

AN ORDINANCE CREATING CHAPTER 117 OF THE PORT ST. LUCIE CITY CODE RELATING TO SECONDARY METALS RECYCLERS; CREATING SECTION 117.01, TITLE; CREATING SECTION 117.02, DEFINITIONS; CREATING SECTION 117.03, LIMITATIONS ON CASH TRANSACTIONS; CREATING SECTION 117.04, RESTRICTED REGULATED METAL PROPERTY; EXEMPTIONS; CREATING SECTION 117.05, ELECTRONIC TRANSACTION RECORDS REQUIRED; CREATING SECTION 117.06, FACSIMILE, TELECOPIER, OR SIMILAR EQUIPMENT REQUIRED; CREATING SECTION 117.07, PENALTY; CREATING SECTION 117.08, SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, increasing worldwide demand for metals and the associated rising price of metals have contributed to increased criminal activity in areas such as theft of copper wiring from construction sites, underground telecommunication wires, utility wires, air conditioning units, and beer kegs; and

WHEREAS, law enforcement officials have indicated that increased criminal activity relating to theft of secondary metal and secondary metal products such as those described above are impacting the public health safety and welfare of the residents of Port St. Lucie; and

WHEREAS, in 2008 the state law took effect that had goals of reducing secondary metal theft and increasing the penalties for violation of the state law (Chapter 2008-69, Laws of Florida); and

WHEREAS, law enforcement in Port St. Lucie has identified areas in the law where additional regulation will be helpful to curb theft of secondary metals in Port St. Lucie; and

WHEREAS, Port St. Lucie Police Department and other St. Lucie County law enforcement, secondary metals recyclers, and other interested persons should find a way to share information, cooperate, and move forward collectively in an effort to further reduce secondary metal theft locally; and

WHEREAS, the state has a specific goal of increasing recycling and that recycling secondary materials is a vital part of preserving our state environment;

ORDINANCE 12-07

Section 1. NOW, THEREFORE, THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Sec. 117.01. – Title.

This chapter shall be known as the Secondary Metals Recyclers Ordinance of the City of Port St. Lucie, Florida.

Sec. 117.02. - Definitions.

Ferrous metals means any metals containing significant quantities of iron or steel.

Fixed location means any site occupied by a secondary metals recycler as owner of the site or as lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration or not less than three hundred sixty-four (364) days.

Money means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency.

Nonferrous metals means metals not containing significant quantities of iron or steel, including, without limitation, copper, brass, aluminum, bronze, lead, zinc, nickel, and alloys thereof, excluding precious metals subject to regulation under F.S. Ch. 538, Pt. 1.

Personal identification card means any government issued photographic identification card.

Purchase transaction means a transaction in which a secondary metals recycler gives consideration for regulated metals property.

Regulated metals property means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers. For purposes of enforcement under this article, the term shall also include stainless steel beer kegs.

Restricted regulated metal property means the specific regulated metal items that

ORDINANCE 12-07

are listed in section 117.04 of this Code.

Secondary metals recycler shall have the meaning ascribed in subsection F.S. § 538.18(8), as may be amended from time to time.

Seller means the person from whom the regulated metal property is acquired.

Utility means any person, firm, corporation, association, or political subdivision, whether private, municipal, City, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

Sec. 117.03 - Limitations on Cash Transactions.

(a) A secondary metals recycler shall not enter into any cash transaction for purchase of any restricted regulated metals property listed in section 117.04 of this Code.

(b) Payment by a secondary metals recycler for the purchase of restricted regulated metal property shall be made by check issued to the seller and payable to the seller or by electronic payment to the seller's bank account or to the seller's employer's bank account.

(c) Each check for payment shall be mailed by the secondary metals recycler directly to the current street address of the seller which is on file with the secondary metals recycler unless otherwise provided in this article. Payment shall not be mailed to a post office box. Electronic payments shall be sent to a bank account for which the seller is listed as an account holder or an employee or agent thereof.

(d) Each check or electronic payment shall be mailed or electronically transferred by the secondary metals recycler to the seller within three (3) business days of the purchase transaction unless otherwise provided in this article.

Sec. 117.04 - Restricted Regulated Metal Property; Exemptions.

(a) A secondary metals recycler shall not purchase any of the following items of

ORDINANCE 12-07

restricted regulated metal property without obtaining reasonable proof that the seller owns the property (such as a receipt or bill of sale) or reasonable proof that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other entity, owning the property (a secondary metals recycler shall retain on file an official document on the letterhead of the entity, indicating that the seller is authorized to sell the item of regulated metal property and such a letter must be dated within ninety (90) days of the transaction):

- (1) A manhole cover or storm grate.
- (2) An electric light pole or other utility structure and its fixtures, wires, and hardware which are readily identifiable as coming from the utility structure.
- (3) A guard rail.
- (4) A street sign, traffic sign, or traffic signal and its fixtures and hardware.
- (5) Communication, transmission, distribution, and service wire, from a utility including copper or aluminum bus bars, connectors, and grounding plates or grounding wire.
- (6) A funeral/grave marker or funeral vase.
- (7) A historical marker.
- (8) Railroad equipment, including, but not limited to a tire plate, signal house, control box, switch plate, E clip, or rail tie junction.
- (9) Any metal item that is observably marked upon reasonable inspection with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
- (10) A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from a heating or air conditioning unit (excluding coils from window air conditioning units and automobiles).
- (11) An aluminum or stainless steel container or bottle designed to hold

ORDINANCE 12-07

propane for fueling forklifts.

(12) Stainless steel beer kegs.

(13) A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a vehicle.

(14) Metallic wire that was burned in whole or in part to remove insulation.

(15) Brass or bronze commercial valves or fittings, referred to as "FDC valves," that are commonly used on structures for access to water for the purpose of extinguishing fires.

(16) Brass or bronze water meters and commercial potable water backflow preventer valves that are valves commonly used to prevent backflow of potable water into municipal domestic water service systems from commercial structures.

(17) A shopping cart.

(18) Brass sprinkler heads.

(b) *Exemptions.* The secondary metals recycler may provide a check at the time of the purchase transaction, rather than mailing said check as required in subsection 117.03 of this article, if the seller is in one of the following exempt categories:

(1) Organizations, corporations, or associations registered with the state as charitable, philanthropic, religious, fraternal, civic, patriotic, social, or school-sponsored organizations or associations, or from any nonprofit corporation or association;

(2) A law enforcement officer acting in an official capacity;

(3) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondary metals recycler;

(4) Any public official acting under judicial process or authority who has presented proof of such status to the secondary metals recycler; or

ORDINANCE 12-07

(5) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondary metals recycler; or

(6) A manufacturing, industrial, or other commercial vendor that generates regulated materials in the ordinary course of business.

Sec. 117.05 - Electronic Transaction Records Required.

(a) All secondary metals recyclers shall maintain a legible electronic record, in the English language, of all purchase transactions involving regulated metal property and restricted regulated metal property to which such secondary metals recycler is a party. Such electronic format will be the Leads Online software or such software as is otherwise designated in writing by the Port St. Lucie Police Department. It shall be the responsibility of the individual secondary metal recycler, or any employee thereof, to obtain the most current data specifications of the designated electronic format.

(b) The following information shall be maintained and transmitted to the Port St. Lucie Police Department in the specified electronic data format described in subsection(a), above:

- (1) The name and address of the secondary metals recycler;
- (2) The name, initials, or other identification of the individual entering the information regarding the transaction;
- (3) The date and time of the transaction;
- (4) The weight, quantity or volume, and a specific detailed description of the type of regulated metals property (to include its common English name) purchased in a purchase transaction;
- (5) Digital image(s) of items that accurately reflect specific detailed characteristics of item(s);
- (6) The distinctive number from the personal identification card of the seller;
- (7) A description of the seller including:

ORDINANCE 12-07

- a. Full name, current residential address, workplace, and home and work phone numbers;
- b. Height, weight, date of birth, gender, hair color, eye color, and any other identifying marks, as well as a digital image of the seller;
- c. A vehicle description to include the make, model, and tag number of the vehicle and trailer of the seller of the regulated metals property; and
- d. Any other information required by the form approved by the Florida Department of Law Enforcement and as specified in F.S. § 538.19, except the amount of consideration given in the purchase transaction.

(c) Such information shall be electronically transmitted for the previous day's business to the Port St. Lucie Police Department by 10:00 a.m. on each day the secondary metals recycler is open for business.

(d) A secondary metals recycler shall maintain or cause to be maintained the information required by this section for not less than five (5) years from the date of purchase transaction. Further, the secondary metals recycler must electronically scan and preserve in digital format, images of the documents upon which the secondary metals recycler relied to establish reasonable proof of ownership or authority to act on the Seller's behalf. These records must be preserved by the secondary metals recycler for five years from the date of the transaction.

(e) If the purchase transaction involves the transfer of regulated metals property from a) a secondary metals recycler registered with the state or b) an exempt seller under section 117.04(b) of this Code to a secondary metals recycler registered with the state, the secondary metals recycler receiving the regulated metals property shall record the seller's business name and address and the name of the seller's business representative or seller's point of contact in lieu of the requirements listed in paragraph (6) above.

ORDINANCE 12-07

Sec. 117.06 - 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 Port St. Lucie City Police Department. The equipment shall 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 Police and shall notify the Police within twenty-four (24) hours of any change in the number.

Sec. 117.07. - Penalty.

Whoever violates this article shall be guilty of a misdemeanor punishable as provided in § 775.082(4)(b) and 775.083(1)(e), Florida Statutes.

Sec. 117.08. – Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ORDINANCE 12-07

Section 2. This Ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this ___ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY: _____
JoAnn M. Faiella, Mayor

ATTEST:

Karen A. Phillips, City Clerk

APPROVED AS TO FORM: _____
Roger G. Orr, City Attorney

MEMORANDUM

TO: JERRY A. BENTROTT, CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY

FROM: GABRIELLE TAYLOR, ASSISTANT CITY ATTORNEY *GT*

DATE: FEBRUARY 7, 2012

SUBJECT: ORDINANCE CREATING CHAPTER 117
SECONDARY METAL RECYCLERS

Attached please find a proposed Ordinance creating sections 117.01 through 117.08, Title XI. – Business Regulations, Port St. Lucie City Code, relating to Secondary Metals Recyclers. This Ordinance tracks St. Lucie County Ordinance No. 11-025, entitled Secondary Metals Recyclers. The Ordinance will assist law enforcement in curbing the increase of secondary metals theft by providing regulations for secondary metals recyclers, and penalties for violations of the ordinance.

The Ordinance provides relevant definitions; sets forth items that are defined as restricted regulated metal property that a recycler may not purchase without specified items of identification and proof of ownership; sets forth electronic transaction records maintenance requirements; provides that recyclers be equipped to immediately receive reports of stolen property from law enforcement at all times during business hours; provides that violations of the ordinance will be a misdemeanor; and provides for severability.

Please place this Ordinance on the City Council Agenda for first reading at the next council meeting.

Please advise if you have any further questions in this regard.

GT/liw
Attach.

cc: City Council
Karen A. Phillips, City Clerk

2/13/12 *JG*

GC
New Business
moved to
1st. Read by
July on
2-9-12
KAP

RECEIVED
FEB 07 2012
City Manager's Office