

ORDINANCE 08-05-04

AN ORDINANCE OF THE CITY OF ENNIS, TEXAS ESTABLISHING RULES AND REGULATIONS GOVERNING THE SECONDARY RECYCLING OF METAL, ESTABLISHING THE RECORDS REQUIRED PROVIDING A NOTICE TO SELLERS, ESTABLISHING RESTRICTIONS ON THE PURCHASE OF METAL, ESTABLISHING A PENALTY, AND PROVIDING SEVERABILITY AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ENNIS, TEXAS:

SECTION 1: PURPOSE.

This ordinance is an exercise of the city's police power to promote, through regulation of secondary metals recyclers, the recovery of stolen property. This ordinance 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.

SECTION 2: DEFINITIONS.

In this chapter:

- (1) CHIEF means the chief of police for the City of Ennis or a designated representative.
- (2) FERROUS METAL means a metal that contains significant quantities of iron or steel.
- (3) 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.
- (4) 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 the their alloys.
- (5) PASSPORT means a passport issued by the United States government or issued by another country and recognized by the United States government.
- (6) PERSON means an individual, partnership, corporation, joint venture, trust, association, and any other legal entity.
- (7) 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.
- (8) PURCHASE TRANSACTION means a transaction in which a secondary metals recycler gives consideration in exchange for regulated metal property.
- (9) 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.
- (10) 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.

- (11) SELLER means any person who, in a purchase transaction, receives consideration from a secondary metals recycler in exchange for regulated metal property.

SECTION 3: 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 and 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; and
 - (10) a photograph, videotape, or similar likeness of the seller that clearly depicts the seller's facial features.
- (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 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.
- (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) 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.

SECTION 4: 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 ENNIS 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.

SECTION 5: 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 of the equipment on file with the chief and shall notify the chief within 24 hours after any change in the number.

SECTION 6: 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 of the following items of regulated metal property without obtaining a 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, 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.
- (d) A secondary metals recycler shall maintain on file the information required by Subsection (c) 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 an 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.

SECTION 7: 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 Subsection (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 provided by the secondary metals recycler under Section 5 of this ordinance.
- (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.

SECTION 8: 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.

SECTION 9: OFFENSES; DEFENSES; PENALTY

- (a) A person who violated any provision of this ordinance, or who fails to perform a duty required of him under this ordinance, commits an offense. A person is guilty of separate offense for each item of regulated metal property involved in a violation of this ordinance. An offense under this ordinance is punishable by a fine not to exceed \$500.
- (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.
- (c) The culpable mental state required for the commission of an offense under this ordinance is governed by Section 6.03 of the Texas Penal code.

SECTION 10: SEVERABILITY

If any section, clause, sentence, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 11: EFFECTIVE DATE

This Ordinance shall become effective from and after _____ as provided by law.

PASSED, ADOPTED AND APPROVED by the City Commission of the City of Ennis, Texas on first reading this the ____ day of _____, 2008.

PASSED, ADOPTED AND APPROVED by the City Commission of the City of Ennis, Texas on second reading this the ____ day of _____, 2008.

RUSSELL R. THOMAS, Mayor
City of Ennis, Texas

ATTEST:

SHIRLEY TRULL, City Secretary