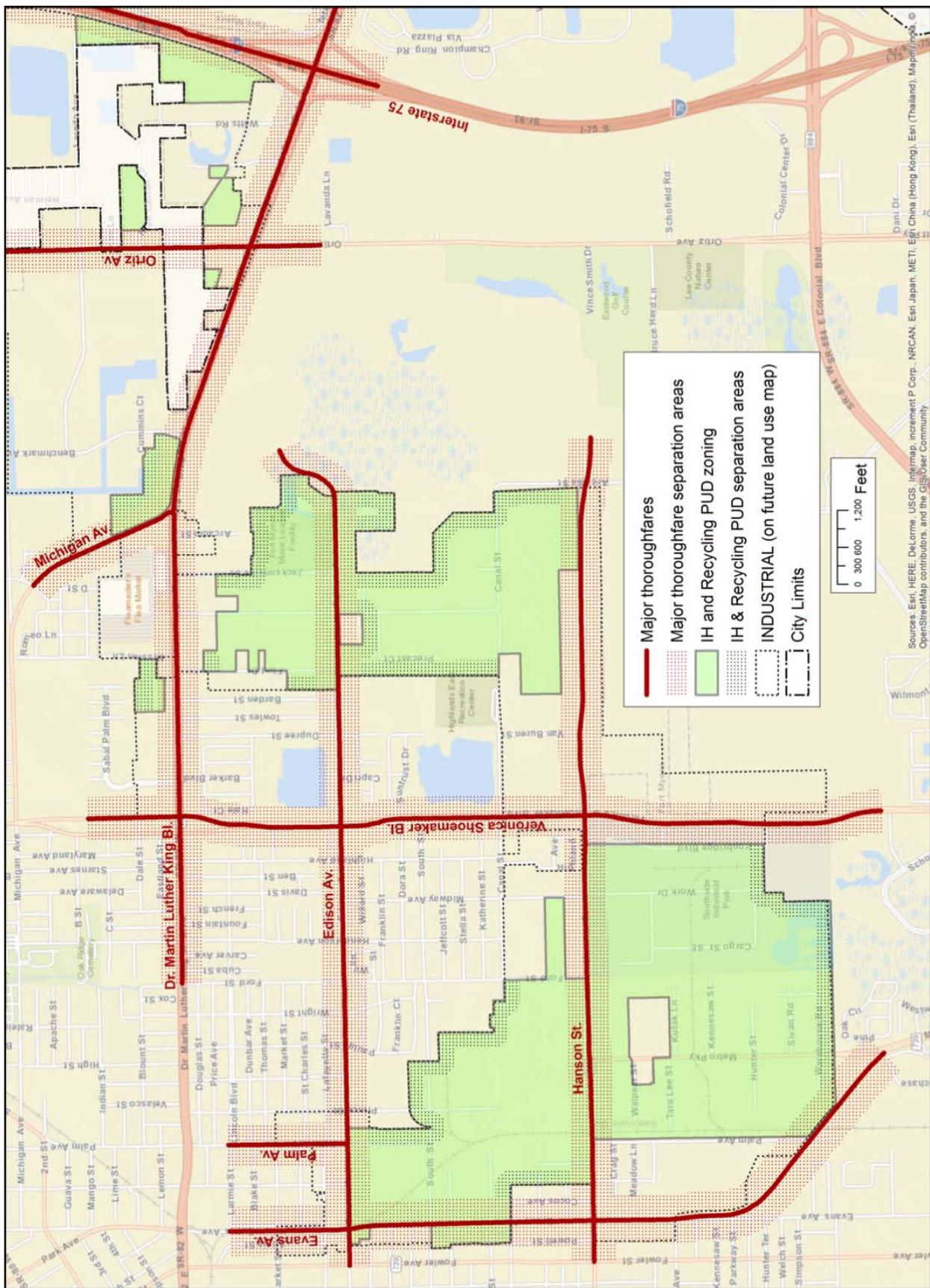
TYPE OF USE	APPROVAL REQUIRED
<u>Auto salvage yard</u>	<u>Special-use permit in IH zoning district</u>
<u>Construction/demolition yard</u>	<u>Special-use permit in IH zoning district</u>
<u>Impound lot</u>	<u>Special-use permit in IH or IL zoning district</u>
<u>Mulch yard</u>	<u>Special-use permit in IH zoning district</u>
<u>Paper yard</u>	<u>Special-use permit in IH zoning district</u>
<u>Scrap yard</u>	<u>Special-use permit in IH zoning district</u>
<u>Shredder</u>	<u>Special-use permit in IH zoning district</u>

2) Screening and buffer yards. New and relocated recycling businesses must meet the screening and buffer yard requirements set forth in paragraph D.1.c.2.a). Regular buffer yard and landscaping requirements in other portions of this code also apply, such as parking lot landscaping and building perimeter planting.

3) Separation. New and relocated recycling businesses must maintain separation areas. Certain portions of the business may operate in the separations areas, which do not need to be screened: fully enclosed buildings, customer parking lots, stormwater detention areas, landscaped or natural open spaces, and related or unrelated businesses that are allowed in the zoning district. The remainder of the recycling business must be fully screened as provided in paragraph D.1.c.2.a). The required separation areas are:

- a) 300 feet from the nearest edge of an existing or proposed right-of-way of a designated major thoroughfare.
- b) 300 feet from any land that is not designated “Industrial” on the Future Land Use Map in the city’s Comprehensive Plan.
- c) Map B identifies the major thoroughfares from which separation is required and the approximate width of the thoroughfare separation areas. Map B also identifies “Industrial Heavy” (IH) zoning plus PUD zoning granted for specific recycling businesses as of *[insert adoption date]* and the approximate width of the non-industrial separation areas.
- d) If separation areas are reserved for uses not classified as recycling businesses, the separation areas may be rezoned to a different zoning district at the same time the special-use permit is being considered for the remainder of the site.

Map B



4) Special criteria. The general criteria for consideration of special-use permits are provided in section 98.3.17. The following special criteria also apply during consideration of special-use permits for recycling businesses:

- a) Proximity.** Whether the proposed location would result in harm to existing or proposed neighborhoods in the vicinity.
- b) Visibility.** Whether the proposed location and site design will allow the recycling business to function with minimal visual impacts on the community.
- c) Special impacts.** Whether the proposed recycling business would cause unacceptable impacts to the community due to traffic, noise, fire hazards, dust, or other air or water pollutants.
- d) Site plan.** Whether the proposed site design adequately minimizes potential negative impacts.

e. Supplemental regulation for all recycling businesses.

- 1)** The operation of equipment, processing of materials, and purchase of scrap shall be limited to Monday through Saturday from 7:00 a.m. to 6:00 p.m.
- 2)** Recycling businesses must remain in compliance with state and federal requirements for all regulated activities, such as handling and storage of hazardous wastes, used automotive fuels, waste tires, and other recovered materials.

f. Administration of recycling business standards.

- 1) Conflicts.** Where these standards for recycling businesses conflict with other Land Development Code requirements, these recycling business standards shall apply.
- 2) Appeals.** A person aggrieved by a determination of the community development director regarding a recycling business may appeal such determination within 30 days by filing written notice of appeal with the community development department. Each appeal must refer to the specific provision involved and set forth the determination asserted to be correct. Within 30 days of receipt of the notice of appeal, the city council will, at a public meeting, either reverse, modify, or affirm the director's determination. This process replaces the standard process for resolving appeals from administrative actions as provided in section 98.3.7.

D. Industrial use standards.

1. Junkyards and recycling business operations. A moratorium effective on July 20, 2015, is hereby imposed on any land development approvals for new junkyard or recycling businesses or expansion of existing junkyard or recycling businesses within the city for one year unless rescinded earlier by ordinance of the city council. However, during the one year moratorium, a lawful existing junkyard and/or recycling business that is located on land in the Dunbar/Belle Vue annexation area may apply for relocation through the planned unit development process. A permitted "relocation" is defined during the moratorium period as a discontinuance of existing lawful uses on one site and a movement of those same uses to a different site zoned Heavy Industrial that the city council deems as more suitable when the type of use does not change and no additional uses are added (i.e., junkyard to junkyard, or recycling to recycling, but not recycling to junkyard plus recycling). It is intended that during the moratorium, no relocation of a junkyard or recycling business will result in any expansion in the amount of land for either use; however, additional land that may be required for setbacks, buffers, or surface water management at the new location may be included in the application. During the moratorium, the planner engaged by the city to conduct a study of junkyard and recycling businesses shall assist city staff in preparation of the required staff report for any land development approval applications for a relocated junkyard or recycling business. The purposes of this assistance is to analyze compliance with emerging junkyard and recycling criteria in the staff report and allow those criteria to be considered by the planning board and city council when reviewing the relocation application.

a. **Existing junkyard identification.** Existing junkyards are identified as follows:

- 1) **A&D Scrap Material Inc.**, 3066 Cranford Avenue, Strap Number 25-44-24 P2 200170E.0010;
- 2) **Glen Fox**, 4871 Dr. Martin Luther King, Jr. Boulevard, Strap Number 21-44-25 P2 2000100.021A;
- 3) **Glen Fox**, 4981 Dr. Martin Luther King, Jr. Boulevard, Strap Number 21-44-25 P2 2000100.0220;
- 4) **Damron Auto Parts**, 5001 Dr. Martin Luther King, Jr. Boulevard, Strap Number 21-44-25 P2 2000100.0230;
- 5) **Allied Recycling Inc.**, 3770 Veronica S. Shoemaker Boulevard/Palmetto Extension, Strap Number 29-44-25 P1 00104.0080;
- 6) **P & S Auto Salvage Inc.**, 3800 Veronica S. Shoemaker Boulevard/Palmetto Extension, Strap Number 29-44-25 P1 00104.008A;
- 7) **Allied Recycling Inc.**, 3460 Dr. Martin Luther King, Jr. Boulevard, Strap Number 19-44-25 P2 0140A.0010;
- 8) **Auto Parts Salvage Inc.**, 2419 Henderson Avenue, Strap Number 19-44-25 P2 00926.0010;
- 9) **Affordable Auto Salvage Inc.**, 3312 Edison Avenue, Strap Number 19-44-25 P2 00927.0100;
- 10) **Garden Street Iron & Metal Inc.**, 3350 Metro Parkway; Strap Number 30-44-25 P4.00108.0000.

- b. Existing recycling business operation identification.** Existing recycling business operations are identified as follows:
- 1) Garden Street Paper Products**, 2998 South Street, Strap Number 19-44-25 P4 200010E.0020;
 - 2) Waste Corporation of Florida, Inc.**, 4251 Michigan Link, Strap Number 17-44-25 P3 2000061.0040;
 - 3) C.M. Gray Scrap Metals**, 2803 Lafayette Street, Strap Number 19-44-25 P1 2000315.0100;
 - 4) Reynolds/American Aluminum Recycling**, 2203 Cleveland Avenue, Strap Number 24-44 P1 2000402.0010;
 - 5) Forestry Resources, Inc.**, 4259 Michigan Link, Strap Number 17-44-25 P3 2000061.0020, plus parcels 00061.002A, 00061.0010, and 00061.0030, and Strap Number 16-44-25 P4 2000300.0280; and
 - 6) Any new recycling business operation permitted after March 18, 2002.**
- c. Conflicting provisions.** Where these regulations conflict with other Land Development Code requirements, these use standards shall apply.
- d. Existing junkyard operations regulated.**
- 1) Existing junkyard operations identified in paragraph a above are prohibited from expansion.**
 - 2) For purposes of this section, the term "expansion" means the physical expansion or enlargement of the geographic boundaries of a site. Such term shall not mean additional construction or buildings.**
 - 3) Relocation of existing junkyards may be considered by the city council if the relocation site has a future land use designation of light industrial or heavy industrial and the relocation site can be shown to improve the visual impact from the roadways and surrounding properties by observing increased setbacks from the property lines, utilizing sightproof screening, and improving the traffic circulation on the road network by utilizing traffic calming measures. The building and operations shall observe a minimum 250 foot front yard setback and 40 foot setback from all other yards adjacent to nonindustrial districts. Retail business activity may be considered within the 250 foot setback area and shall be wholly contained inside a building, with no outside storage of goods or materials. Said relocation of a junkyard operation with a retail component may be through the planned unit development process.**
- e. New junkyards.** New junkyards are expressly prohibited.
- f. Existing recycling business operations.**
- 1) The existing recycling business operations identified in paragraph b above may be allowed future expansion through the planned unit development process and only on property designated as heavy industrial.**
 - 2) No existing recycling business operation shall be allowed expansion if the Heavy Industrial property is within a 1,000 foot radius of property zoned or developed as residential, educational or recreational, unless it can be shown that the expansion area will have the effect of reducing adverse**

~~impacts on the residential, recreational or educational zoned or developed property by improving the views and vistas and by reducing or eliminating vehicular traffic. Possible expansion areas within a 1,000 foot radius of property zoned or developed residential, educational or recreational that can meet the above traffic criteria may be considered through the planned unit development process.~~

g. New recycling business operations.

- ~~1) New recycling business operations shall be permitted through the planned unit development process only in areas designated heavy industrial as reflected on future land use map that is on file in the city clerk's office, and designated as potential areas for new recycling business operations.~~
- ~~2) New recycling business operations shall be expressly prohibited from being located within a 1,000 foot radius of property zoned or developed as residential, recreational or educational.~~
- ~~3) New recycling business operations shall be wholly contained and operated from an enclosed building. No outside storage of goods, materials or equipment shall be permitted. A sightproof screening shall be required along all public rights of way and along any yard adjacent to a nonindustrial land use or nonindustrial land use district and shall comply with the following:~~
 - ~~a) Such screening shall be a minimum of a ten foot high, sightproof enclosure, consisting of a solid fence or wall with a hedge or berm.~~
 - ~~b) The solid wall shall be either reinforced masonry, concrete stanchioned slat fencing system, or some other substantial material as approved by the development services manager.~~
 - ~~c) When the wall and berm or fence and berm combination is utilized, the solid wall or fence shall comprise 50 percent of the overall height.~~
 - ~~d) All berthing shall be 100 percent landscaped with low ground cover such as juniper, liriope, or lantana, and shall be provided with irrigation in accordance with section 138-5.~~
 - ~~e) Fence or wall columns are required at ten foot intervals to break up the solid expanse of wall sections.~~
 - ~~f) The maximum height of the solid wall or wall and berm shall not exceed 15 feet.~~
 - ~~g) When berms are utilized, maximum slopes of three to one shall be used.~~
 - ~~h) The sightproof enclosure shall be set back between 15 feet and 40 feet, depending on the buffer yard requirement set forth in chapter 138 and shall be set back 50 feet on arterial streets and 30 feet from all other rights of way.~~
 - ~~i) A minimum perimeter planting shall be installed along the outside of the sightproof enclosure and shall consist of a minimum of five shade trees, and shall be a minimum of 12 feet in height at planting, and 30 shrubs, to be three gallon size at planting, per 100 linear feet, or a double row of hedges, at staggered planting, and a minimum of 48 inches at installation, and shall be maintained at 60 inches high, and must be a continuous visual screen within one year after the time of~~

~~planting, or some other comparable planting scheme approved by the community development director.~~

- ~~j) The location of the solid wall and required vegetation shall be subject to the visibility at intersection requirements of chapter 134.~~

h. Mandatory supplemental regulations. The following use regulations are applicable to existing junkyards, existing recycling business operations, and new recycling business operations:

- ~~1) Maintenance of the required perimeter planting area shall be the responsibility of the property owner. If any plant materials die, they shall be replaced within 60 days so that the required number of trees and shrubs are always maintained. The landscaping shall be maintained, fertilized, including use of appropriate pesticide and weed control application, and sprinklered twice weekly in the months of October through May, and once weekly in the months of June through September. An efficient irrigation system shall be provided. Use of xeriscape principles, native species, ground cover and mulch is encouraged. The planting area shall be kept clean and free of litter, trash and debris with cleanup in 24 hour intervals.~~
- ~~2) No materials are to be visible above the solid wall from eye level (six feet above grade) at the adjoining road pavement edge. This is not applicable for new recycling business operations which are wholly contained and operated from a building.~~
- ~~3) The operation of equipment or processing of materials shall be limited to the hours of 7:00 a.m. and 5:00 p.m. on weekdays, 7:00 a.m. and 5:00 p.m. on Saturdays, and closed on Sundays when located within 1,000 feet of a residential or recreational use, excluding new recycling business operations to which this subsection is not applicable.~~
- ~~4) The number of parking spaces required shall be according to the requirements of chapter 134. A minimum of five paved parking spaces shall be provided, plus necessary loading spaces and access for emergency vehicles shall be provided in accordance with the requirements of the Land Development Code.~~

i. Amortization program for screening existing junkyards and recycling business operations. An amortization program to screen existing junkyard operations and existing recycling business operations identified in subsections a and b above shall be as follows:

- ~~1) All city permit fees due as a result of this amortization program are waived.~~
- ~~2) The amortization program shall be completed within 12 months from March 18, 2002.~~
- ~~3) The previously required sightproof enclosure shall be reinforced, rebuilt/stabilized, and repainted, as necessary, as determined by the development services manager.~~
- ~~4) A minimum perimeter planting along all street frontages shall be installed at a minimum number of plantings of five shade trees, shall be a minimum of 12 feet in height at the time of planting, and 30 shrubs, to be three gallon size at planting, per 100 lineal feet, or a double row of hedges, at staggered planting, a minimum of 48 inches at installation~~

~~and maintained at 60 inches high, and must be a continuous visual screen within one year after the time of planting, or some other comparable planting scheme approved by the community development director.~~

- j. Administrative relief.** Where environmental concerns or physical constraints make compliance impossible, an administrative variance may be recommended by the community development, permit and inspection, planning and development services managers, and the director of the public works department jointly, and approved by the community development director.
- k. Appeals.** Where the applicant feels aggrieved by the decision of the community development director, such appeal shall be taken not more than 30 days from the date of the decision of the community development director, by filing with the community development director a notice of appeal on forms provided by the city. Every appeal shall refer to the specific provision involved and shall set forth the interpretation that is claimed. Within 30 days of receipt of the notice of appeal, the city council shall, at a public meeting, determine reverse, or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made; and to that end, shall have the powers of the community development director from whom the appeal is taken.
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SECTION 2. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 118 - 'Administration'; Article 3 - 'Permitted Use Table'; Section 118.3.1 - 'General Provisions'; Paragraph B - 'Uses Not Specifically Listed'):

B. Uses not specifically listed.

1. Specific uses are listed in subsection 118.3.6, Use Categories. Uses may be further defined in Chapter 142, Definitions. Any principal use not specifically listed is expressly prohibited unless the development services manager determines that the use is similar to a permitted use already listed in this code. Where the similar permitted use is subject to a use standard or conditional use **or special-use permit** review, the proposed use shall also be subject to such standard or approval. The development services manager shall not amend this code by adding to or eliminating any use standard for the proposed use.
2. *[no further changes]*

SECTION 3. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 118 - 'Land Use Regulations'; Article 3 - 'Permitted Land Uses'; Section 118.3.2 - 'Permitted Use Table'; Paragraph A - 'Use Table Key'; also the Industrial Use Table in Paragraph B - 'Permitted Uses'):

A. Use table key.

- 1. Use permitted by right (■).** Use permitted in the respective district subject to any use standard, if applicable. Such uses are also subject to all other applicable requirements of this development code.
- 2. Use permitted through the conditional use process (□).** Indicates a use that may be permitted in the respective district only where approved by board of adjustment in accordance with section 98.3.8, Conditional Uses. Conditional uses are subject to all other applicable requirements of this code, including all applicable use standards, except where such use standards are expressly modified by the board of adjustment as part of the conditional use approval.
- 3. Use permitted through the special-use permit process (○).** Indicates a use that may be permitted in the respective district only where approved by the city council in accordance with section 98.3.17, Special-Use Permits. Special-use permits are subject to all other applicable requirements of this code, including all applicable use standards, except where such use standards are expressly modified by the city council as part of the approval process for a special-use permit.
- 4. 3. Use not permitted.** A blank cell indicates that a use is not permitted in the respective district.
- 5. 4. Use category.** Characteristics of the various uses located in section 118.3.6, Use Categories.
- 6. 5. Specific use.** Specific use listed in the various use categories located in section 118.3.6, Use Categories.
- 7. 6. Use standard.** A cross-reference to any use standard listed in section 118.3.3, Use Standards. Where no cross-reference is shown, no additional use standard applies.

B. Permitted uses.

KEY:		Blank Cell = Not Permitted	■ = Permitted Use	□ = Conditional Use	○ = Special-Use Permit				
USE CATEGORY	SPECIFIC USE	n/a	CG	CI	IL	IH	CON	REC	Use Standard
INDUSTRIAL									
Wholesale Trade (see 118.3.6.E.1)	All wholesale trade		□	■	■	■			118.3.3.D.2
Light Industrial (see 118.3.6.E.2)	All light industrial, except as listed below:				■	■			
	Light manufacturing or assembly of equipment, instruments, or goods		□	□	■	■			
	Repair of Scientific or Professional Instruments, Electric Motors		□	□	■	■			
	Research, Testing, and Development Laboratory		■	■	■	■			
	Sheet metal shop		□	□	■	■			
	Welding, machine, tool repair shop		□	□	■	■			
	Woodworking, including cabinet makers and furniture manufacturing		□	□	■	■			
Warehouse & Distribution (see 118.3.6.E.3)	All warehouse & distribution, except as listed below:				■	■			118.3.3.D.2
	Outdoor storage yard				■				118.3.3.D.3
Heavy Industrial (see 118.3.6.E.4)	All heavy industrial, <u>except as listed below:</u>				■				118.3.3.D
	<u>Junkyards and recycling business operations, scrap metal processors, secondary materials dealers</u>				■				118.3.3.D.1
Waste-Related Service (see 118.3.6.E.5)	All waste-related service, except as listed below:				■				
	Recycling Drop-off Facility		□	□	□	■			
	Municipal-owned horticulture recycling/processing						□		
Recycling Businesses (see 118.3.6.E.6)	<u>Auto salvage yard</u>					○			118.3.3.D.1
	<u>Construction/demolition yard</u>					○			118.3.3.D.1
	<u>Impound lot</u>				○	○			118.3.3.D.1
	<u>Mulch yard</u>				○				118.3.3.D.1
	<u>Paper yard</u>				○				118.3.3.D.1
	<u>Scrap yard</u>				○				118.3.3.D.1
	<u>Shredder</u>				○				118.3.3.D.1

SECTION 4. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 118 - 'Land Use Regulations'; Article 3 - 'Permitted Land Uses'; Section 118.3.3 - 'Use Standards'; Paragraph D - 'Industrial Use Standards'); Subparagraph 4 - 'Prohibited Uses in Industrial Districts':

D. Industrial use standards.

4. **Prohibited uses in industrial districts.** Establishment of any of the following uses is expressly prohibited:
 - a. Abattoirs.
 - b. Acid manufacturing.
 - c. Creosote treatment or manufacturing.
 - d. Fertilizer manufacturing.
 - e. Gunpowder, fireworks or other explosive manufacturing.
 - f. **Reserved. Junkyards.**
 - g. Mineral excavation or refining.
 - h. Paper or pulp mills.
 - i. Poison or toxic gas manufacturing.
 - j. Portland cement manufacturing.
 - k. Slag or rock crushing.
 - l. Stockyards.
 - m. Private wastewater facility.
 - n. Any other use, the operation of which may be noxious, offensive or injurious to persons or properties of this community by reason of the emission of excessive amounts of odor, dust, particulate matter, smoke, gas, fumes, noise, refuse matter, vapors, vibrations or other substances or conditions.

SECTION 5. The City of Fort Myers Land Development Code is hereby amended to create Paragraph 118.3.5.H as follows (Chapter 118 - 'Land Use Regulations'; Article 3 - 'Permitted Land Uses'; Section 118.3.5 - 'Temporary Uses and Structures'; new Paragraph H - 'Filling Former Borrow Pits'):

H. Filling former borrow pits. Former borrow pits may be filled with clean debris upon approval of a special-use permit, subject to the following requirements.

1. **Clean debris.** Fill material is limited to clean debris as defined by Chapter 403 of the Florida Statutes.
2. **Special criteria.** The general criteria for consideration of special-use permits are provided in section 98.3.17. The following special criteria also apply during consideration of special-use permits for filling former borrow pits:
 - a. **Proximity.** Whether the proposed location and duration would result in harm to existing or proposed neighborhoods in the vicinity.

- b. Special impacts.** Whether the filling would cause unacceptable impacts to the neighborhood due to traffic, noise, dust, or other air or water pollutants.
- 3. Hours of operation.** Unless further restricted by a special condition, hours of operation in or abutting a residential area are limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.
- 4. Conditions of approval.** The city council may impose special conditions on an approval of a special-use permit regarding security, hours of operation, the duration of the activity, post-filling restoration of the site, and other relevant factors.
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SECTION 6. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 118 - 'Land Use Regulations'; Article 3 - 'Permitted Land Uses'; Section 118.3.6 - 'Use Categories'; Paragraph A - 'General Provisions' and Paragraph E - Industrial Use Categories):

A. General provisions.

- 1. Applicability.** The following use categories are not zoning districts. These categories group uses for regulatory purposes. A use listed below is only permitted in accordance with subsection 118.3.2.B, Permitted Use Table.
- 2. Basis for classifications.** Use categories classify land uses and activities based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, likely impact on surrounding properties, and site conditions. Use categories provide a systematic basis for assigning land uses to appropriate zoning districts.
- 3. Approach to categorizing uses.** The use categories used in subsection 118.3.2.B, Permitted Use Table, are set forth in subsections B through F below.
 - a. Principal uses.** The "Principal Uses" portion of each use category lists principal uses common to that use category. The names of these sample uses are generic and are based on common meanings, not on what a specific use may call itself.

Commentary. A use that calls itself "Wholesale Warehouse," but sells mostly to retail consumers, is included in the retail sales and service category rather than the wholesale trade category.
 - b. Accessory uses.** Accessory uses are allowed by right in conjunction with a principal use as set forth in subsections B through F below. No accessory use may be established on a site without a principal use. Specific regulations governing accessory uses and structures may be listed in section 118.3.4, Accessory Uses and Structures. Some listed accessory uses may also be considered accessory structures.
 - c. Uses not included.** The "Uses Not Included" provides cross-references to uses that may appear to be part of a particular category, but that are explicitly handled in a different use category.

E. Industrial use categories.

- 1. Wholesale trade.** Firms or individuals involved in the sale, lease, or rent of products to industrial, institutional or commercial businesses only. The uses emphasize on-site sales or order-taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are not permitted. Products may be picked up on-site or delivered to the customer.

Principal Uses	Accessory Uses	Uses Not Included
Mail-order house Sale or rental of machinery, equipment, heavy equipment, building materials, special trade tools, welding supplies, machine parts, electrical supplies, plumbing supplies, janitorial supplies, restaurant equipment, and store fixtures Wholesale of food, clothing, auto parts, building hardware Wholesale display Wholesale establishment	Associated office Food preparation or dining area Domestic Television and Radio Mast-Type Antennas, and Satellite Earth Station (Dish) Antennas Minor fabrication services On-site day care where children are cared for while parents or guardians are occupied on the premises Repackaging of goods Warehouse	Earth moving and heavy construction and transportation equipment (see Heavy Industrial) Retail or wholesale sales of agriculturally-related supplies and equipment (see Agriculture) Vehicle parts sale as a principal use (see Retail Sales and Service)

- 2. Light industrial.** Firms engaged in the manufacturing, assembly, repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products mainly by providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

Principal Uses	Accessory Uses	Uses Not Included
Aluminum screening fabrication Armory, brewery, winery, bottling plant, bulk mailing service, catering establishment, large-scale, movie production facility Clothing, textile or apparel manufacturing, boot and shoe manufacturing, garment factory Contractors storage (indoor/outdoor) including janitorial and building maintenance service, exterminator, or other maintenance yard or facility, building, heating, plumbing, landscaping or electrical contractor and others who perform services off-site, but store equipment and materials or perform fabrication or similar work on-site Lawn, tree or garden service Crematorium, detention center, jail, prison Laundry, dry-cleaning, and carpet cleaning plants, cleaning establishment, large-scale Diaper service, linen supply Labor pool	Accessory medical clinic Associated office Domestic Television and Radio Mast-Type Antennas, and Satellite Earth Station (Dish) Antennas Food preparation or dining area On-site day care where children are cared for while parents or guardians are occupied on the premises Employee recreational facility On-site repair	Dredging, earth extraction, clearing or grading (timber cutting), extraction of phosphate or minerals, extraction of sand or gravel, borrow pit, metal, sand stone, gravel clay, mining and other related processing, stockpiling of sand, gravel, or other aggregate materials (see Resource Extraction) Recycling facility including recyclable material storage, including construction material (see Waste Related Service) Outdoor storage yard (see Warehousing and Distribution) Sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies,

<p>Leather and leather products except tanning and finishing, felt and fiber articles</p> <p>Light manufacturing or assembly of equipment, instruments, or goods including musical instruments, appliances, bedding, coated-ware, medical/dental goods, orthopedic, medical appliances, precision items, optical goods, surgical products, sporting goods, office and art supplies, pottery, ceramics, electrical equipment/items, glass products, paper products (except pulp mills) printing, publishing, and lithography, production of artwork and toys, sign-making, metal products, rope, cord, twine manufacture</p> <p>Repair of scientific or professional instruments, electric motors, electrical and refrigeration equipment, research, testing, and development laboratory</p> <p>Stone, clay, concrete products</p> <p>Storage area used for manufacturing</p> <p>Trade school, heavy equipment, truck operators</p> <p>Welding, machine, tool repair shop, sheet metal shop, tool, die, and gauge manufacturing, metal stamping</p> <p>Woodworking, including cabinet makers and furniture manufacturing, lumberyard and wood products</p>	<p>facility</p> <p>Residential unit for security purposes (single unit)</p> <p>Retail or wholesale sales of goods manufactured on-site</p>	<p>machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures (see Wholesale Trade)</p> <p>Small-scale catering and laundry establishments (see Retail Sales and Service)</p> <p>Auto salvage yard, Construction/demolition yard, Impound lot, Mulch yard, Paper yard, Scrap yard, Shredder (see Recycling Businesses)</p>
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3. Warehouse and distribution. Firms involved in the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer with little on-site sales activity to customers.

Principal Uses	Accessory Uses	Uses Not Included
<p>Freight, distribution facility, parcel service</p> <p>Bulk storage, including nonflammable liquids,</p> <p>Cold storage plants, including frozen food lockers,</p> <p>Household moving and general freight storage,</p> <p>Separate warehouse used by retail store such as furniture or appliance store</p> <p>Bus barn</p> <p>Cartage and express facility</p> <p>Commercial packing for fruits and vegetables</p> <p>Drop yard</p> <p>Outdoor storage yard</p> <p>Postal distribution facility</p> <p>Railroad switching yard, freight terminal, piggyback yard</p> <p>Stockpiling of sand, gravel, or other aggregate materials</p> <p>Transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred</p>	<p>Associated office</p> <p>Domestic Television and Radio Mast-Type Antennas, and Satellite Earth Station (Dish) Antennas</p> <p>Food preparation or dining area</p> <p>On-site day care where children are cared for while parents or guardians are occupied on the premises</p> <p>Employee recreational facility</p> <p>Outdoor storage yard</p> <p>Residential unit for security purposes (single unit)</p>	<p>Bulk storage of flammable liquids (see Heavy Industrial)</p> <p>Warehouse, self-service, mini-storage</p> <p>Warehouse, indoor multi-story (see Self-Service Storage)</p> <p>Solid or liquid waste transfer station (see Waste-Related Service)</p> <p>Auto salvage yard, Construction/demolition yard, Impound lot, Mulch yard, Paper yard, Scrap yard, Shredder (see Recycling Businesses)</p>

Truck or motor freight terminal, service facility Warehouse, distribution facility	Truck fleet parking and maintenance area	
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4. Heavy industrial. Firms involved in research and development activities without light fabrication and assembly operations; limited industrial/manufacturing activities. The uses emphasize industrial businesses, and sale of heavier equipment. Factory production and industrial yards are located here. Sales to the general public are limited.

Principal Uses	Accessory Uses	Uses Not Included
<p>Asbestos and radioactive materials products</p> <p>Bulk storage of flammable liquids</p> <p>Chemical, cosmetics, drug, soap, paints, fertilizers and abrasive products</p> <p>Concentrate plant</p> <p>Processing of food and related products</p> <p>Production of lumber, tobacco, chemical, rubber, leather, clay, bone, paper, pulp, plastic, stone, or glass materials or products</p> <p>Production or fabrication of metals or metal products including enameling and galvanizing, batch plant</p> <p>Concrete batching and asphalt processing and manufacture, batch plant</p> <p>Dredging, earth extraction, clearing or grading (timber cutting)</p> <p>Earth moving and heavy construction equipment and transportation equipment</p> <p>Fabricated metal products and machinery</p> <p>Gypsum manufacture</p> <p>Linoleum manufacturing</p> <p>Foundry, forge plant</p> <p>Leather and leather products includes tanning and finishing</p> <p>Petroleum, liquefied petroleum gas and coal products and refining</p> <p>Primary metal manufacturing, electroplating, graphite</p> <p>Rubber and plastic products, rubber manufacturing</p> <p style="color: yellow;"><u>Scrap metal processors</u></p> <p style="color: yellow;"><u>Secondary materials dealers</u></p> <p>Tire recapping</p> <p>Tobacco products</p> <p>Transportation equipment</p> <p>Uses Prohibited:</p> <p>Any use that is potentially dangerous, noxious or offensive to neighboring uses in the district or those who pass on public ways by reason of smoke, odor, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with radio, television reception, radiation or any other likely cause.</p> <p>Acid manufacturing;</p>	<p>Associated office</p> <p>Food preparation or dining area</p> <p>Domestic Television and Radio Mast-Type Antennas, and Satellite Earth Station (Dish) Antennas</p> <p>Product repair</p> <p>Repackaging of good</p> <p>Warehouse, storage</p> <p>Residential Unit for Security purposes (single unit)</p>	<p>Animal waste processing (see Waste-Related Service)</p> <p style="color: yellow;"><u>Recycling facility including recyclable material storage, including construction material (see Waste-Related Service)</u></p> <p>Repair and service of motor vehicles, motorcycles, RVs, boats, and light and medium trucks (see Vehicle Sales and Service)</p> <p style="color: yellow;"><u>Auto salvage yard, Construction/demolition yard, Impound lot, Mulch yard, Paper yard, Scrap yard, Shredder (see Recycling Businesses)</u></p>

<p>Animal processing, packing, treating, and storage, livestock or poultry slaughtering, animal slaughter, stockyards, commercial feed lot;</p> <p>Creosote treatment or manufacturing;</p> <p>Explosives, fireworks, gunpowder;</p> <p>Extraction of phosphate or minerals, sand or gravel, borrow pit, mineral excavation or refining, slag or rock crushing;</p> <p>Fertilizing manufacturing;</p> <p>Impound lot, wrecker service includes city wreckers, auto storage, automobile dismantlers and recyclers, wrecking, junk or salvage yard;</p> <p>Poison or toxic gas manufacturing;</p> <p>Portland cement manufacturing;</p> <p>Sawmill, paper, pulp mill (see 118.3.3.D.3)</p>		
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5. Waste-related service. Characterized by uses that receive solid or liquid wastes from others for transfer to another location and uses that collect sanitary wastes or that manufacture or produce goods or energy from the composting of organic material.

Principal Uses	Accessory Uses	Uses Not Included
<p>Animal waste processing</p> <p>Garbage or refuse collection service (office and truck fleet)</p> <p>Landfill, sanitary</p> <p>Landfill, construction</p> <p>Municipal-owned horticulture recycling/processing</p> <p>Manufacture and production of goods from composting organic material</p> <p>Recycling facility including recyclable material storage, including construction material</p> <p>Recycling drop-off facility</p> <p>Solid or liquid waste transfer station</p>	<p>Associated office</p> <p>On-site refueling and repair</p> <p>Recycling of material</p> <p>Rewrapaging and shipment of by-products</p>	<p>Stockpiling of sand, gravel, or other aggregate materials (see Resource Extraction)</p> <p>Auto salvage yard, Construction/demolition yard, Impound lot, Mulch yard, Paper yard, Scrap yard, Shredder (see Recycling Businesses)</p>

6. Recycling businesses. Firms involved in converting discarded materials and products into reusable components or into raw materials such as secondary metals. Materials may be acquired from and resold to the general public. Unusable material is never stored above or below ground.

Principal Uses	Accessory Uses	Uses Not Included
<p>Auto salvage yard</p> <p>Construction/demolition yard</p> <p>Impound lot</p> <p>Mulch yard</p> <p>Paper yard</p> <p>Scrap yard</p> <p>Shredder</p>	<p>Associated office</p> <p>On-site refueling and repair</p> <p>Recycling drop-off facility</p>	<p>Stockpiling of sand, gravel, or other aggregate materials (see Resource Extraction)</p> <p>Storage of unusable</p>

		<u>material above or below ground</u>
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SECTION 7. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 118 - ‘Land Use Regulations’; Article 3 - ‘Permitted Land Uses’; Section 118.3.7 - ‘Outdoor Storage and Display’; Paragraph D - ‘Categories of Outside Storage and Display’; Subparagraph 2 - ‘Outdoor Storage’; Subsubparagraph b - ‘General Outdoor Storage’):

b. General outdoor storage.

- 1) General outdoor storage shall be defined as vehicle storage yards, overnight outdoor storage of shipping containers, lumber, pipe, steel, junk and other similar merchandise, material or equipment. Special requirements have been established for junkyards and recycling businesses operations (see subsection 118.3.3.D.1).
 - 2) General outdoor storage shall be permitted in association with any permitted nonresidential use (in accordance with subsection C above) following review and approval of a site plan illustrating the extent of the permitted area for general outdoor storage provided it meets the standards below.
 - 3) General outdoor storage shall be screened by a 100-percent opaque, eight-foot high visual barrier or screen. Where located abutting or across the street from a residential district, such screening shall be high enough to completely conceal all outdoor storage from view.
 - 4) All general outdoor storage shall be located at least 15 feet from the public right-of-way and any abutting residential use or residential district.
 - 5) No general outdoor storage shall be permitted in a front yard, corner side yard, or otherwise forward of the front building line.
 - 6) General outdoor storage may be located in the side or rear yard.
 - 7) No outdoor storage or display is permitted within any required buffer area or foundation planting area.
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SECTION 8. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 98 ‘Administration’; Article 2 ‘Review and Decision-Making Bodies’; Section 98.2.1 ‘City Council’; Paragraph A ‘Powers and Duties Relating to Land Development Code’):

A. Powers and duties relating to land development code. The city council shall have the following powers and duties under the land development code:

1. Consider, adopt or reject proposed amendments to the city comprehensive plan.

- 2.** Consider, adopt or reject proposed amendments to the land development code.
 - 3.** Consider, adopt or reject proposed planned unit development, special-use permit, and rezoning applications in accordance with chapter 118.
 - 4.** Grant variances and appeals concerning flood hazard areas in accordance with chapter 110, article II.
 - 5.** Designate historic districts and historic landmarks, and approve tax exemptions for historic properties pursuant to chapter 114.
 - 6.** Hear and decide appeals from the historic preservation commission regarding demolition of unsafe historic structures and regarding appeals from the historic preservation commission pursuant to chapter 114.
 - 7.** Hear and decide appeals of decisions regarding warrants pursuant to section 118.8.3.
 - 8.** Establish a schedule of fees and charges as stated in section 98.3.14.
 - 9.** Approve public art after consideration of the recommendation of the public art committee pursuant to section 98.2.6.
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SECTION 9. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 98 - 'Administration'; Article 2 - 'Review and Decision-Making Bodies'; Section 98.2.2 - 'Planning Board'; Paragraph C - 'Powers and Duties'):

C. Powers and duties. The powers and duties of the planning board shall be as follows:

- 1.** Assume the responsibility for the preparation of the comprehensive plan and amendments thereto, after public hearings to be held after due public notice, and make recommendations to the city council regarding the adoption of such plan or element, or portion thereof.
- 2.** Conduct the comprehensive planning program, including the responsibility to monitor and oversee the effectiveness and status of the comprehensive plan.
- 3.** Recommend to the city council such changes in the comprehensive plan as may from time-to-time be required and to the land development regulations and other mechanisms that implement the comprehensive plan.
- 4.** Adopt rules of procedure and policies for the administration of the comprehensive planning program.
- 5.** Promote public interest in comprehensive planning.
- 6.** Request the assistance of and receive information from the community development department in relation to planning board work.
- 7.** Review and recommend to the city council as to the relationship to the comprehensive plan of proposed land development regulations or amendments thereto.
- 8.** Review and recommend to the city council as to the relationship to the comprehensive plan of proposed development to be undertaken by the city. It is the intent of this subsection that no development shall be undertaken by, nor

actions taken in regard to development orders by the city council or the board of adjustments until such proposals have been reviewed by the planning board and found to be consistent with the comprehensive plan.

9. Act in the capacity of local planning agency, pursuant to F.S. § 163.3174.
 10. Coordinate the comprehensive planning program with the county, region, and state planning programs and with local civic organizations.
 11. Review and make recommendations to the board of adjustments regarding proposed conditional uses.
 12. Review and make recommendations to the city council regarding **special-use permits and** rezonings, including rezoning to a planned unit development, and regarding text amendments to this land development code.
 13. Review and make recommendation to the city council regarding development agreements.
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SECTION 10. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 98 - 'Administration'; Article 3 - 'Procedures'; Section 98.3.1 - 'Common Review Procedures'; Paragraph I - 'Withdrawal, Denial or Abandonment of Application'):

I. Withdrawal, denial or abandonment of application.

1. An applicant may withdraw its application anytime before a noticed public hearing. Once a public hearing on the application has been noticed as required by this land development code, and the applicant withdraws the application, the application may not be resubmitted for a period of six months.
2. Any application for rezoning, conditional use, **special-use permit**, PUD, platting, variance or administrative deviation that has been denied by the board of adjustments or the city council may not be resubmitted for a period of one year.
3. If a completed application is on file for more than six months with no action taken by the applicant as required, it shall be deemed abandoned and notice by certified mail shall be provided to the applicant. Further, if an applicant does not provide information requested by the city for a period of six months, the application will be considered abandoned.
4. Once an application is deemed abandoned and if development approval is still desired, then a new application, with repayment of all applicable fees, shall be submitted to the development services division. The applicant may be granted a three-month extension, at the discretion of the development services manager, if a written request is received within 30 days prior to the six-month deadline.

SECTION 11. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 98 - 'Administration'; Article 3 - 'Procedures'; Section 98.3.2 - 'Ownership Disclosures'; Paragraph B - 'Applicability'):

B. Applicability.

1. Disclosure provisions are required for zoning map amendments, conditional use approvals, special-use permits, development agreements, variances, planned unit developments and developments of regional impact.
 2. Any person or entity holding real property in the form of a partnership, limited partnership, corporation, assignment of interest, trust, option, assignment of beneficial interest, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, during application submittal for zoning map amendments, conditional use approvals, special-use permits, development agreements, variances, planned unit developments and developments of regional impact, shall make a public disclosure, in writing, under oath, and subject to the penalties prescribed for perjury. In the case of a trust, the four largest beneficiaries must also sign the affidavit.
 3. This written disclosure shall be made to the city manager at the time of application. The disclosure information shall include the name and address of every person having a beneficial interest in the real property, however small or minimal. All evidence submitted shall be subject to the city's satisfaction, and said satisfaction shall be liberally interpreted in favor of the city's interest.
 4. The city shall send written notice to the person required to make disclosures under this section prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made pursuant to this article.
 5. Exemptions to the requirements of this section include the beneficial interest which is represented by stock in corporations registered with the federal securities exchange commission or in corporations registered pursuant to Chapter 517, Florida Statutes, whose stock is for sale to the general public.
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SECTION 12. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 98 - 'Administration'; Article 3 - 'Procedures'; Section 98.3.13 - 'Quasi-Judicial Procedures'; Paragraph B - 'Applicability'):

- B. Applicability.** These procedures shall apply to all applications in which the city council or the board of adjustments acts in a quasi-judicial capacity for final decisions or appeals of final decisions as to conditional uses, special-use permits, variances and rezonings, or where the planning board hears applications to make such recommendations to the decision-making board. These procedures do not apply to administrative decisions made by city staff, except upon the appeal of the administrative decision to the board of adjustments or the city council.

SECTION 13. The City of Fort Myers Land Development Code is hereby amended to create Section 98.3.17 as follows (Chapter 98 - ‘Administration’; Article 3 - ‘Procedures’; Section 98.3.17 - ‘Special-Use Permits’):

98.3.17 – Special-Use Permits

- A. Authority to grant.** The city council has the sole authority to approve special-use permits.
- B. Application.** An application for a special-use permit shall be submitted to the community development department on forms provided by the city. Property ownership must be disclosed as required by section 98.3.2. The application must be accompanied by a site plan that shows existing conditions on and around the site and all structures and improvements proposed for the site. If a deviation from the precise terms of this code is requested as part of the application, the location where the deviation would apply must be shown on the site plan.
- C. Public notice.** Notice about an application for a special-use permit and public hearing dates and times shall be provided as required by law for zoning map amendments.
- D. Public hearings.** Public hearings on an application for a special-use permit shall be held according to the quasi-judicial procedures in section 98.3.13. The applicant must, and any party may, appear in person or by agent or attorney.
- E. Planning board recommendation.** The planning board shall make a recommendation to the city council as to whether the requested special-use permit is consistent with the comprehensive plan, will meet the standards and criteria in this code, and is otherwise in the interests of the public health, safety, and welfare.
- F. Consideration of general criteria.** In considering an application for a special-use permit, the city council shall consider the following potential impacts and may reject the application or may require mitigation of adverse impacts as a condition of approval:
1. Impacts on the local economy, including governmental fiscal impact, employment, and property values.
 2. Impacts on the natural environment, including air, water, and noise pollution, vegetation and wildlife, open space, noxious and desirable vegetation, and flood hazards.
 3. Impacts on historic, scenic, cultural, and aesthetic resources, including views and vistas, and loss or degradation of cultural and historic resources.
 4. Impacts on neighborhoods or public thoroughfares that may result from approval of a special-use permit at a particular location.
- G. Consideration of special criteria.** In considering an application for a special-use permit, the city council shall also consider all additional criteria specified in this code for a particular type of special-use permit and may reject the application or require mitigation of adverse impacts as a condition of approval.
- H. Findings.** Before granting approval or approval with conditions, the city council must make a finding that the granting of the special-use permit is consistent with the comprehensive plan, will meet the standards and criteria in this code, and will

be in the interests of the public health, safety, and welfare. If a deviation was requested from the precise terms of this code, the city council may approve, approve with modifications, or deny the deviation based on its conclusion as to whether the deviation preserves and promotes the purposes of this code and the general public interest.

I. Enforcement of conditions and safeguards. If the city council imposes appropriate conditions and safeguards to mitigate adverse impacts, ensure compliance with this code, or protect the public interest, violation of such conditions and safeguards will be deemed violations of this land development code and will be punishable as provided by this code. The city council may prescribe a time limit within which an action shall be begun or completed. Failure to begin or complete such action within the time limit set will void the special-use permit.

SECTION 14. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 98 - 'Administration'; Article 4 - 'Nonconformities'; Section 98.4.6 - 'Nonconforming Uses of Structures and Premises'; Paragraph B - 'Nonconforming use of garage apartments'; Subparagraph 6 - 'Vesting of uses and structures in the Belle Vue and Dunbar annexation areas'):

- 6. Vesting of uses and structures in the Belle Vue and Dunbar annexation areas.** Uses or structures in the Dunbar/Belle Vue annexation area as shown on the Dunbar/Belle Vue Annexation Map D on page 39, that were in legal existence and compliant with the Lee County land use regulations on or before December 21, 2005, shall be considered vested in the city. Similarly, in the Dunbar/Belle Vue annexation area, previously granted Lee County development approvals as of December 21, 2005, shall be vested pursuant to those approvals and the county land use regulations as of December 21, 2005.
- a. Structures located in the area shown on Map D on page 39 may be replaced or remodeled as built and uses may be continued indefinitely until such time as the occupational license is not renewed. The city shall maintain an inventory of the licensed structures and uses. In order to preserve vesting, a property owner with an existing structure that is to be demolished must apply for building permits to rebuild the structure within one year of its demolition. The rebuilt structure shall comply with city land development regulations with regard to living area, setbacks, parking spaces, and landscaping.
 - b. Existing structures or uses shall be considered a special nonconformity and any expansion shall be required to seek approval through the conditional use process. No increase in dwelling units is permitted. The fees for conditional uses shall be waived.
 - c. None of the provisions of subsection 98.4.6.B.6 grant any special rights or privileges to land, landowners, or operators of recycling businesses, as described in 118.3.6.E.6. Land in the Dunbar/Belle Vue annexation area will be treated the same as land in the rest of the city as to siting, expansion, and relocation of recycling businesses (see subsection 118.3.3.D.1). Any expansion to an existing junkyard or recycling center shall be required to seek approval through the planned unit development process.

SECTION 15. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 122 - ‘Public Facilities’; Article VIII - ‘Concurrency Management System’; Division 1 - ‘Review and Requirements’; Section 122.421 - ‘Development Permits’):

Sec. 122-421. - Development permits. The city requires concurrency review and determination with the following applications for development permits:

- (1) Building permit;
 - (2) Preliminary/final plat;
 - (3) Conditional use;
 - (4) Planned unit development;
 - (5) Development of regional impact (development order);
(6) Special-use permits.
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SECTION 16. The City of Fort Myers Land Development Code is hereby amended as follows (Chapter 142 - ‘Definitions’; Article 2 - ‘Defined Terms’):

2. DEFINED TERMS The following words, terms and phrases, when used in this land development code, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Webster’s Dictionary, latest edition, shall be used when words are not defined herein.

Automobile wrecking and automobile wrecking yard means the dismantling, crushing, shredding, or disassembling of used motor vehicles or trailers, or the storage, sales or dumping of dismantled, partially dismantled, obsolete, or wrecked motor vehicles or trailers, or their repairs. (See also: Junkyard)

Auto salvage yard means an open area where end-of-life vehicles have their fluids drained and are then stored so that parts can be salvaged and resold before the remainder of the vehicle is moved off the premises to be recycled into secondary metals.

Construction/demolition yard means an open area where waste material from construction and demolition sites is sorted, disassembled, crushed, or otherwise processed to separate salvageable material from material requiring disposal.

Development means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

- (4) Development permit, for purposes of the concurrency management system, is defined as one of the following:
- a. Building permit;
 - b. Preliminary and final subdivision plats;

- c. Conditional use;
- d. Planned unit development;
- e. Development of regional impact (development order).
- f. Special-use permit.

Development order means any order granting, denying, or granting with conditions an application for development, including but not limited to a building permit, rezoning, conditional use, special-use permit, variance, subdivision plat, planned unit development; development of regional impact development order, certificate of compliance, and certificate of review, but does not include comprehensive plan amendments, amendments to the text of the land development code, or development agreements.

Impound lot means a facility capable of storing more than 50 towed vehicles until the vehicles are recovered by their owners or resold.

Junkyard means an open area where waste, used or secondhand materials are bought, sold, exchanged, salvaged, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, cloth, paper, rags, bags, plumbing or electrical fixtures or appliances, tires, batteries, bottles, glass, inoperable vehicles and auto parts, automobile wrecking and automobile wrecking yard.

Mulch yard means an open area where cut trees, vegetative debris, or wood scraps are ground up and processed for subsequent resale as mulch, compost, and similar products.

Paper yard means a facility that sorts and processes scrap paper for subsequent conversion by paper processing mills into new paper products.

Recycling means 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 new products. A majority of the materials must be demonstrated to be sold, used, or reused within one year. The materials are not hazardous wastes and have not been recovered from solid wastes which are defined as hazardous wastes under F.S. § 403.703, and rules promulgated pursuant thereto. Recycling may include scrap processors who from a fixed location, utilizes machinery and equipment for processing and manufacturing iron, steel, nonferrous metals, plastic, glass and paper into prepared grades and whose principle products are scrap iron, scrap steel, nonferrous scrap metal, scrap plastics, scrap glass and scrap paper for sale for remelting, refining, smelting and remanufacturing purposes. Recycling does not include automobile wrecking and automobile wrecking yards.

Scrap yard means a facility that sorts and processes scrap metals and other scrap material for subsequent resale to become secondary metals or other products. A scrap yard may process vehicles but does not hold vehicles on the premises in anticipation of selling parts. Scrap yards that use a shredder to process scrap material must be explicitly approved by the city to operate a shredder and may not stockpile shredder residue at the scrap yard.

Secondary metal means raw metal ready for re-use that was produced by refining scrap metal rather than being produced from ore.

Shredder means industrial equipment that grinds scrap metal into small pieces and mechanically sorts the pieces into recyclable metal streams while diverting unusable material for disposal off-site.

Special-use permit means approval for a use that would not be appropriate generally or without restriction throughout the particular zoning district, but which if controlled as to number, area, location, and relation to its surroundings, would not adversely affect the public health, safety, comfort, good order, appearance, and general welfare. The city council may approve a special-use permit only if it finds that specific criteria and standards in this code have been met.

SECTION 17. The Fort Myers City Code is hereby amended as follows (Chapter 18 - 'Businesses and Business Regulation'; Article IV - 'Secondhand Dealers and Secondary Metals Recyclers'; Division 2 - 'Secondhand Dealers'; Section 18-221 - 'Definitions'):

Sec. 18-221. - Definitions.

Secondhand dealer means any person who is not a secondary materials recycler subject to division 3 and is engaged in the business of purchasing, consigning, pawning or selling secondhand goods or goods of any kind or description having once been used or transferred from the manufacturer to the dealer and then received into the possession of third parties, whether such goods consist of clothes, carpets, clothing, rags, iron or other metals, furniture or articles of household utensils, or articles of personal use, or male or female wearing apparel, or of jewelry of any kind or description or of old gold and silver.

SECTION 18. The Fort Myers City Code is hereby amended as follows (Chapter 18 - 'Businesses and Business Regulation'; Article IV - 'Secondhand Dealers and Secondary Metals Recyclers'; Division 2 - 'Secondhand Dealers'; Section 18-223 - 'License Required'):

Sec. 18-223. - License and business tax required.

No person shall engage in the business of a secondhand dealer, pawnbroker, junk dealer or precious metals dealer in the city, whether temporarily, irregularly or continually, or whether with a fixed place of business or as an itinerant peddler, without first having obtained a license from the city as described in this division and having paid the local business tax pursuant to sections 82-183—82-205. section 82-205.

SECTION 19. The Fort Myers City Code is hereby amended as follows
(Chapter 18 - 'Businesses and Business Regulation'; Article IV - 'Secondhand Dealers and Secondary Metals Recyclers'; Division 2 - 'Secondhand Dealers'; Section 18-224 - 'License Application'):

Sec. 18-224. – License application.

- (a) Every applicant for a license to engage in the business of pawnbroker, junk or secondhand dealer, or precious metals dealer shall file with the city council a written application upon a form prepared and provided by the city, and signed by the applicant. Such application shall contain the following information:
 - (1) The names and residences of the applicants, if an individual, partnership or firm, or the names of principal officers and their residences, if the applicant is an association or corporation.
 - (2) The length of time such applicants, if an individual, firm or partnership, or the manager or person in charge, if the applicant is an association or corporation, have resided in the city, their places of previous employment, whether they, or any of them, have been convicted of a felony and, if so, for what offense, when and in what court.
 - (3) Whether the applicants, or officers, or manager of the applicants have been a pawnbroker, junk or secondhand dealer, or precious metals dealer previously, or employed by such.
 - (4) The detailed nature of the business to be conducted and the kind of materials to be collected, bought, sold or otherwise handled.
 - (5) The premises where such business is to be located or carried on.
 - (b) Each application shall contain an agreement that the applicant accepts the license, if granted, upon the condition that it may be temporarily suspended or absolutely revoked or cancelled by the code enforcement board pursuant to the procedures as set forth in chapter 2, article V, after a finding of a violation at a code enforcement board hearing wherein the code enforcement board has determined that there has been a violation of this article, this chapter, state law or any other applicable city ordinance and adopted code including the Land Development Code, and after the holder has refused to correct violations set forth in the provisional order as provided in section 2-412. at any time upon conviction of a violation of this division.
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SECTION 20. The Fort Myers City Code is hereby amended as follows
(Chapter 18 - 'Businesses and Business Regulation'; Article IV - 'Secondhand Dealers and Secondary Metals Recyclers'; Division 2 - 'Secondhand Dealers'; Section 18-231 - 'Marking of Vehicles Used; Signs'):

Sec. 18-231. – Marking of vehicles used; signs.

- (a) Each vehicle kept or used by a pawnbroker, junk or secondhand dealer, or precious metals dealer in the exercise of his license shall be marked on both sides with his or its name, the street, and number of the place of business, the words

"Pawnbroker," "Junk Dealer" or "Secondhand Dealer," or "Precious Metals Dealer," and "Fort Myers, Florida," and the number corresponding to the number of his license, in plain letters and figures at least two inches high, and of such color as to be plainly read at a distance of 60 feet.

- (b) Every licensee under this division shall have and keep a sign on the outside and in front of each of his places of business, on which shall be clearly set forth, in conspicuous letters, his name, the words "Pawnbroker," "Junk Dealer," or "Secondhand Dealer," or "Precious Metals Dealer" and the number corresponding to the number of his license.
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SECTION 21. The Fort Myers City Code is hereby amended as follows (Chapter 18 - 'Businesses and Business Regulation'; Article IV - 'Secondhand Dealers and Secondary Metals Recyclers'; Division 3 - 'Secondary Metals Recyclers'; Section 18-262 - 'Definitions'):

Sec. 18-262. Definitions.

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

Ferrous metals means any metals containing significant quantities of iron or steel.

Fixed location means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

Money means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

Nonferrous metals means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under division 2 of this article.

Personal identification card means a driver's license or identification card issued by the state department of highway safety and motor vehicles under F.S. § 322.03 or F.S. § 322.051, or a similar card issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Bureau of Citizenship and Immigration Service.

Purchase transaction means a transaction in which a secondary metals recycler gives consideration having a value in excess of \$10.00 in exchange for regulated metals property.

Regulated metals property means any item composed primarily of any nonferrous metals. The term does not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes stainless steel beer kegs and items made of ferrous metal obtained from any restricted regulated metals property.

Secondary metals recycler means any person who:

- (1) Is engaged, from a fixed location ~~or otherwise~~, in the business of ~~purchase transactions or~~ gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
 - (2) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.
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SECTION 22. The Fort Myers City Code is hereby amended to replace Section 18-272 – ‘Occupational License Required’ with a new Section 18-264 – ‘State Registration Required’ (Chapter 18 - ‘Businesses and Business Regulation’; Article IV - ‘Secondhand Dealers and Secondary Metals Recyclers’; Division 3 - ‘Secondary Metals Recyclers’; Section 18-272 - ‘Occupational License Required’):

Sec. 18-272. Occupational license required.

~~All persons dealing in regulated metals shall have a business and occupational license issued pursuant to sections 18-223 – 18-233.~~

Sec. 18-264. State registration required.

~~All secondary metals recyclers must register with the State of Florida pursuant to Chapter 403, Part II of the Florida Statutes. Lack or registration, improper registration, or lapsed registration will be deemed violations of this code.~~

SECTION 23. The Fort Myers City Code is hereby amended to create Section 18-265 – ‘Compliance Required’ as follows (Chapter 18 - ‘Businesses and Business Regulation’; Article IV - ‘Secondhand Dealers and Secondary Metals Recyclers’; Division 3 - ‘Secondary Metals Recyclers’; Section 18-265 - ‘Compliance Required’).

Sec. 18-265. Compliance required. Secondary metals recyclers must comply with all state requirements for secondary metals recyclers (see Chapter 403, Part II of the Florida Statutes).

- (a) State law authorizes the police chief of Fort Myers and the sheriff of Lee County to enforce those requirements.
- (b) Violations of state requirements for secondary metals recyclers will also be deemed violations of this code.

SECTION 24. The Fort Myers City Code is hereby amended to create Section 18-266 – ‘Business Tax Required’ as follows (Chapter 18 - ‘Businesses and Business Regulation’; Article IV - ‘Secondhand Dealers and Secondary Metals Recyclers’; Division 3 - ‘Secondary Metals Recyclers’; Section 18-266 - ‘Business Tax Required’).

Sec. 18-266. Business tax required.

All secondary metals recyclers must pay the local business tax pursuant to sections 82-183—82-205 for the type of recycling business as defined in Chapters 118 and 142.

SECTION 25. The Fort Myers City Code is hereby amended as follows (Chapter 82 - ‘Taxation’; Article IV - ‘Local Business Tax’; Division 1 - ‘Generally’; Section 82-134 - ‘Levied’):

Sec. 82-134. Levied.

The city council hereby levies a local business tax for the privilege of engaging in or managing any business, profession, or occupation within the city. The local business tax is levied on:

- (1) Any person who maintains a permanent business location or branch office within the city, for the privilege of engaging in or managing any business within its jurisdiction.
 - (2) Any person who maintains a permanent business location or branch office within the city, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
 - (3) Any person who does not qualify under subsection (1) or (2) of this section and who transacts any business or engages in any occupation or profession in interstate commerce, if the local business tax is not prohibited by article I, section 8 of the U.S. Constitution.
 - (4) Any person who announces an intention to engage in or manage any business, profession, or occupation within the city by displaying a sign, advertising in any media, or requesting a business tax receipt from the county or city.
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SECTION 26. The Fort Myers City Code is hereby amended to create Section 82-164 as follows (Chapter 82 - ‘Taxation’; Article IV - ‘Local Business Tax’; Division 2 - ‘Administration’; Section 82-164 - ‘Local Business Tax Receipts’):

Sec. 82-164. Local business tax receipts.

- (a) The city may decline to accept payment for the local business tax due to apparent noncompliance with zoning or any other city regulations.

(b) Issuance of a local business tax receipt does not confirm:

- (1) the correct classification of a business under section 82-205; or
 - (2) compliance with zoning or other regulations for the listed business location; or
 - (3) the actual or intended operation of a business at the listed business location.
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SECTION 27. The Fort Myers City Code is hereby amended as follows
(Chapter 82 - 'Taxation'; Article IV - 'Local Business Tax'; Division 3 - 'License';
Section 82-205 - 'Local Business Tax Receipt Schedule Established'):

Sec. 82-205. - Local business tax receipt schedule established.

The amount which shall be paid by the several persons engaging in or managing businesses, professions or occupations for which a local business tax receipt is required are hereby fixed per annum, unless otherwise specified, as follows:

(243)	<u>Junkyards and recycling:</u> a. Junkyard (including automobile dismantlers, wreckers and automobile graveyards). For the purposes of this subsection, the term "junkyard" means an area where waste, used or secondhand materials are bought, sold, exchanged, salvaged, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, cloth, paper, rags, bags, plumbing or electrical fixtures or appliances, tires, batteries, bottles, glass, motor vehicles and parts from motorized vehicles [(a), (b), (d), (e)]	50.00
	b. Recycling center. For the purposes of this subsection, the term "recycling center" means an open or closed area where recyclable materials (such as, but not limited to, cans, bottles, paper, scrap metal processing and horticultural materials) are collected, separated and/or processed and re-used or returned to use in the form of raw materials or new products. Recycling does not include automobile dismantlers, wreckers and automobile graveyards [(a), (b), (d), (e)]	50.00
(243)	<u>Recycling businesses:</u> [(a), (b), (d), (e)] a. Auto salvage yard b. Construction/demolition yard c. Impound lot d. Mulch yard e. Paper yard f. Scrap yard g. Shredder	50.00 50.00 50.00 50.00 50.00 50.00 50.00
	In addition to the base fees specified above, recycling businesses must pay the same local business taxes required for other wholesale merchants, which are based on gross sales. Returns shall be made to the city tax collector, showing the amount of gross sales for the 12-month period ending August 31, immediately preceding the local business tax receipt year, or as otherwise provided for herein. On each \$1,000.00 of gross sales or fraction thereof over \$50,000.00, the wholesale local business tax shall be paid at the following rate per \$1,000:	.50
(319)	<u>Paper, waste, Service establishment</u> (see also Junk dealers) [(a), (e)]: a. Base b. Each vehicle used in performance of service	50.00 50.00

SECTION 28. Severability. If for any reason, any section, subsection, paragraph, sentence, clause or phrase of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent

jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance.

SECTION 29. Effective Date. This ordinance shall become effective immediately upon adoption.