

## ORDINANCE NO. 20100826-028

**AN ORDINANCE AMENDING TITLE 4 OF THE CITY CODE TO ADD CHAPTER 4-7 RELATING TO METAL RECYCLERS; AND PROVIDING FOR CRIMINAL AND CIVIL PENALTIES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Title 4 (*Business Regulations and Permit Requirements*) of the City Code is amended to add Chapter 4- 7 to read:

### **§ 4-7-1 DEFINITIONS**

(1) **CHIEF** means the Chief of Police for the City of Austin and such persons the chief designates to perform duties under this chapter.

(2) **DEPARTMENT** means the Police Department for the City of Austin.

(3) **METAL RECYCLER** means a business that purchases or otherwise acquires building construction materials, regulated material, regulated metals, or scrap material for the eventual use of the materials or metals for manufacturing purposes.

(4) **REGULATED MATERIAL** means aluminum material, bronze material, copper or brass material, or regulated metal.

(5) **REGULATED METAL** means manhole covers; guardrails; metal cylinders designed to contain compressed air, oxygen, gases, or liquids; beer kegs made from metal other than aluminum; historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum; unused rebar; street signs; drain gates; safes; communication, transmission, and service wire or cable; condensing or evaporator coils for heating or air conditioning units; utility structures, including the fixtures and hardware; aluminum or stainless steel containers designed to hold propane for fueling forklifts; and metal railroad equipment, including tie plates, signal houses, control switch plates, e-clips, and rail tie functions.

(6) **SCRAP METAL** means a direct product or byproduct of any form of a manufactured, shaped, or processed iron, steel, aluminum, brass, copper, lead, tin, zinc, or other nonferrous metallic material.

#### **§4-7-2 APPLICABILITY**

- (A) This chapter applies to a metal recycler as defined in Section 1 (*Definitions*).
- (B) This chapter does not apply to:
- (1) a purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business;
  - (2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel; or
  - (3) the transport or hauling of recyclable materials to or from the metal recycling entity.

#### **§4-7-3 NOTICE**

- (A) Mailed notice is presumed received on the fifth day after it is mailed.
- (B) Notice to a permit holder may be delivered to the manager at the metal recycler and is effective on delivery.

#### **§4-7-4 ADMINISTRATIVE RULES**

The police chief shall administer and enforce this chapter.

The police chief shall adopt rules for administration and enforcement of this Chapter. The rules must be reasonably designed to promote public health and safety.

#### **§4-7-5 PERMIT REQUIRED**

- (A) A person may not operate a metal recycler without a metal recycler's permit issued under this article.
- (B) A person must obtain a separate permit for each metal recycler location.

**§4-7-6 PERMIT APPLICATION**

(A) A person who seeks a permit to operate as a metal recycler must submit an application to the police chief on a form provided by the chief and signed by the person seeking the permit. The application must include:

- (1) the names, addresses, and birth dates of all persons who have an ownership interest in, and those who will manage, the metal recycler entity;
- (2) authorization for the City to conduct a criminal background check on each person described in Subpart (1) above;
- (3) a registration certificate for the business entity from the Secretary of State, if registration is required by law, and any Assumed Name certificates filed with Travis County;
- (4) the location where the business is to be conducted and proof of ownership of the property or a written statement including the name, address, and telephone number of the property owner, or authorized agent, granting permission for operation of the business at the proposed location where the metal recycler will conduct business. If the property owner is a partnership or corporation, the application shall include the name, address, and telephone number of one of the partners, or one of the principals of the corporation before the city will issue a permit;
- (5) proof that the applicant has all other permits and approvals required to operate the establishment, including appropriate zoning;
- (6) the regular days and hours of operation;
- (7) a statement that neither the applicant or any business partner, nor, in the case of a corporation, any corporate officer or director, has had a permit revoked under this chapter; and
- (8) any other additional information required by administrative rule.

(B) An applicant shall pay the nonrefundable permit fee established by ordinance.

(C) A permit is void if the applicant obtains the permit by knowingly providing false information on the application.

#### **§4-7-7 PERMIT APPROVAL OR DENIAL**

(A) The chief shall approve a permit application if the chief determines that the applicant and the proposed metal recycler operation meet the requirements of this chapter.

(B) The chief shall deny a permit application if the chief determines that:

- (1) the metal recycler as proposed will not comply with this chapter or
- (2) the applicant had a permit required by this chapter revoked within the preceding 12-month period.

(C) The chief may deny a permit application if the chief determines that:

- (1) the applicant provided incorrect or incomplete information on the application; or
- (2) the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities for operating a metal recycler, such as theft, fraud, robbery, or burglary, and the conviction makes the person unfit to hold a permit.

(D) If the chief does not approve or deny an application within 45 days of the date it is filed, the application is denied.

(E) The chief shall give written notice of a denial of an application to the applicant pursuant to Section 13 (*Denial, Suspension, and Revocation of a Permit*).

(F) An applicant may appeal to the city manager a denial of a permit application in accordance with Section 13 (*Denial, Suspension, and Revocation of a Permit*).

#### **§4-7-8 PERMIT NOT TRANSFERABLE.**

A permit issued under this chapter is not transferable to another person.

#### **§4-7-9 CHANGE IN BUSINESS ADDRESS OR NAME.**

(A) A permitted metal recycler that moves its place of business from the property designated on the permit shall give written notice to the chief within 30 days and have the changed noted on the permit. Any property to which the metal recycler operation is moved must meet each of the requirements of § 4-7-6 (A) above.

(B) A permitted metal recycler that changes the name of its business from the name designated on the permit shall give written notice to the chief within 30 days and have the change noted on the permit.

#### **§4-7-10 PERMIT IS NOT A RIGHT.**

A permit issued under this chapter is a grant of a privilege and is not a property right.

#### **§4-7-11 PERMIT EXPIRATION; RENEWAL.**

(A) A permit issued under this chapter expires two years after the date it is issued.

(B) A permit holder shall file an application for permit renewal not sooner than the 90<sup>th</sup> day and not later than the 45<sup>th</sup> day before the permit expires. An application that is not filed within the described time period is a new application.

#### **§4-7-12 REQUIREMENT TO SUPPLEMENT INFORMATION.**

While a permit application is pending, or a permit is in effect, an applicant or permit holder shall immediately supplement the information provided to the chief in the permit application if the information is or becomes inaccurate, incomplete, or misleading.

#### **§4-7-13 DENIAL, SUSPENSION, AND REVOCATION OF A PERMIT.**

(A) The chief may revoke or suspend a permit issued under this chapter if the chief determines that:

- (1) the permit holder, the manager, or an employee of the metal recycler, has engaged in serious or repeated violations of this chapter;
- (2) the metal recycler does not comply with this chapter; or
- (3) the permit holder does not qualify for a permit under this chapter.

(B) Before taking adverse action under this Chapter, the chief shall notify the applicant or permit holder of the intended action. The written notice shall include:

- (1) the reason the permit is subject to revocation or immediate suspension;
- (2) that denials or revocations become effective on the 20<sup>th</sup> day after the notice is mailed, and immediate suspensions shall be deemed permit revocations on that date.

(C) The chief shall send the notice by certified mail, return receipt requested, to the mailing address listed on the person's application, certificate, or license, as applicable.

(D) If a permit holder timely files a hearing request:

- (1) the chief shall hold a hearing on the permit revocation or immediate suspension not later than the 10<sup>th</sup> day after the date the hearing request is filed; and
- (2) the chief shall decide the hearing on the basis of the preponderance of the evidence presented and shall make a determination not later than the 10<sup>th</sup> day after the hearing; and
- (3) the chief may affirm, reverse, or modify the previous determination; and
- (4) a revocation is stayed pending the outcome of the hearing.

**§4-7-14 APPEAL.**

- (A) An applicant or a permit holder may appeal to the city manager a permit application denial or a permit revocation or suspension by filing a notice of appeal with the chief on a form provided by the chief not later than the 10<sup>th</sup> day after the applicant receives the notice required by Section 13.
- (B) If the permit holder timely files a notice of appeal, a revocation is stayed.
- (C) The city manager or a designee shall, not later than the 10<sup>th</sup> day after the date the notice of appeal is filed, hear the appeal, and may affirm, reverse, or modify a permit application denial, permit suspension, or permit revocation.
- (D) The city manager or designee shall give written notice of a decision on an appeal to the appellant.
- (E) An appellant who seeks judicial review of the city manager's review on appeal must file a petition with a court of competent jurisdiction not later than the 30<sup>th</sup> day after receipt of the notice of the decision.

**§4-7-15 PUBLIC PLACE.**

A metal recycler entity is a public place.

**§4-7-16 PERMIT POSTING IS REQUIRED.**

A permit holder shall post the permit required by this chapter in a prominent public location at the metal recycler entity.

**§4-7-17 RECORDS REQUIRED.**

(A) With the exception of the sale or transfer of aluminum cans, a metal recycler shall keep at its place of business a daily record containing a full description of each transaction in which regulated material is purchased or otherwise received at his place of business. Such description shall include:

- (1) the date and time of receipt of any item;
- (2) the full name and current address of the person or place of business from whom each item was received;

(3) a photocopy of the valid identification presented that establishes that the person transferring, selling, or otherwise giving the items is at least 18 years of age by presenting valid identification, including a photograph of the person transferring, selling, or otherwise giving the items in the form of:

- (a) a current driver's license from Texas or another state within in the United States;
- (b) an identification card issued by the Texas Department of Public Safety; or
- (c) a United States military identification card;

(4) a description of the motor vehicle and/or trailer or other mode of transportation in or on which each item received was carried to, delivered to, or transported to the metal recycler entity's place of business, including state and license plate number, if applicable;

(5) a description of the items received as part of the transaction including, where customary in the business, the weight, material, capacity, and any other designations or descriptions customarily employed in the sale and purchase of such items;

(6) the name or employee number of the employee who facilitates or conducts the transaction;

(7) whether the person:

- (a) presented a written document evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or
- (b) signed a written statement evidencing that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale.

(B) A metal recycler shall maintain on file the information required by this Section for not less than three years from the date the record is made.



(C) A metal recycler shall make these records available for inspection by any peace officer, upon request, at a metal recycler's place of business during the usual and customary business hours of the metal recycler.

(D) A metal recycler shall furnish the reports required under the Texas Occupations Code to the State no later than the end of the second business day after purchase date.

(E) A metal recycler shall maintain at its place of business a facsimile machine, computer, or other equipment of similar function on which communications may be expeditiously received from the department, or sent to the department upon request. The equipment must be operable at all times during the usual and customary business hours of the metal recycler. The metal recycler shall notify the chief within 24 hours after any change in the facsimile number or electronic mail address.

#### **§4-7-18 STOCK TO BE OPEN FOR EXAMINATION.**

The stock or inventory of a metal recycler that is openly displayed and available to the public shall at any time during the ordinary course of business hours be accessible for examination by any peace officer. Failure to comply with this requirement shall be grounds for suspension or revocation of a permit required under this Chapter.

#### **§4-7-19 ACCEPTANCE OF AIR CONDITIONING UNIT PARTS.**

(A) It shall be unlawful for a metal recycler, agents, or employees to purchase or receive any central air conditioning unit parts from any person offering such property for sale to the metal recycler.

(B) It is an affirmative defense to this section if the person presents:

(1) an original copy of a reclamation receipt or recovery receipt issued by a state licensed HVAC company that recovered the Freon from the unit being sold; or

(2) a state-issued professional license or applicable certification.

(C) This section does not apply to window air conditioning units.

**§4-7-20 ACCEPTANCE OF GOODS FROM MINORS.**

(A) A metal recycler shall not purchase or otherwise receive in the course of its business, any item, ownership of which is claimed by any minor, or which may be in the possession of or under control of a minor.

(B) It is an affirmative defense to this section if:

- (1) the minor is accompanied by a parent or guardian, who shall state in writing, that such transaction is taking place with the parent's or guardian's full knowledge and consent; or
- (2) the only items offered for sale by the minor are aluminum cans.

(C) A metal recycler shall maintain and make available for inspection, the written statements of consent for not less than three years.

**§4-7-21 ACCEPTANCE OF GOODS SUSPECTED STOLEN AND PEACE OFFICER REQUESTED HOLDS.**

(A) A metal recycler, its agents, or employees shall report immediately to the police department by filing a formal complaint, any offer to sell to the metal recycler property that the metal recycler has actual knowledge is stolen or by reasonable diligence should know is stolen, together with the identity, when known, and description of the person or persons making such offer.

(B) A metal recycler, its agents, or employees shall report any property acquired by the metal recycler that it, its agents, or employees subsequently determine or suspect to be stolen property.

(C) A metal recycler, its agents, or employees shall furnish information as might be helpful to the department in investigating the known or suspected stolen property.

(D) A metal recycler, its agents, or employees shall hold all suspected stolen property in a secure place for 60 days upon request of a peace officer.

(E) A metal recycler, its agents, or employees shall not process or remove the property from the place of business before the 60<sup>th</sup> day after receipt of the request from a police officer to hold the property. It is an affirmative defense to this section if:

- (1) the property is released into a peace officer's care, custody, and control at an earlier time;
- (2) a peace officer releases the hold on the property on an earlier date;
- (3) a peace officer makes a written request to extend the holding period for up to 24 months from the date the request is received; or
- (4) a court orders the release of the property.

#### **§4-7-22 GOVERNMENT OR UTILITY PROPERTY.**

(A) A metal recycler, its agents, or employees shall not purchase or otherwise receive an item of property, including, but not limited to, street signs, traffic signals, manhole covers, road and bridge guard rails, street light poles and fixtures, on which are written or affixed the words "Property of the City of Austin" or other words or markings demonstrating ownership by the city. It is an affirmative defense to this section if:

- (1) the person offering the item for sale is an employee of the city authorized by the city to make such a sale and that person provides the metal recycler with a written authorization from the city manager or designee for the sale of such property; or
- (2) the person offering the item for sale provides at the time a valid receipt from the city evidencing the purchase of such property by the person offering such property.

(B) A metal recycler, its agents, or employees shall not purchase or otherwise receive an item of property that is marked with any form of the name or initials of a governmental agency, including but not limited to the State of Texas and the United States of America and their agencies and political subdivisions, or that the metal recycler entity know or should reasonably be expected to know belongs to a governmental agency, including but not limited to street signs, traffic signals, manhole covers, road and bridge guard rails, street light poles and fixtures. It is an affirmative defense to this section if:

- (1) the person offering the item for sale is an employee of the governmental agency and that person provides the metal recycler entity with written authorization from the agency documenting that the employee has authority to sell the property; or
- (2) the person offering the item for sale provides at the time a valid receipt from the governmental agency evidencing the purchase of the property by the person offering the property.

(C) A metal recycler, its agents, or employees shall not purchase or otherwise receive an item of property that is marked with any form of the name or initials of an electrical, telephone, cable, or other public utility company that the metal recycler knows, or should reasonably be expected to know, belongs to the company unless the person offering the item for sale presents at the time of the offer a valid receipt from the company evidencing the purchase of the property by the person offering the item.

#### **§4-7-23 ACCEPTANCE OF PROPERTY IN ORIGINAL PACKAGING.**

A metal recycler, its agents, or employees shall not purchase or otherwise receive an item of property that is in its original packaging unless the person offering the item presents a receipt or proof of purchase for that property.

#### **§4-7-24 ACCEPTANCE OF INSCRIBED PROPERTY.**

A metal recycler, its agents, or employees shall not purchase or otherwise receive in the course of its business, any regulated material that is marked with any form of name or initials of a private company that is not the manufacturer of the regulated material, or that the metal recycler knows or should reasonably be expected to know belongs to a private company, unless the person offering the property presents at the time a written, signed statement from the owner, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has is authorized to sell or otherwise transfer that property, or proof of current employment at that private company.

#### **§4-7-25 ACCEPTANCE OF PROPERTY DELIVERED BY SHOPPING CART.**

A metal recycler, its agents, or employees shall not purchase or otherwise receive in the course of its business, any item that is transported to the metal recycler by a shopping cart that is clearly marked with any form of the name or

initials of a private company unless the person offering the property presents at the time of transportation of property to the metal recycler entity a valid receipt from the owner of the shopping cart evidencing the purchase of the shopping cart by the person operating the shopping cart.

#### **§4-7-26 COMPLIANCE WITH OTHER LAWS.**

A permit holder, its agents, or employees shall comply with the Texas Occupations Code and all applicable criminal, zoning, health, and safety laws relating to the operation of a metal recycler.

#### **§4-7-27 CRIMINAL PENALTY.**

- (A) A person commits an offense if the person:
  - (1) Performs an act prohibited by this chapter;
  - (2) Fails to perform an act required by this chapter; or
  - (3) Violates a rule adopted under this chapter.
- (B) A violation under this Chapter is a criminal offense punishable by a fine not to exceed \$500.00.
- (C) Proof of a culpable mental state is not required to prove an offense under this chapter.
- (D) Each day that a violation occurs or continues is a separate offense.

#### **§4-7-28 CIVIL REMEDIES.**

- (A) The city council has determined that this chapter is necessary to protect health, life, and property and to preserve good government, order, and security of the City and its inhabitants.
- (B) The City may file suit to enforce this chapter or enjoin or otherwise cause the abatement of any condition described in this article, as well as for the recovery of all expenses incurred, including without limitation, administrative and legal expenses, attorneys' fees and costs, and for civil penalties as provided by law.
- (C) The City may seek to enjoin violations of this chapter.

**§4-7-29 CUMULATIVE REMEDIES.**

The remedies authorized under this article are cumulative unless specifically prohibited by state or federal regulation.

**PART 2.** This ordinance takes effect on October 15, 2010.

PASSED AND APPROVED

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August 26, 2010

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Lee Leffingwell  
Mayor

**APPROVED:**

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Karen M. Kennard  
Acting City Attorney

**ATTEST:**

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Shirley A. Gentry  
City Clerk