

ORDINANCE NO. 3947

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE BY ADDING A NEW ARTICLE XI THEREBY PROHIBITING SECONDARY METALS RECYCLERS FROM PURCHASING REGULATED METAL PROPERTY FROM INTOXICATED PERSONS; REQUIRING PROOF OF AUTHORITY TO SELL CERTAIN ITEMS OF REGULATED METAL PROPERTY; UPDATING REFERENCES TO STATE LAW; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite, Texas, is hereby amended by adding a new Article XI to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

ARTICLE XI. SECONDARY METALS RECYCLERS

Sec. 10-205. Purpose.

This chapter is an exercise of the City's police power to promote, through regulation of secondary metals recyclers, the recovery of stolen property. This chapter provides licensing and recordkeeping requirements and enforcement procedures that will enable the Police Department to identify and recover public and private property composed of certain metals that may have been illegally appropriated.

Sec. 10-206. Definitions.

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

Chief means the Chief of Police for the City of Mesquite or a designated representative.

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 chapter 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.

Passport means a passport issued by the United States government or issued by another country and recognized by the United States government.

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 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) Engages 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.

Sec. 10-207. Records required.

- (a) A secondary metals recycler shall maintain an accurate and legible record of each purchase transaction. Each transaction must be recorded separately.
- (b) The record of each purchase transaction must be in English and contain the following information:
 - (1) The name and 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, address, sex and birthdate as well as the identifying number from the seller's driver's license, military identification card, passport or personal identification certificate;
 - (4) The license number of any motor vehicle in which the regulated metal property is delivered in a purchase transaction;
 - (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;
 - (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;
 - (9) A signed statement from the seller in a purchase transaction affirming a legal right of ownership and the right to sign over title to the regulated metal property offered for sale;
 - (10) A digital photograph, videotape or similar likeness of the seller that clearly depicts the seller's facial features; and
 - (11) A clear thumbprint of the seller.
- (c) A person selling or attempting to sell regulated metal property to a secondary metals recycler shall:
- (1) Display to the secondary metals recycler the person's driver's license, military identification card, passport or personal identification certificate; and
 - (2) Sign a written statement provided by the secondary metals recycler affirming that the person is the legal owner 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.
- (e) A secondary metals recycler shall maintain on file the information required by this section for not less than one year from 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) The recordkeeping requirements of this section, other than Subsection (b)(7) and (b)(10), do not apply to purchase transactions involving regulated metal property composed solely of the following nonferrous metal materials for which definitions and recordkeeping requirements are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:
 - (1) Copper or brass material in excess of 50 pounds.
 - (2) Bronze material.
 - (3) Aluminum material in excess of 40 pounds.
- (g) It is a defense to prosecution under Subsection (b)(10) of this section that:
 - (1) A photograph of the seller, taken within the preceding six months, was currently on file with the secondary metals recycler; and
 - (2) At the time of the purchase transaction, the secondary metals recycler or an employee of the secondary metals recycler visually verified that the seller was actually the person depicted in the file photograph.

Sec. 10-208. 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 two-inch lettering that contains the following or similar language approved by the Chief:

A PERSON ATTEMPTING TO SELL ANY
REGULATED METAL PROPERTY MUST PRESENT
SUFFICIENT IDENTIFICATION REQUIRED BY
CITY OF MESQUITE ORDINANCE.

- (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. 10-209. 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 Police Department. 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 Chief and shall notify the Chief within 24 hours after any change in the number.

Sec. 10-210. Restrictions on the purchase of regulated metal property.

- (a) A secondary metals recycler shall conduct all purchase transactions only between the hours of 7:00 a.m. and 7:00 p.m.
- (b) A secondary metals recycler shall not purchase any item of regulated metal property from an intoxicated person.
- (c) A secondary metals recycler shall not purchase any item of regulated metal property from an individual who does not arrive at the secondary metals recycler in a motor vehicle.
- (d) A secondary metals recycler shall not purchase any item of regulated metal property using cash payments.
- (e) 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 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, 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.
- (f) A secondary metals recycler shall maintain on file the information required by Subsection (e) of this section for not less than one year from 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.
- (g) The requirements of Subsections (e) and (f) of this section do not apply to purchase transactions involving regulated metal property composed solely of the following nonferrous metal materials for which definitions, recordkeeping requirements and other regulations are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:
 - (1) Copper or brass material in excess of 50 pounds.
 - (2) Bronze material.
 - (3) Aluminum material in excess of 40 pounds.

Sec. 10-211. 72-hour 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 72 hours after purchase unless the property is released sooner by written order of the Chief or by order of a court of competent jurisdiction.
- (b) Except as provided in Subsection (c) of this section, 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) The hold, segregation and labeling requirements of Subsections (a) and (b) of this section do not apply to any item of regulated metal property composed solely of ferrous metal material unless the secondary metals recycler has received notice that the Chief has, in accordance with this subsection, designated the item or type of item as being subject to those requirements. The Chief shall periodically review theft statistics on ferrous regulated metal property and establish a list of items or types of items that the Chief determines are subject to the requirements of Subsections (a) and (b). A current list must be maintained on file in the Chief's office or in another designated office of the Police Department so that it may be inspected by the public during the City's normal business hours. Notice of the list must be given to secondary metals recyclers in accordance with schedules and procedures established by the Chief. A secondary metals recycler is presumed to have received notice of the list if the Police Department transmits the list to the facsimile number or access number provided by the secondary metals recycler under Section 10-209.
- (d) While in possession of purchased regulated metal property, a secondary metals recycler shall make the property available for inspection by any police officer at the secondary metals recycler's place of business during the usual and customary business hours of the secondary metals recycler.

Sec. 10-212. Hold on stolen regulated metal property; hold notice.

- (a) Whenever a police officer has reasonable cause 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 60 days from 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 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.
- (c) This section does not apply to items of regulated metal property composed solely of the following nonferrous metal materials for which definitions and hold notice requirements are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:

- (1) Copper or brass material in excess of 50 pounds.
- (2) Bronze material.
- (3) Aluminum material in excess of 40 pounds.

Sec. 10-213. Offenses; defenses; penalty.

- (a) A person who knowingly violates any provision of this chapter or who knowingly fails to perform a duty required of him under this chapter commits an offense. A person is guilty of a separate offense for each item of regulated metal property involved in a violation of this chapter. An offense under this chapter is punishable by a fine not to exceed \$500.00.
- (b) It is a defense to prosecution under this chapter that the regulated metal property involved:
 - (1) Was 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) Was 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; or
 - (4) Was purchased from a manufacturing, industrial or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business.

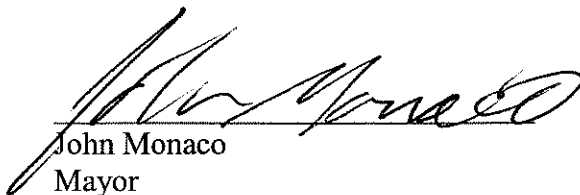
SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

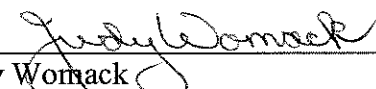
SECTION 5. That this ordinance shall take effect immediately on and after its passage.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 5th day of May, 2008.




John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney