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AN ORDINANCE 2008-06-19-0594

AMENDING CHAPTER 16, ARTICLE VII OF THE CITY CODE OF SAN ANTONIO TO REQUIRE LICENSING OF SALVAGE YARDS PURCHASING COPPER AND OTHER REGULATED METALS AND PLACING RECORDKEEPING RESTRICTIONS ON THE PURCHASE OF SUCH ITEMS.

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WHEREAS, the licensing of salvage yards (Division 1) and the sale of certain second-hand metals (Division 2) is currently addressed by Article VII of Chapter 16 of the City Code; and

WHEREAS, an increase in the resale value of certain metals has led to an increase in thefts and damage to property; and

WHEREAS, in the past, City Council has recognized the benefit and importance to the community of regulating the resale and trade of these metals; and

WHEREAS, changes in state law allow new technologies to be utilized by municipalities to track the resale of metals to prevent the occurrence of theft; and

WHEREAS, City Council wishes to continue to make its best effort to combat metal theft and the associated damage to property; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The current language of Article VII (Salvage Yards and Auto Dismantlers) of Chapter 16 of the City Code of San Antonio, Texas is hereby repealed in its entirety and is replaced with the following provisions:

ARTICLE VII. SALVAGE YARDS AND AUTO DISMANTLERS

DIVISION 1. GENERALLY

Sec. 16-186. 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:

Best management practices means a technique or series of structural and non-structural techniques which, when used in a storm water pollution prevention plan, as required by federal law, is proven to be effective in controlling industrial related runoff.

Dealer means a person, firm, or corporation who buys salvage for recycling or resale or owns or operates a salvage yard, as defined herein.

Director means the director of the housing and neighborhood services department.

Salvage means and refers to any secondhand worn out, cast off, or discarded article or material (including but not limited to bodies, parts, and sections of junked, wrecked, or inoperable vehicles, airplanes, and boats) ready for destruction, or collected or stored for dismantling, conversion, or removal of parts; and shall include any article kept for more than sixty (60) days for the purpose of its repair.

Salvage yard means any facility or premises used for the storage or collection of regulated metal or salvage as defined below in Section 16-199.

Sec. 16-187. License required.

No dealer may operate a salvage yard, within the city without a valid license. A dealer may transfer a license only with written approval of the director and in compliance with all applicable city code requirements.

Sec. 16-188. Application for license.

(a) All applications for licenses to operate salvage yards must be made in writing to the director on a form prescribed by the director and shall, among other things contain:

(1) The name, residence, and business address of the applicant (this information shall be listed for each member of the partnership and for each officer of a corporation);

(2) The name and nature of the proposed operation; and

(3) The present zoning, address, and legal description of the premises for which application is being applied.

(b) All applications must contain the following statement:
"The license applied for shall be subject to all provisions of the codes and ordinances of the city relating to salvage yards and auto dismantlers as well as all state and federal regulations relating to such operations."

(c) All applications must be signed and sworn to by the party applying for the license (by a general partner of a partnership and by an officer of a corporation) before a notary public or other official authorized to administer oaths.

(d) The application to operate a salvage yard engaged in the dismantling or conversion of junked, wrecked, or inoperable vehicles whether for scrap or parts must include:

(1) A copy of the National Pollutant Discharge Elimination System discharge permit or notice of coverage for that location;

(2) A copy of the storm water pollution prevention plan for that location which must include:

a. A list of people on the operation's pollution prevention team, with an outline of their respective responsibilities;

b. A statement of waste minimization or waste reduction efforts in place for that location;

c. A copy of the spill response plan in place for that location;

d. A list of the spill response equipment available at that location;

e. A list of authorized personnel on that location to respond to a spill at that location;

f. A list of significant spills or leaks occurring for the last three (3) years at that location;

g. Records of scheduled inspections of storm water management devices at that location;

h. A site map detailing the outfalls, drainage areas, drainage patterns, and surface waters for that location;

i. A list of non-storm water discharges and their areas (such as springs, air conditioner condensation, etc.) for that location;

j. Records of non-storm water discharge testing for that location;

k. A list of floor drains at that location that discharge to the storm sewer;

l. An inventory of significant materials and/or inventory of potential pollutant sources at that location exposed to rainfall; and

m. A summary of any sampling data for storm events for that location;

(3) Identification of the best management practices, measures and controls for that location which should include but not be limited to:

a. Draining fluid and removing batteries from incoming vehicles as soon as feasible;

b. Labeling and separating fluid storage containers such as oil, antifreeze, fuel, etc.;

c. Recycling or reusing vehicle fluids where practical;

d. Cleaning parts indoors or under a covered area using minimal amounts of biodegradable detergents;

e. Development of a preventive maintenance schedule to include inspections, maintenance, and cleaning of the yard/facility's equipment and vehicles;

f. Scheduling of periodic inspections of equipment for leaks, spills, and malfunctioning or worn parts;

g. Maintaining an adequate supply of dry absorbent material on-site;

h. Proper disposal of used absorbent materials;

i. Placement of drip pans or plastic sheets under vehicles, parts, and equipment during maintenance and dismantling;

j. No use of vehicle fluids, oils, or fuel for weed control;

(4) A copy of the multi-sector permit for that location and:

a. Copies and dates of all sampling pursuant to federal regulations taken during the past year; or

b. Copies of any waivers or alternative certification to the required sampling;

c. A statement that the location is not required to conduct testing for that period due to compliance with federal regulations for concentrations of pollutants, and copies of all supporting documentation and test data;

(5) Copies of all other records and permits required by the state commission on environmental quality and the Environmental Protection Agency for that location including:

a. TCEQ waste registration;

b. EPA identification number;

c. Manifests for offsite hazardous waste shipments for the last three (3) years;

d. Annual waste summaries for the last three (3) years;

e. Annual waste generation fee receipt;

f. Contingency plan and emergency procedures;

g. TCEQ pollution prevention plan;

h. TCEQ annual pollution prevention progress report.

(e) Production of any of the records or permits listed in subsection (d), shall not be required upon presentation of certification from the appropriate agencies or entities that such records or permits are not required for that location.

(f) The director may require code enforcement officers to physically ascertain that documents required by subsection (d) are kept on file at the salvage yard as an alternative to the inclusion of such documents with an application. In such cases, the application must not be approved until the officers have ascertained the documents' existence. Enforcement of federal or state requirements shall remain the responsibility of the appropriate agencies.

Sec. 16-189. License fees.

The annual fee for each salvage yard or location where junked, wrecked or inoperable vehicles are stored, licensed by this article shall be five hundred dollars ($500.00) paid to the city with the application for the license. The annual fee for each metal recycler or second-hand metal dealer or location where vehicles are not stored, licensed by this article shall be two hundred fifty dollars ($250.00) paid to the City with the application for the license. The fee will be refunded in the event the license is refused. The license shall cover the period from the first day of January through the last day of December of each year. Only the first year's license may be prorated for each month or fraction thereof. The fee for issuing a duplicate license for one which is lost, destroyed or mutilated shall be ten dollars ($10.00).

Sec. 16-190. Issuance or denial of licenses.

Annual licenses shall be issued by the director upon receipt of the prescribed fee and the completed application, provided that:

(1) The applicant, including partners or officers in the case of a partnership or a corporation, has not been convicted within the previous five (5) years of two (2) or more violations of this article; and

(2) After inspection, the premises are in compliance with this article and other applicable city ordinances and codes. In the event a license is denied, the applicant may appeal this decision to the city council.

Sec. 16-191. City council approval; appeal to city council.

(a) It shall be unlawful for any person to establish or expand any salvage yard within the city without obtaining prior approval of the city council. In granting such approval, the city council may impose conditions which the applicant must comply with before certificates of occupancy may be issued by the director of building inspections for the use of land or buildings on the property pursuant to the approval. The conditions shall not be construed as conditions precedent to the granting of approval, but shall be construed as conditions precedent to the granting of the certificates of occupancy.

(b) The decision of the city council whether to approve the expansion or establishment of a salvage yard, as defined by this article, shall be made only after a public hearing before the council on the question at which interested parties shall have the opportunity to be heard. The housing and neighborhood services department shall mail notices to the owners of all property located within two hundred (200) feet of the area to be occupied by the new salvage yard or expansion. The notice shall state:

(1) The nature of the approval sought;

(2) The location of the requested expansion or new yard;

(3) The date, time, and location of the hearing; and

(4) That the addressee will have the opportunity to be heard regarding the requested expansion or establishment of the new salvage yard.

The rules, methods and procedures for the timing and delivery of notices and all other related notice matters shall be the same as those used whenever an application for a change in zoning is to be heard before the zoning commission.

(c) At any time a salvage yard, as defined by this article, ceases operations and the property is not used for a salvage yard for a period of one (1) year or more, reestablishment of the use will require approval of the city council in the same manner as an expansion or establishment of a new salvage yard.

(d) The city council will not approve the establishment of a new salvage yard, as defined by this article, nor an expansion of an existing salvage yard, if the location of the new salvage yard or the expansion area is within five hundred (500) feet of a church or school building or within three hundred (300) feet of a residence (single-family home, duplex, apartment, townhouse, or mobile home) if such church, school or residence is located within an A, B, C, D, E, F, G, H, R-1, R-2, R-3, R-4, R-5, R-6, O-1, B-1, B-2, or B-3 zone.

(e) Any appeal of the decision or action by the director shall be filed in writing with the city clerk within twenty (20) days of receipt of the decision or action specifying the exact grounds and reasons for the appeal. The appeal shall be heard by the city council during its next available, regularly scheduled meeting. The city council may uphold, reverse, or modify the director's decision or action. Failure to appeal to the city council within the prescribed period shall render the director's decision or action

final, and in cases of license revocation, the effect shall be a forfeiture of the license, which forfeiture shall be final.

Sec. 16-192. Variances.

The board of adjustment is authorized to grant, pursuant to the procedures set forth in this Code, a variance from the provisions of sections 16-193 and 16-194, but only due to unique circumstances on the premises or adjacent thereto (such as topography), not created by the dealer and not merely financial, and which are not a part of general conditions in the area, provided and except, however, that existing industries within the purview of this article may expand to adjoining property without the necessity of an additional license so long as all other requirements for such expansion are met by the dealer. The board of adjustment, however, may not in any manner grant variances to subsection 16-194(g) nor to requirements set by state or federal regulations which may be listed in this article.

Sec. 16-193. Fencing.

(a) All salvage yards shall be enclosed on all sides (including front and rear) with a substantial and anchored wall or screen fence constructed as an adequate barrier to inhibit the migration of rodents and other vectors from the salvage yard to an adjacent property. The wall or screen fence shall be constructed with appropriate screen drains so as not to inhibit necessary water drainage.

(b) The wall or screen fence shall be constructed such that the interior of the salvage yard is not visible from the exterior. The wall or screen fence for salvage yards located within one hundred (100) feet of a property with a residence thereon shall be constructed or modified so that it is eight (8) feet in height. The wall or screen fence for all other salvage yards shall be at least six (6) feet in height.

(c) Those sections of a salvage yard which are contiguous with another salvage yard shall be exempt from subsection (b), if those sections otherwise have an adequate barrier as required by subsection (a), to inhibit the migration of rodents and other vectors between the salvage yards.

(d) Any section of wall or screen fence located within one hundred (100) feet of a property with a residence thereon shall be constructed or modified so that it extends at least (3) inches into the ground. Building up the surrounding ground to cover at least the lower (3) three inches of the section of wall or screen fence shall be considered compliance with this requirement. Should water drainage be substantially affected, the procedure in section 16-192 shall be followed.

(e) All walls or screen fences shall be maintained in a neat, solid, substantial, and safe condition. No wall or screen fence shall be kept in a listing, damaged, or decaying condition.

(f) Gates for access to the salvage yard's premises at each street or alley line shall not have combined openings exceeding thirty (30) percent of the alley or street frontage.

All gates for access shall swing inward and shall be kept closed when the salvage yard is not open for business.

(g) The fencing requirements in the subsection shall not apply to salvage yards conducted solely within a completely enclosed structure or structures.

(h) Dealers affected by this section shall have two (2) years from the date this section becomes effective to comply.

Sec. 16-194. Manner of salvage article storage; waste containment; weed and brush maintenance; fire lane.

(a) Salvage articles on the premises of a salvage yard shall be arranged so that a reasonable inspection of, or access to, all parts of the premises can be had at any time by the proper fire, health, police, code enforcement, and building authorities which inspections dealers shall permit at any reasonable time. All junked, wrecked or inoperable vehicle bodies located outside of a building, if stacked, shall be so stacked only with the use of metal racks or other safe, metal supports so that all bodies are at least six (6) inches above the ground and are arranged to provide ease of inspection, control of insects and rodents, and to facilitate water drainage, containment, and waste control. Neither the vehicle bodies, vehicle parts, nor other salvage articles shall be stored or stacked higher than the height of the salvage yard's wall or screen fence.

(b) No salvage articles shall be placed in any manner outside of the salvage yard's surrounding screen fence or wall.

(c) Premises shall be kept clean of any weeds and/or brush over twelve (12) inches tall where salvage articles are kept and/or within one hundred fifty (150) feet from the curb line of adjacent streets or the edge of the streets or road surface where no curb exists.

(d) Upon the salvage dealer's possession of all salvage articles, contaminated liquid wastes along with other contaminated materials, hazardous waste, and special waste--including freon--shall be removed from the salvage articles and contained, stored, and disposed in compliance with all applicable state and federal regulations. Disposal of accumulated contaminated liquids and materials shall be accomplished by a duly licensed contractor. The salvage dealer shall maintain on premises all completed manifests evidencing legal disposal for a period of no less than five (5) years from the date of disposal.

(e) All storage of liquid waste shall be subject to applicable state and federal regulations. In no event shall any salvage dealer maintain a volume and weight of stored liquid waste inventory in excess of the lesser of the maximum exempt amounts allowed by the fire code as adopted within this Code or state and federal regulations for a small quantity generator. All liquid waste shall be stored only in above ground containers approved by and in accordance with the state department of transportation, the Texas Administrative Code, and the fire code sufficient for the delivery to a transporter for

disposal. It shall be unlawful for any waste to be held in a container which leaks, is in any other manner not in compliance with state and federal regulations, or in any manner fails to completely contain the material in question.

(f) All solid waste, regardless of character or category, shall be so contained as to cause or allow no release or spill of the material in question.

(g) All salvage yards, as defined by this article, shall have a fire lane. No salvage articles shall be placed within ten (10) feet of the surrounding wall or screen fence. The fire chief shall oversee fire lane specifications and compliance for each salvage yard, and may alter the required number of feet in accordance with the location, use, size, and other characteristics of an individual salvage yard. A salvage yard shall be brought into compliance within one (1) year. All penalties and appellate procedures of chapter 11 of this Code shall apply to this subsection.

Sec. 16-195. Emergency contact numbers.

All salvage dealers shall place and maintain a sign on the premises that may be read from the street right-of-way listing the names and telephone numbers of at least one person in the county who may be called to give admittance to the premises in case of emergency.

Sec. 16-196. Rodent and vector control.

(a) All salvage yards shall have a rodent and vector extermination treatment covering the entire premises conducted a minimum of once every six (6) months, conducted in such a manner and utilizing such chemicals as are acceptable to the director.

(b) A rodent and vector control program is the responsibility of the dealer and shall be on-going for the duration of the salvage yard's operation.

(c) A code compliance officer shall inspect all salvage yards, as defined by this article, within the city a minimum of once every six (6) months. At the time of the inspection, the inspector shall be provided with evidence to prove that such extermination procedure has occurred within the preceding six-month period and that the dealer has an on-going program for observation, determination, and control of rodents and vectors. The dealer's presentation of evidence of a service contract with a recognized and licensed pest control contractor may satisfy this requirement.

(d) If a professional exterminator has been employed, a receipt for payment for services rendered shall be provided. If the dealer conducts the extermination without using a professional exterminator, the dealer shall request health department certification at the time the extermination occurs and furnish the code compliance officer with such evidence sufficient to show that the control has been accomplished in an efficient manner.

(e) It shall be unlawful for any dealer to fail to have the necessary rodent and vector extermination conducted in accordance herewith, and it shall also be unlawful to fail

to present to the code compliance officer upon request the necessary verification of such effective extermination.

Sec. 16-197. Monthly inspections; nuisance declared.

(a) Monthly inspections shall be made of all salvage yards by the housing and neighborhood services department for the purpose of assuring compliance with the terms of this article. A form shall be devised by said department to be completed at the time of such inspection indicating the date the inspection occurred. This form indicating the date of the last inspection must be posted by the dealer in a conspicuous place on the premises at all times.

(b) Conditions maintained in violation of this article which impact public health, safety, or welfare, or which deprive neighbors of their safe or peaceful use of nearby properties shall be unlawful and shall be deemed a public nuisance.

(c) Multiple allegations of violations of the provisions of this article shall be grounds for the director to consider revocation of the dealer's license. Revocation by the director, if such should occur, may take place only after opportunity is afforded to the dealer to confer with the director concerning the alleged violations. Revocation may be appealed to the city council.

Sec. 16-198. Time limit for compliance by newly annexed yards.

(a) Dealers of salvage yards which are annexed into the city shall have a period of one (1) year from the effective date of the annexation to install fencing as required by this article. Dealers whose salvage yards are annexed shall also demonstrate compliance with existing federal, state, and county laws and regulations applicable to fencing requirements for such yards at the date of annexation.

(b) Subsequent to annexation, the director shall promptly notify affected dealers in newly annexed areas of the obligations under this article.

DIVISION 2. RECEIPT OF REGULATED METAL PROPERTY

Sec. 16-199. Definitions.

For the purpose of this article, the following terms shall have the meanings indicated:

City means the City of San Antonio, Bexar County, Texas.

Dealer means both secondary metals recyclers and secondhand metal dealers collectively.

Person means an individual, joint venture, partnership, corporation, trust, or association.

Secondhand metal dealer means a person other than a secondary metals recycler, who personally or through managers, agents, and/or employees, purchases or receives scrap or other metal items that are offered for sale.

Secondary metals recycler means any person who, directly or through an agent, manager, or employee, purchases or receives scrap metal which is thereafter subjected to two (2) or more of the following:

(1) Sorting or classifying;

(2) Cleaning;

(3) Bailing or wrapping;

(4) Cutting, shredding, or shearing; or

(5) Changing the physical form or chemical content thereof as needed for the manufacturing of new metal items.

Metal recycling entity means anyone, who from a fixed location engages in the business of utilizing machinery or equipment for the processing of or manufacturing of iron, steel or nonferrous metallic scrap and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for re-melting purposes.

Used means any items, goods, products, wares, chattels, or articles of any sort which have previously been owned by someone other than the manufacturer, or a dealer whose business it is to sell such items, goods, products, wares, chattels, or articles when new to the consumer.

Regulated metal means a direct product or byproduct of any form of a manufactured, shaped, or processed aluminum, brass, copper, lead, bronze, catalytic converters, batteries, unused rebar or other nonferrous metallic material.

Building construction materials means copper pipe, tubing, or wiring, aluminum wire, aluminum siding, plumbing supplies, electrical supplies, window glass, window frames, doors, door frames, downspouts, gutters, lumber, air conditioning units and other similar materials.

Chief of Police means the Chief of Police for the City of San Antonio and such persons as he may designate to perform his duties under this article.

Director means the director of the housing and neighborhood services for the City of San Antonio.

Clear thumbprint impression means an intentional recording of the friction ridge detail on the volar pads of the thumb.

Licensee means a person who holds a license to conduct business as a scrap metal processor or secondhand dealer.

Minor means any person under 18 years of age.

Real-time electronic web-based database means an electronic filing system in which data is organized by fields and records and that is capable of transmitting a file or responding to input immediately via the internet.

Sec. 16-200. Administrative Rules

The director and the chief of police shall promulgate rules and regulations to administer the provisions of this ordinance. Such rules and regulations shall not conflict with any applicable provisions of this Code. All rules and regulations so promulgated shall be kept on file for public inspection at the office of the city secretary, the office of the chief of police and the office of the director. A copy of the rules and regulations shall be provided to any person upon payment of the fees prescribed by law. Failure to comply with any of the promulgated rules or regulation established under this subsection shall be grounds for the revocation of or the refusal to issue or renew any license required of the owner or operator of a metal recycling, secondhand metal or secondhand business under this Code. The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license under this article.

Sec. 16.201. Records required to be kept by metal recycling entities, and secondhand metal dealers.

(a) The provisions of this section apply to all business carried on at a single location. With the exception of the sale or transfer of aluminum cans, a metal recycling entity or secondhand metal dealer shall keep at his place of business a record in a real-time electronic web-based database, in a form and method approved by the chief of police, in which he shall enter daily, in English, a full description of each transaction in which personal property 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 clear thumbprint impression from the person seeking to transfer, sell or otherwise give the items that are the subject of each transaction;

(4) Verified evidence that the person transferring, selling or otherwise giving the items is at least 18 years of age by presentation of valid identification, including a photograph of the face of person transferring, selling or otherwise giving the item, in the form of;

(a) A current driver's license from Texas or another state within the United States;

(b) An identification card issued by the Texas Department of Public Safety; or

(c) United States military identification.

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 or transported to the metal recycling entity, secondhand metal dealer, or secondhand dealer's place of business, including state and license plate number, if applicable;

(5) The individual transaction number assigned by the licensee to each item received;

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

(6) A digital photo of the seller, and digital photograph of items received,

(7) The name or employee number of the employee who facilitates or conducts the transaction.

(b) The real-time electronic web-based database described in subsection (a) of this section shall be created and maintained by the police department. The metal recycling entity or secondhand metal dealer shall forward the required record and descriptions set forth in subsection (a) of this section in an electronic format to the designated police department web site before the close of business on each day on which the metal recycling entity or secondhand metal dealer is open for business. Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 16-213 of this Code.

(c) The metal recycling entity or secondhand metal dealer, his agents or employees shall obtain a consecutively numbered receipt from the seller or transferor of the property. Such receipt shall be dated on the actual date of the transaction and shall list the items sold or otherwise transferred. A printed version of the record input and transmitted to the real-time electronic web-based database as described in this section shall satisfy this requirement. An accurate copy or record of receipts obtained shall be retained for a period of not less than one year.

(d) A metal recycling entity or secondhand metal dealer shall, upon request, submit and exhibit the various business records that are required to be maintained under this section for inspection or copying by any peace officer or authorized inspector of the director. Failure to maintain or to so permit the

examination or copying of such records when requested shall be a misdemeanor offense punishable as specified in Section 16-213 of this code.

(e) The metal recycling entity or secondhand metal dealer shall be on-line with the real-time database within (90) ninety days of the approval and signing of this ordinance by the City Council of San Antonio. All other sections of this ordinance will be immediately enforced upon the approval and signing of the ordinance by City Council.

Sec. 16-202. Government or Utility Property

(a) It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or 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 San Antonio" or other words or markings demonstrating ownership by the city except in the following circumstances:

(1) Where the person offering such property for sale is an employee of the city authorized by the director to make such a sale and provides the metal recycling entity or secondhand metal dealer, his agents or employees with a written authorization from the city treasurer for the sale of such property; or

(2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the director evidencing the purchase of such property by the person offering such property.

(b) It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or 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 recycling entity or secondhand metal dealer, his agents or employees 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, except:

(1) Where the person offering such property for sale is an employee of the governmental agency authorized by that agency to make such a sale and provides the metal recycling entity or secondhand metal dealer, his agents or employees with a written authorization from the agency for the sale of such property; or

(2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the governmental agency evidencing the purchase of such property by the person offering such property.

(c) It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or 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 or that the metal recycling entity or secondhand metal dealer, his agents or employees know or should reasonably be expected to know belongs to a public utility unless the person offering such property for sale presents at the time of such offer a valid receipt from the public utility company evidencing the purchase of such property by the person offering such property.

Sec. 16-203. Acceptance of building construction materials

It shall be unlawful for any metal recycling entity or secondhand metal dealer, to receive, sell, dismantle, deface or in any manner alter or dispose of any building construction material received by him at his licensed place of business unless he complies with the provisions of sections 16-201, and section 16-206 of this Code.

(b) It shall be unlawful for any metal recycling entity or secondhand metal dealer to receive, sell, dismantle, deface or in any manner alter or dispose of any building construction material received by him at his licensed place of business unless prior to receiving, selling, dismantling, defacing or in any manner altering or disposing of any building construction material, the metal recycling entity or secondhand metal dealer:

(1) Records, along with the description of the property, the serial number, or other identifying characteristics of each part or piece of building construction material; and

(2) Obtains a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer, that property. Any person violating any provision of this section shall be punished as provided by section 16-213 of this Code.

Sec. 16-204. Acceptance of air conditioning unit parts.

It shall be unlawful for any metal recycling entity, secondhand metal dealer or secondhand dealer, his agents or employees to purchase or receive any nonferrous central air conditioning unit parts to include air conditioning window units from any person offering such property for sale unless the person presents an original copy of a reclamation receipt or recovery receipt issued by a state licensed HVAC company that recovered the Freon from the unit which is being sold.

(1) Where the person offering such property for sale is an employee of the governmental agency authorized by that agency to make such a sale and provides the metal recycling entity or secondhand metal dealer, his agents or employees with a written authorization from the agency for the sale of such property; or

(2) Where the person offering such property for sale presents at the time of such offer a valid receipt from the governmental agency evidencing the purchase of such property by the person offering such property.

(3) The person offering the property for sale is the manufacturer of air conditioning units, or a licensed recycler in the business of purchasing air conditioning parts to include

air conditioning window units must provide a certificate of reclamation or recovery certificate to the metal recycling entity, secondhand metal dealer, his agents or employees in order to resell the units to the metal recycling entity, secondhand metal dealer, his employees or his agents.

Sec. 16-205. Stock to be open for examination.

The stock or inventory of any metal recycling entity, secondhand metal dealer, or secondhand dealer' shall at any time during ordinary business hours be accessible for examination by any peace officer or authorized inspector of the director's office. Failure to comply with any provision of this section shall be 'grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity, secondhand metal dealer or secondhand dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 16-213 of this Code.

Sec. 16-206. Articles to be retained at least 72 hours; tag; exceptions

(a) Notwithstanding the provisions of subsection (b) and (c) of this section. No metal recycling entity, or secondhand metal dealer shall sell, dismantle, deface or in any manner alter or dispose of any regulated metal purchased or otherwise received by him at his licensed place of business for 72 hours after receipt, excluding weekends and holidays provided that he is not required to keep aluminum cans for more than 24 hours. During such 72-hour period, all items of property shall be stored or displayed at the dealer's business location, in the exact form received, and in a manner so as to be identifiable from the description entered in the database. Such property shall not be kept in such a manner so as to prevent or impede its, examination.

(b) A peace officer who has reasonable suspicion to believe that an item of regulated material in the possession of a metal recycling entity or a secondhand metal dealer is stolen may place the item on hold in the manner provided by Section 1956.037 of the Occupations Code.

c) Exceptions. A metal recycling entity is not required to comply with the provisions of this section if: the metal recycling entity verifies that the person or entity seeking to sell or otherwise transfer the metal items has one of the following licenses or permits to establish that he is a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business:

(1) The metal items are not in their original packaging in which case the metal recycling entity must comply with section

(2) A valid city-issued metal recycling entity or secondhand metal dealer license, which the metal recycling entity or secondhand metal dealer shall record by photocopying the license or recording the license number in connection with the sale and maintain for a period of not less than three years; or

(3) A valid city-issued construction, demolition, or electrical permit, which the metal recycling entity or secondhand metal dealer shall record by photocopying the permit or recording the project number located on the permit in connection with the sale and maintain for a period of not less than one year.

Sec. 16-207. Acceptance of property suspected stolen; peace officer requested holds; violation.

(a) It shall be the duty of every metal recycling entity or secondhand metal dealer, his agents or employees to report immediately to the police department, by filing a formal complaint, any offer to sell to the metal recycling entity or secondhand metal dealer, his agents or employees, property that such metal recycling entity or secondhand metal dealer, his agents, or employees have 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. Such metal recycling entity or secondhand metal dealer, his agents, or employees, shall also report any property acquired by the metal recycling entity or secondhand metal dealer, that the metal recycling entity or secondhand metal dealer or, his agents or employees, subsequently determine or reasonably suspect to be stolen property, and the metal recycling entity or secondhand metal dealer, his agents or employees, shall furnish such other information as might be helpful to the police in investigating the matter.

(b) Notwithstanding the provisions of section 16-206 of this article, it shall be the duty of every metal recycling entity or secondhand metal dealer, his agents or employees to hold all suspected stolen property in a secure place for 60 days upon request by a peace officer. The metal recycling entity or secondhand metal dealer, his agents or employees, may not process or remove the property from the dealer(s) or entity(ies) premises before the sixtieth day after receipt of the request from a peace officer to hold the property unless:

(1) The item 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 upon 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 release of the property.

(c) Failure to comply with any provision of this section shall be grounds for the revocation of or the refusal to issue or renew any license required of a metal recycling entity or secondhand metal dealer under this Code. Any person violating any provision of this section shall be punished as provided by section 16-213 of this Code.

Sec. 16-208. Facsimile, telecopy, or similar equipment required

A secondary metals recycler or secondhand metal dealer shall maintain at its place of business, or otherwise have immediate access to, a facsimile, telecopy, 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 or secondhand metal dealer. The secondary metals recycler or secondhand metal dealer shall maintain the facsimile number or other access number of the equipment on file with the chief of police and shall notify the chief of police within 24 hours after any change in the number. Any person violating any provision of this section shall be punished as provided by section 16-213 of this Code.

Sec. 16-209. Purchasing or receiving goods from minors.

(a) No metal recycling entity or secondhand metal dealer, shall purchase or otherwise receive in the course of his 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, unless:

(1) The minor is accompanied by his parent or guardian, who shall state in writing, that such transaction is taking place with such parent's or guardian's full knowledge and consent; or

(2) The only items offered for sale by the minor are aluminum cans.

(b) It shall be the duty of such metal recycling entity or secondhand metal dealer, to preserve and keep on file, and available for inspection, such written statements of consent for a period of not less than one years.

Sec. 16-210. Acceptance of property inscribed with company name.

It shall be unlawful for any metal recycling entity or secondhand metal dealer, or his agents or employees, to purchase or receive an item of property that is marked with any form of the name or initials of a private company or that the metal recycling entity or secondhand metal dealer knows or should reasonably be expected to know belongs to a private company unless the person offering such property for sale presents at the time of such offer a written, signed statement from the seller attesting to lawful ownership of the property, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer that property.

Sec. 16-211. Acceptance of property delivered by shopping cart

It shall be unlawful for any metal recycling entity or secondhand metal dealer, his agents or employees to purchase or receive an item of property that is transported to the metal recycling entity or secondhand metal dealer's place of business by a shopping cart that is marked with any form of the name or initials of a private company or that the metal recycling entity or secondhand metal dealer knows or should reasonably be expected to know belongs to a private company unless the person operating the shopping cart presents at the time of transportation of property to the metal recycling entity or secondhand metal dealer presents a valid receipt from the owner of the shopping cart evidencing the purchase of the shopping cart by the person operating the shopping cart.

Sec. 16-212. Change in business address

Should any licensee move his place of business from the place designated in such license to a new address, he shall immediately give written notice to the director and have the change noted on his license.

Sec. 16-213. Individuals to be prosecuted; fine upon conviction.

It is a class "C" misdemeanor for any individual dealer, manager, agent, or employee of a dealer to recklessly receive or negligently allow another to receive regulated metal property in violation of this code. Upon conviction it shall be punishable by a fine of not more than five hundred dollars ($500.00).

Sec. 16-214. Revocation of license of salvage dealers with repeat violations; hearing

The housing and neighborhood services department director shall investigate suspended violators of this article. An administrative license revocation hearing shall be conducted by the city manager or a duly appointed hearing officer in accordance with the requirements of section 16-203. The hearing officer shall consider documentary evidence and testimony from any interested parties who desire to offer relevant testimony. Upon a determination that the licensee is unable or unwilling to enforce the business practices necessary to comply with this article, the city manager shall revoke the dealer's license.

Sec. 16-215. License revocation hearing.

(a) Request by housing and neighborhood services director to city manager for hearing. The director shall notify the city manager of the need for a salvage dealer's license revocation administrative hearing and the city manager or a duly authorized representative shall set a hearing date. The director shall notify the affected dealer of such hearing, the reason for such hearing, and of the dealer's right to present evidence and to question all witnesses at such hearing. The notice shall be mailed by certified mail, return receipt requested, or hand delivered to an individual salvage dealer or to any partner of a partnership dealer, or to any officer of a corporate dealer. The notice shall be so delivered not less than fifteen (15) days before such hearing.

(b) Prerequisite for hearing. Such hearing shall be had if the dealer or any employee, manager, or agent of the dealer cumulatively have accrued two (2) convictions for violating this article within a 12-month period, or three (3) convictions within an 18-month period.

(c) Notice to dealer of license revocation. If the hearing officer determines that the dealer's salvage dealer's license shall be revoked, the city manager shall issue a written thirty (30) days notice of a salvage dealer's license revocation to the dealer by certified mail, return receipt requested. The revocation notice shall inform the dealer of the right of appeal and of the time limit for the written notice of appeal. The revocation shall become final on the thirty-first day after the dealer's receipt of said notice unless an appeal is properly filed.

Appeal to city council; request in writing. The dealer licensee shall have the right of an administrative appeal to the city council if demanded in writing and delivered to the city manager within ten (10) days after the dealer's receipt of the city manager's written thirty (30) days notice dealer's license revocation. Any continuation of business as a dealer after such revocation takes effect shall be in violation of the license requirements of this article unless enjoined by a court of competent jurisdiction. Said revocation notice shall inform the dealer of the right of appeal and of the time limit for the required written notice of appeal to be submitted to the city manager.

SECTION 2. All other provisions of Chapter 16 of the City Code of San Antonio, Texas shall remain in full force and effect.

SECTION 3. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 4. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

SECTION 5. The City Clerk of the City of San Antonio is hereby directed to publish notice of this ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 6. This ordinance shall take effect ten days from the date of passage.

PASSED AND APPROVED this 19th **day of** June**, 2008.**

M A Y O R
PHIL HARDBERGER

ATTEST:

City Clerk

APPROVED AS TO FORM:

for **City Attorney**

Request for COUNCIL ACTION

City of San Antonio

Agenda Voting Results - 54

Name:	54
Date:	06/19/2008
Time:	04:49:02 PM
Vote Type:	Motion to Approve
Description:	An Ordinance amending Chapter 16, Article VII of the City Code of San Antonio to require licensing of salvage yards purchasing copper and other regulated metals and placing recordkeeping restrictions on the purchase of such items. [Erik J. Walsh, Assistant City Manager; William P. McManus, Police Chief]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x			x	
Lourdes Galvan	District 5	x					
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					

CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 54
Council Meeting Date: 6/19/2008
RFCA Tracking No: R-3528

DEPARTMENT: SAPD **DEPARTMENT HEAD:** William McManus

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Repealing and Amending of Chapter 16 of the City Code (Salvage Yards)

SUMMARY:

This ordinance repeals and amends Chapter 16, Article VII (Salvage Yards and Auto Dismantlers) of the City Code of San Antonio to require that purchasers of regulated metal property for resale or recycling obtain a license from the City, that a record of all sales of regulated metal property to a salvage yard operator be digitally preserved in a format which can be uploaded to a central database which will maintain data required by the City to document the sale, and provide for comprehensive regulation of the sale and resale of regulated metals.

BACKGROUND INFORMATION:
Theft of copper and other regulated metals for resale has become an even greater problem since City Council addressed the issue last year on January 11, 2007 by adopting Ordinance No. 2007-01-11-0063 which amended Chapter 16, Article VII of the City Code of San Antonio. This Ordinance amended the City Code by including copper in the list of regulated metal properties, requiring secondary metal recyclers to maintain records associated with the purchase of copper and identifying vendors from whom such purchases are made. The proposed ordinance will strengthen the Police Department's ability to prevent the theft of these metals and improve the ability to investigate stolen metal property.

The proposed ordinance will also require businesses that purchase regulated metal to obtain a City license and require the following to be recorded:

1) date and time an item is received;
2) full name and address of person or business from whom item is received;
3) thumbprint of seller;
4) photo of seller and proof seller is at least 18 years of age in the form of current driver's license, state ID or passport of seller;
5) transaction number of sale;

PRIME TIME Newspapers, LLC

AFFIDAVIT OF PUBLICATION

(COUNTY OF BEXAR)
(STATE OF TEXAS)

I, **Lynette Nelson** do solemnly swear that the notice was published ___1___ time(s) in the following publication(s):

Daily Commercial Recorder

A free weekly newspaper of general circulation published at San Antonio, Bexar County, Texas on the following dates:

June 23, 2008

Lynette Nelson

Lynette Nelson
Subscribed and sword before me, this

_8th_ day of _December_, 2008

Olivia D. Chaverria

NOTARY PUBLIC SIGNATURE

OLIVIA D. CHAVERRIA
MY COMMISSION EXPIRES
July 17, 2010

Olivia D. Chaverria
Notary Public Printed/Typed Name

My Commission Expires: 07/17/2010

AN ORDINANCE 2008-06-19-0594

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE VII OF THE CITY CODE OF SAN ANTONIO TO REQUIRE LICENSING OF SALVAGE YARDS PURCHASING COPPER AND OTHER REGULATED METALS AND PLACING RECORDKEEPING RESTRICTIONS ON THE PURCHASE OF SUCH ITEMS.

PASSED AND APPROVED this 19th day of June, 2008.
/S/ PHIL HARDBERGER
MAYOR
ATTEST: LETICIA VACEK
CITY CLERK

6) digital photo of seller and each item sold; and
7) name of employee conducting transaction.

The wholesale price of scrap metals has continued to rise resulting in increasing incidence of thefts from government, businesses, schools and churches.

Other cities have taken advantage of new technology and have recently adopted mutually compatible Ordinances with electronic recordkeeping, photo and fingerprint requirements and an online system for reporting copper purchases to the Department of Public Safety in Austin. This technology will allow city-to-city tracking of persons selling scrap metal. The San Antonio Police Department (SAPD) and business leaders in San Antonio have expressed support for these changes to curb the market for stolen metals and to allow San Antonio to participate in the online database which is a more effective sales recording system compatible with those in use in other major cities in Texas. This data will be entered into the Leads On-Line database and information service to which the Police Department currently subscribes. Leads On-Line is an online database that allows regional law enforcement agencies to access, search and report information. Therefore, additional licenses are required to further implement the information on this online database.

The proposed revision also provides for:

1) administrative rules for conducting secondhand metal sales and recycling;
2) limitations on accepting building construction materials;
3) limitations on accepting condensing and evaporating coils;
4) open examination of stock by inspectors and peace officers;
5) 72-hour hold on items purchased;
6) requirement to maintain fax equipment;
7) written statement from named company if metal property is inscribed with an owner's name; and
8) City procedures for hearings in case of license revocation.

On May 14, 2008, the matter of amending the current ordinance was proposed to the Public Safety Committee which recommended forwarding to the entire City Council for action.

ISSUE:

The proposed ordinance continues City Council's policy of providing safeguards and protection for all constituents regarding the thefts of copper and other regulated metals.

ALTERNATIVES:

If the proposed Ordinance amendment requiring more stringent regulation of the sale and resale of regulated metals for the City is not supported, an alternative would be to continue to make the best effort to combat metal theft and property damage by utilizing the current enforcement tools available.

FISCAL IMPACT:

The proposed annual license fee for each metal recycler, second-hand metal dealer or location where vehicles are not stored will be $250.00 paid to the City and collected through the current licensing procedures implemented by the Code Compliance Division of the Housing and Neighborhood Services Department. Annual revenues are estimated to increase between $2,500.00 and $5,000.00 annually.

There will be a cost from Leads On-Line of $26,000.00 that will be paid from the funds that are available through the Confiscated Property Fund.

RECOMMENDATION:
Staff recommends approval of the proposed amendment to Chapter 16 of the Municipal Code to address the need for additional enforcement tools to ensure safeguards and protection for all constituents regarding the thefts of copper and other regulated metals.

ATTACHMENT(S):

File Description	File Name
Voting Results	
Ordinance/Supplemental Documents	200806190594.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Geraldine Garcia	Assistant Police Chief	SAPD
Liz C Garcia	Assistant Director	Housing and Neighborhood Services

APPROVED FOR COUNCIL CONSIDERATION:
Erik Walsh Assistant City Manager