

ORDINANCE NO. 2011-08 - _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS AMENDING THE CODE OF ORDINANCES BY REPEALING CHAPTER 70, ARTICLE VI, "PURCHASE AND SALE OF CERTAIN PROPERTY FOR RESALE OR SALVAGE," IN ITS ENTIRETY; ADOPTING A NEW CHAPTER 70, ARTICLE VI TO BE ENTITLED "SECONDARY METAL RECYCLERS"; ESTABLISHING A PURPOSE; PROVIDING DEFINITIONS; ESTABLISHING RECORDS REQUIREMENTS; REQUIRING NOTICES TO SELLERS OF SECONDARY METALS; REQUIRING SPECIFIC NOTIFICATION EQUIPMENT; ESTABLISHING RESTRICTIONS ON THE PURCHASE OF SECONDARY METALS; ESTABLISHING EXCEPTIONS; ESTABLISHING A LICENSE REQUIREMENT; ESTABLISHING AN APPLICATION PROCESS; PROVIDING FOR SUSPENSION AND REVOCATION OF A LICENSE; ESTABLISHING AN APPEAL PROCESS; PROVIDING REMEDIES; CREATING AN OFFENSE; PROVIDING A PENALTY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City possesses, pursuant to Section 1956.003 of the Texas Occupations Code, as amended, the authority to regulate and license metal recycling entities; and

WHEREAS, the City has seen an increase in the number of secondary metals recyclers within the City necessitating the expenditure of City resources to protect the health and safety of all citizens of the City; and

WHEREAS, the City Council has determined that it is in the best interest of the residents of the City to enact regulations relating to secondary metals recycling entities as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

- Section 1. All of the above premises are found to be true and correct legislative and factual determinations of the City Council of the City of McKinney and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.
- Section 2. Chapter 70, Article VI, "Purchase and Sale of Certain Property for Resale or Salvage," of the Code of Ordinances of the City of McKinney is hereby repealed in its entirety.
- Section 3. A new Chapter 70, Article VI, "Secondary Metals Recyclers," of the Code of Ordinances of the City of McKinney is hereby adopted to read as follows:

"ARTICLE VI. SECONDARY METALS RECYCLERS

DIVISION 1. - GENERALLY

Sec. 70-149. Purpose.

This article is adopted pursuant to Chapter 1956 of the Texas Occupations Code, authorizing the City to establish license requirements and regulations, that are

more stringent than state laws, and to promote, through regulation of secondary metals recyclers, the recovery of stolen property. This article provides licensing and recordkeeping requirements and enforcement procedures that will enable the McKinney Police Department to identify and recover public and private property composed of certain metals that may have been illegally appropriated.

Sec. 70-150. Definitions.

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

Catalytic Converter means a device used to reduce the toxicity of emissions from an internal combustion engine through the use of a catalyst (typically a platinum-iridium catalyst) that converts the toxic combustion by-products into less toxic gases or products.

Check means a check, draft, or other negotiable or non-negotiable order of withdrawal that is drawn against funds held by a financial institution.

Chief means the Chief of Police for the City of McKinney, Texas, or a designated representative.

Department means the City of McKinney Police Department.

Ferrous Metal means a metal that contains significant quantities of iron or steel.

Hold Notice means written notification by the Chief to a secondary metals recycler stating that the secondary metals recycler may not sell, redeem, or dispose of certain regulated metal property that the Chief has reasonable cause to believe has been stolen.

Licensee means a person in whose name a License has been issued under this article or a person listed as an applicant on the application for a License.

Nonferrous Metal means a metal that does not contain significant quantities of iron or steel, including, but not limited to, copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.

Person means an individual, partnership, corporation, joint venture, trust, association, and any other legal entity.

Personal Identification Certificate means a personal identification card issued by the Texas Department of Public Safety under Chapter 521, Subchapter E of the Texas Transportation Code, as amended, or a similar card or certificate issued by another state.

Purchase Transaction means a transaction in which a secondary metals recycler gives consideration, or agrees to give consideration, in exchange for regulated metal property.

Regulated Metal Property means any item composed in whole or in part of any ferrous or nonferrous metal, other than an item composed in whole of tin.

Secondary Metals Recycler means any person who:

- (a) is engaged in the business of purchasing, collecting, or soliciting regulated metal property; or
- (b) operates or maintains a facility where regulated metal property is purchased or kept for shipment, sale, transfer, or salvage.

Seller means any person who, in a purchase transaction, receives consideration from a secondary metals recycler in exchange for regulated metal property.

Thumbprint Impression means an intentional recording of the friction ridge detail on the volar pads of the thumb.

Burnt Wire means any regulated metal that appears to be burnt, or has been altered by fire.

Sec. 70-151. Records Required to be Maintained and Submission of Records to Electronic Web Based Database.

- (a) A secondary metals recycler shall maintain an accurate and legible record of each purchase transaction. The information shall be maintained in electronic format. Each transaction must be recorded and filed separately. A business or entity licensed under this article shall record the information to an electronic web based database in a form and method approved by the Department.
- (b) The record of each purchase transaction must be in English and contain the following information:
 - (1) the name and street address of the secondary metals recycler;
 - (2) the name or initials of the individual recording the information required by this section for the secondary metals recycler;
 - (3) the seller's name, street address, sex, and birth date and the identifying number from the seller's current and valid driver's license issued by a state in the United States, United States military identification card, or an identification card issued by the Texas Department of Public Safety;
 - (4) the make, model, and license plate number of the motor vehicle in which the regulated metal property is delivered in a purchase transaction, along with a clear digital still photograph of the motor vehicle and any trailer attached to the motor vehicle (photograph shall include the license plate of vehicle/trailer);
 - (5) the place, date, and time of the purchase transaction;
 - (6) the weight, quantity, or volume and a description, made in accordance with the custom of the trade of the regulated metal property purchased, along with a clear digital still photograph of the regulated metal property;
 - (7) a general description of the predominant types of regulated metal property purchased in the purchase transaction;
 - (8) the amount of consideration given in a purchase transaction for the regulated metal property and, if the seller was paid by:
 - (A) check, a copy of the check; or
 - (B) cash.
 - (9) written documentation evidencing that the seller is the legal owner, or is lawfully entitled to sell, the regulated metal property or a signed statement from the seller affirming a legal right of ownership and the right to sign over title to the regulated metal property offered for sale;

- (10) a clear digital still photograph of the seller, taken at the time of the purchase transaction, that clearly depicts the seller's facial features; and
 - (11) a clear and legible thumbprint impression of the seller.
- (c) A person selling or attempting to sell regulated metal property to a secondary metals recycler shall provide the following information to the secondary metals recycler:
 - (1) display to the secondary metals recycler the person's current and valid driver's license issued by a state in the United States, United States military identification card, valid identification card issued by the Texas Department of Public Safety;
 - (2) provide to the secondary metals recycler the make, model, and license plate number of the motor vehicle, and trailer used to deliver the regulated metal property; and
 - (3) sign a written statement provided by the secondary metals recycler affirming that the person is the legal owner of, or is lawfully entitled to sell, the regulated material offered for sale.
- (d) The secondary metals recycler or the recycler's agent shall visually verify the accuracy of the identification presented by the seller at the time of each purchase of regulated metal property and make a copy of the identification to be maintained by the secondary metals recycler in the record of the purchase transaction.
- (e) A secondary metals recycler shall maintain on file the information required by this section for not less than three years after the date of the purchase transaction. A secondary metals recycler shall make these records available for inspection by any police officer, upon request, at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler.
- (f) A business or entity licensed under this article shall record the information required under this section to an electronic internet or web-based database in a form and method approved by the Department. The business or entity shall file all required information by the end of business day on which the transaction occurred. The business or entity and the Department may agree to use the electronic internet or web-based database system as the record keeping method for transactions subject to this article, subject to approval by the Department. The Department may allow less data to be reported under this subsection if necessary to accommodate the database format chosen by the Department. Failure to comply with any provision of this section shall be grounds for the suspension of, revocation of, refusal to issue, or renew any license required by this article.

Sec. 70-152. Notice to Sellers.

- (a) A secondary metals recycler shall at all times maintain in a prominent place in the secondary metals recycler's place of business, in open view to a seller of regulated metal property, a notice in lettering at least two inches tall that:
 - (1) contains the following or similar language approved by the Chief:

"A PERSON ATTEMPTING TO SELL ANY REGULATED METAL PROPERTY MUST PRESENT SUFFICIENT IDENTIFICATION AND

WRITTEN PROOF OF OWNERSHIP AS REQUIRED BY AN ORDINANCE OF THE CITY OF MCKINNEY TEXAS"

"WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR OTHER FALSE INFORMATION TO A METAL RECYCLING ENTITY WHILE ATTEMPTING TO SELL ANY REGULATED MATERIAL."; and

- (2) states the usual business hours of the secondary metals recycler.
- (b) The notice required by this section may be contained on a sign that contains another notice required by law to be displayed by the secondary metals recycler.

Sec. 70-153. Facsimile, Telecopier, or Similar Equipment Required.

A secondary metals recycler shall maintain at its place of business, or otherwise have immediate access to, a facsimile, telecopier, or other equipment of similar function on which notifications of stolen property or other notifications relating to regulated metal property may be expeditiously received from the Department or other law enforcement agency. The equipment must be operable at all times during the usual and customary business hours of the secondary metals recycler. The secondary metals recycler shall maintain the facsimile number or other access number of the equipment on file with the Department and shall notify the Department within twenty-four (24) hours after any change in the number.

Sec. 70-154. Restrictions on the Purchase of Regulated Metal Property.

- (a) A secondary metals recycler shall conduct all purchase transactions only from 7:00 AM to 7:00 PM.
- (b) A secondary metals recycler shall not purchase any item of regulated metal property from
 - (1) an intoxicated person; or
 - (2) a person who does not deliver the item of regulated metal property to the secondary metals recycler's place of business in a motor vehicle or in a trailer attached to a motor vehicle.
- (c) A secondary metals recycler shall not purchase any of the following items of regulated metal property without obtaining proof that the seller owns the property (such as by a receipt or bill of sale) or proof that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other person, business, or entity owning the property and the seller is authorized to sell the item of regulated metal property on behalf of the person, business, or entity owning the property:
 - (1) A manhole cover.
 - (2) An electric light pole or other utility structure and its fixtures and hardware.
 - (3) A guard rail.
 - (4) A street sign, traffic sign, or traffic signal and its fixtures and hardware.
 - (5) Communication, transmission, and service wire.

- (6) A funeral marker or funeral vase.
 - (7) An historical marker.
 - (8) Railroad equipment, including but not limited to a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.
 - (9) Any metal item that is marked with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
 - (10) A copper or aluminum condensing or evaporator coil from a heating or air conditioning unit.
 - (11) An aluminum or stainless steel container or bottle designed to hold propane for fueling fork lifts.
 - (12) Metal cylinders designed to contain compressed air, oxygen, gases, or liquids.
 - (13) A catalytic converter or any part of a catalytic converter.
 - (14) "Burnt Wire" in any quantity.
- (d) A secondary metals recycler shall maintain on file the information required by subsection (c) of this section for not less than three years after the date of the purchase of the item of regulated metal property. A secondary metals recycler shall make these records available for inspection by any police officer, upon request, at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler.
- (e) A secondary metals recycler may, at the time of purchase, give consideration in the form of cash

Sec. 70-155. Five-Day Hold on Regulated Metal Property; Segregation, Labeling, and Inspection of Regulated Metal Property; Exceptions.

- (a) Except as provided in subsection (c) of this section, a secondary metals recycler shall retain possession of purchased regulated metal property at the secondary metals recycler's local place of business and withhold the property from alteration, processing, resale, or salvage use for five days after purchase, unless the property is released sooner by written order of the Chief or by order of a court of competent jurisdiction.
- (b) A secondary metals recycler shall segregate all regulated metal property purchased from a seller from regulated metal property purchased from other sellers and attach to the property, or to the container in which the property is held, a label indicating the name of the seller, the date on which the property was purchased, and the number of the receipt on which the purchase information is recorded. If in any single purchase transaction there are multiple items of regulated metal property of the same general type, only one representative item from each type of regulated property must be segregated and labeled in accordance with this subsection.
- (c) While in possession of purchased regulated metal property, a secondary metals recycler shall make the property available for inspection by any police officer or other law enforcement officer at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler.

Sec. 70-156. Hold on Stolen Regulated Metal Property; Hold Notice.

- (a) Whenever a police officer has reasonable suspicion to believe that certain items of regulated metal property in the possession of a secondary metals recycler are stolen, the Chief may issue a hold notice. The hold notice must:
 - (1) identify those items of regulated metal property alleged to be stolen and subject to hold; and
 - (2) inform the secondary metals recycler of the restrictions imposed on the regulated metal property under subsection (b) of this section.
- (b) A secondary metals recycler may not, for sixty (60) days after the date of receiving a hold notice under this section, process or remove from the secondary metals recycler's place of business any regulated metal property identified in the hold notice, unless the property is released sooner by the Chief, police officer, or by order of a court of competent jurisdiction. At the expiration of the hold period, the hold is automatically released, and the secondary metals recycler may dispose of the regulated metal property unless otherwise directed by a court of competent jurisdiction.

Sec. 70-157. Conflicts, Other Criminal Penalties, and Exceptions.

- (a) This article shall apply to any secondary metals recycler that operates a place of business in McKinney, Texas.
- (b) This article shall not prevent any law enforcement office of competent jurisdiction in Collin County from pursuing criminal charges as allowed under Texas Occupations Code Section 1956.040 or any other criminal penalty applicable to issues related to this article or state law.
- (c) This article shall not apply to the purchase of metals which:
 - (1) is purchased from a charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organization or association or from any organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended;
 - (2) is purchased from any public officer acting in an official capacity as a trustee in bankruptcy, executor, administrator, or receiver; from any public official acting under judicial process or authority; or from a sale on the execution, or by virtue, of any process issued by a court;
 - (3) consists of aluminum food or beverage containers, used food or beverage containers, or similar food or beverage containers for the purpose of recycling, other than beer or beverage kegs;
 - (4) is a purchase from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business; or
 - (5) is 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.

ARTICLE II. - LICENSING OF SECONDARY METALS RECYCLERS.

Sec. 70-160. License Required.

- (a) A person who conducts business as a secondary metals recycler in McKinney, Texas, must be licensed under this article. Each entity covered by this article must acquire a license by September 1, 2011, or for any business that opens after September 1, 2011, such business may not operate as a secondary metal recycler until acquiring a license under this article.
- (b) An application for a license must be made on a form provided by the Chief. Each applicant must be qualified according to the provisions of this article.
- (c) If the applicant is a sole proprietorship, the owner must sign the application. If the applicant is a legal entity, including but not limited to a corporation, partnership, association, or joint venture, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as an applicant. Each applicant must meet the requirements of Section 70-161(a), and each applicant will be considered a licensee if a license is granted.
- (d) An applicant is not exempt from the license requirements of this article by having some other form of federal or state government issued certificate or license.

Sec. 70-161. Issuance of License; Posting.

- (a) The Chief shall issue a license to an applicant within thirty (30) days after receipt of an application unless it is determined that one (1) or more of the following is true:
 - (1) An applicant is under 18 years of age.
 - (2) An applicant or an applicant's spouse is overdue in payment to the county of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse.
 - (3) An applicant failed to answer or falsely answered a question or request for information on the application form provided.
 - (4) An applicant or an applicant's spouse has been convicted of an offense which originated from Texas Occupations Code Section 1956.040. The fact that a conviction is being appealed has no effect.
 - (5) The license fee required by this article has not been paid.
 - (6) An applicant has been convicted of a felony or a Class A misdemeanor involving theft or fraud, including but not limited to theft, robbery, burglary, forgery, criminal simulation, deceptive business practices, securing execution of document by deception, or any other similar state or federal criminal offense, and three years have not elapsed since the termination of any sentence, parole, or probation; the fact that a conviction is being appealed has no effect. If three years have elapsed, the Chief shall, in accordance with Section 53.023 of the Texas Occupations Code, as amended, determine the present fitness of the applicant to be licensed from the information and evidence presented with the application.
 - (7) An applicant has been convicted of an offense under any federal or state law providing for recordkeeping or licensing requirements for persons purchasing or selling regulated metal property, and three

years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.

- (b) The license, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the premises for which the license is granted. A license issued pursuant to this article is valid only for the location stated in the application. Should any licensee move a place of business from the place stated on the license to a new location, the licensee shall give the Chief prior written notice and present the license to the Chief to have the change of location noted on the license.
- (c) A license must be posted in a conspicuous place at or near the entrance to the licensed premises so that it may be easily read at any time.
- (d) If the Chief determines that issuance or renewal of a license should be denied, the Chief shall send to the applicant or licensee by certified mail, return receipt requested, a written statement of the reasons for the denial and of the applicant or licensee's right to appeal.

Sec. 70-162. Fees.

The annual fee for a license issued under this article is \$245. The fee is payable to the City of McKinney, Texas.

Sec. 70-163. Expiration of License.

Each license will expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 70-160. To ensure reissuance of a license prior to expiration, application for renewal should be made at least thirty (30) days before the expiration date.

Sec. 70-164. Suspension.

- (a) The Chief shall suspend a license for a definite period of time, not exceeding thirty (30) days, if the Chief determines that a licensee, an individual who is a business associate of the licensee in the same or a related business or a corporate officer of the licensee, or an employee of the licensee:
 - (2) committed, in the aggregate, two (2) or more violations of this article within any six (6)-month period; or
 - (3) intentionally or knowingly impeded or refused to allow an inspection by the Chief authorized under this article.
- (b) The Chief shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the suspension, the date the suspension is to begin, the duration of the suspension, and the licensee's right to appeal.
- (c) A licensee whose license is suspended may not operate as a secondary metals recycler inside the county during the period of suspension.

Sec. 70-165. Revocation.

- (a) The Chief shall revoke a license if it is determined that one or more of the following is true:
 - (1) A licensee has given a false statement as to a material matter submitted to the Chief during the application process.

- (2) A licensee, an individual who is a business associate of the licensee in the same or a related business or a corporate officer of the licensee or an employee of the licensee has been convicted within a two-year period of three or more offenses under this article. If a conviction is appealed, the time period between conviction and final disposition on appeal of the conviction is not included in calculating the two-year period if the conviction is affirmed.
 - (3) A licensee has been convicted of any felony or of a Class A misdemeanor involving theft or fraud, including but not limited to theft, robbery, burglary, forgery, criminal simulation, deceptive business practices, securing execution of document by deception, or any other similar state or federal criminal offense, and three years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.
 - (4) A licensee has been convicted of an offense under any federal or state law providing recordkeeping or licensing requirements for persons purchasing or selling regulated metal property, and three years have not elapsed since the termination of any sentence, parole, or probation. The fact that a conviction is being appealed has no effect.
 - (5) A cause for suspension under Section 70-164 has occurred and the license has already been suspended at least once within the preceding twelve (12) months.
 - (6) The licensee does not qualify for a license under Section 70-161(a).
- (b) The Chief shall send to the licensee by certified mail, return receipt requested, a written statement of the reasons for the revocation and of the licensee's right to appeal.
- (c) When the Chief revokes a license, the revocation will continue for one year, and the licensee may not be issued a license for one year from the date revocation became final. If, subsequent to revocation, the Chief finds that the basis for the revocation action has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became final. If the license was revoked under subsection (a)(3) or (a)(4) of this section, an applicant may not be granted another license within three years of the termination of any sentence, parole, or probation.

Sec. 70-166. Appeal.

If the Chief denies the issuance of a license or suspends or revokes a license, the Chief shall issue written notice of the denial or revocation and of the right to an appeal. The applicant or licensee may appeal the decision of the Chief to the City Manager within five (5) days after the date of the denial, suspension or revocations. If such appeal is not made within this five (5)-day period, the decision of the Chief shall be final. The appeal shall be decided by the City Manager within ten (10) days after the date of a timely filed appeal

Sec. 70-167. Injunction or Other Remedies.

If the Chief determines that a secondary metals recycling business is operating without a license and such business fails or refuses to acquire the license as set out in this article, the Chief may take any appropriate legal action, including, but not limited to, the filing for an injunction or court order to prevent the business from operating in violation of this article. If a secondary metals recycling business has a suspended or revoked license and continues to operate in

violation of this article, the Chief may take any appropriate legal action including but not limited to the filing for an injunction or court order to prevent the business from operating in violation of this article.

Sec. 70-168. Transfer of License.

A licensee shall not:

- (1) transfer a license issued under this article to another; or
- (2) operate a business engaged in the purchase of regulated metal property for resale or salvage use under the authority of a license at any location other than the address designated in the license application.”

Section 4. Any person, firm, partnership, corporation or association violating any provision of this Ordinance or of any code adopted herein shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of not more than \$500.00, and each day such violation continues shall constitute a separate and distinct violation.

Section 5. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 7. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 16th DAY OF August, 2011.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____
APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney
