

ORDINANCE NO. 5217

**ORDINANCE AMENDING CHAPTER 24, ARTICLE III OF THE CODE OF
ORDINANCES TO UPDATE AND AMEND REGULATIONS
REGARDING JUNK AND SCRAP METAL DEALERS**

WHEREAS, the existing City Code of Ordinances, Chapter 24, Article III does not adequately address necessary regulatory measures for junk and scrap metal dealers; and

WHEREAS, it is deemed appropriate and in the best interest of the citizens to amend said Chapter 24, Article III to include scrap metal dealers in the article title, update the method for recording purchases and establish a permitting process for junk and scrap metal dealers.

SECTION 1, NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 24, Article III, is hereby amended to read as “Junk and Scrap Metal Dealers”.

SECTION 2, BE IT FURTHER ORDAINED That Chapter 24, Article III, Section 24-56 is hereby amended by adding the definitions of “scrap metal”, “scrap metal dealer” and “Licensed HVAC Contractor” as follows:

“Scrap metal” means any ferrous or nonferrous metal that is no longer used for its original purpose and is capable of being processed for reuse by a metal recycling facility, including, but not limited to, iron, brass, wire, cable, copper, bronze, aluminum, platinum, lead, solder, steel, stainless steel, catalytic converters, or other similar obsolete ferrous or nonferrous metals, but shall not include recyclable aluminum cans; and

“Scrap metal dealer” means a person who buys, exchanges, or deals in scrap metal, or an employee or agent of that dealer who has the express or implied authority to buy, exchange or deal in scrap metal on behalf of the dealer.

Licensed HVAC Contractor. The term “contractor” shall mean any person who holds and maintains a valid license to obtain a permit from the Memphis and Shelby County Office of Construction Code Enforcement pursuant to the Memphis and Shelby County Mechanical Code Contractor Licensing Chapter sections 106 and 112, in order to perform mechanical work on HVAC equipment, including all manner of repair, installation and removal of such equipment.

SECTION 3, BE IT FURTHER ORDAINED That Chapter 24, Article III, Section 24-57 through Section 24-63 are hereby amended to include “ and scrap metal dealer” whenever

“junk dealer” is mentioned in the text.

SECTION 4, BE IT FURTHER ORDAINED That Chapter 24, Article III, Section 24-57 through Section 24-63 shall be numbered Section 24-58 through 24-64.

SECTION 5, BE IT FURTHER ORDAINED That Chapter 24, Article III, Section 24-57 is hereby amended to add the following language:

Section 24-57-1. Permits – Required.

No person shall act as a junk or scrap metal dealer or conduct such activity or other similar business establishment in the city without first obtaining a permit as provided in this article from the City Permits Office.

Section 24-57-2. Application – Contents.

An application for a permit issued under this article shall be made upon blank forms prepared and made available by the City Permits Office and shall state:

- A. The full name, age, residence, and present and previous occupation of the applicant;
- B. Name of the business entity and a specific description of the location of the principal place of business of the applicant;
- C. The number of years experience the applicant has had as a junk or scrap metal dealer or other related fields;
- D. A complete list of the names and residence addresses of all employees in the business and the name and residence addresses of the manager or other person principally in charge of the operation of the business;
- E. Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit;
- F. The names and addresses of three adults who will serve as character references. These references must be persons other than relatives and business associates; and
- G. Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, such declaration being duly dated and signed in the city.

Section 24-57-3. Investigation of applicant.

Within ten (10) days after receipt of an application as provided for in this article, the City Permits Office shall cause an investigation to be made of the applicant and his or her proposed operation.

Section 24-57-4. Standards of issuance.

The City Attorney or designee shall issue a permit under this article when he or she finds:

- A. That the applicant's application for a permit has been properly submitted;
- B. That the applicant has not been convicted of a felony or any offense relating to theft of goods within five years next preceding the filing of the application;
- C. That the operation as proposed by the applicant, if permitted, would comply with all applicable laws, including, but not limited to the city's building, zoning and health regulations;
- D. That the applicant has not knowingly made any false, misleading or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith; and
- E. That the applicant has not had a similar permit or license denied, revoked or suspended for any of the above causes by the city or any other state or local agency within five years preceding the next filing of an application.

Section 24-57-5. Appeal of denial.

Any applicant who was denied a permit or permit renewal under this article may request a hearing with the City Attorney's Office to discuss such denial, that hearing to be held within ten (10) days of the denial. Within ten (10) days after that hearing, an applicant may seek further relief by appealing such denial to the city council. Notice of appeals from the City Attorney Office's hearings to the council of the city must be filed within such ten (10) days; otherwise the action of the City Attorney Office shall be deemed and considered to be final.

Section 24-57-6. Fee.

The annual permit for each junk or scrap metal operation shall be one hundred dollars (\$100.00).

Section 24-57-7. Conditions.

The following conditions shall apply to all permits:

- A. Transferability. Permits issued under this article shall not be transferable.
- B. Revocation and Suspension. Permits issued under this article shall be subject to revocation or suspension by the director of police services or designee for violation of any of the provisions of this chapter, or of the rules and regulations issued hereunder, or misconduct by the permittee or his or her employees, after reasonable notice and an opportunity to be heard has been given the permittee. The director of police services or designee shall immediately notify any permittee in writing of such suspension or revocation.

- C. Renewal. Each permit shall expire on July 1st of each year, except that a first permit shall expire on the second next ensuing July 1st. Permits may be renewed. In processing a renewal application, the City Attorney or designee shall consider all the elements and standards contained herein in determining whether or not to renew a permit. An unrevoked permit may be renewed for one year on written application to the City Permits Office made at least one month before its expiration date and accompanied by the required fee, such renewal fee being the same amount as the original permit fee.

Section 24-57-8. Standards applicable to employees of permittee-Employee list to be on file with division of police services.

All employees of any person and/or business entity having or applying for a permit under this article shall meet the requirements of not having been convicted of any felony or any offense relating to theft of goods within the last five years. It shall be further required that any person and/or business entity having a permit under this chapter shall keep on file with the division of police services a list of those persons currently employed by him or her in his junk or scrap metal operation.

SECTION 6, BE IT FURTHER ORDAINED That the new Chapter 24, Article III, Section 24-60 is hereby amended by deleting the current language and replacing it with the following language:

- A. Every junk and scrap metal dealer shall keep a book containing a consecutively numbered record of each and every purchase which shall correspond in all essential particulars to the detachable transaction ticket attached thereto.
- B. Any person selling, exchanging or trading catalytic converters, scrap iron, brass, wire, cable, copper, lead, solder or second-hand metals of any sort shall present a valid driver's license and/or any other acceptable form of picture identification from a state or federal issuing agency (i.e., state issued id or passport) to the junk or scrap metal dealer.
- C. The junk or scrap metal dealer shall, at the time of making the purchase, enter in the book as well as on the transaction ticket, which shall be typed or written in ink and in the English language:
 - 1. The name, race, sex, date of birth, and residential address of the seller.
 - 2. The date of the scrap metal purchase.
 - 3. The driver's license number or other acceptable identification card from a state or federal issuing agency (i.e., state issued id or passport) capable of identifying the seller.
 - 4. The amount paid therefore.
 - 5. The kind of metals purchased or received.
 - 6. The number of pounds of each kind.

- D. The seller shall sign the transaction ticket and shall receive a detached copy. The junk or scrap metal dealer shall also sign the transaction ticket. On the junk or scrap metal dealer copy of the record of the pawn transaction, the seller shall reproduce his or her right thumbprint. In the event the right thumb is amputated, then such other fingerprint as required by the junk or scrap metal dealer shall be taken and such fingerprint fully described on such record. This thumbprint shall be reproduced and taken in the usually approved manner and shall not be blurred or obliterated. The book shall at all times be open to the inspection of the police or other officer, or any person who may desire to see it, and shall be kept in good faith and preserved by such dealer for convenient inspection.
- E. The junk or scrap metal dealer shall inquire as to where the scrap metal was obtained for the purpose of determining if purchasing scrap metal from that person is a lawful transaction. If the seller presents a bill of sale, receipt or other document indicating that the person is in lawful possession of the scrap metal, or was otherwise lawfully acquired, the dealer shall photocopy such document and maintain it with the transaction information otherwise required by this section.
- F. (a) It is an offense for a scrap metal dealer to knowingly accept any portion of an air conditioner evaporator coil or condenser unless it is accompanied by a statement and appropriate documentation from a certified technician evidencing that the coil or condenser has been decommissioned and removed from an appliance in compliance with the Federal Clean Air Act and its regulations.
- (b) It is an offense for a scrap metal dealer to pay cash to a person who presents an air conditioner evaporator coil or condenser or any portion of an air conditioner coil or condenser for sale as scrap, nor may such dealer make payment at the time of the transaction.
- (c) Payment for scrap metal described in subsection (a) shall be:
- 1) Made by check or money order to a Contractor named by the seller;
 - 2) Such check or money order shall be mailed to the business address of the Contractor; and
 - 3) The payee on the check shall be the name of such Contractor.
- (d) 1) A violation of this section shall be punishable by a fine not to exceed \$50.00 for each coil or portion of a coil offered or accepted.
- 2) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any applicable criminal offense.
- G. (a) Except as provided in subsection (b), it is an offense to knowingly sell or attempt to sell to a scrap metal dealer or for a scrap metal dealer to knowingly purchase or attempt to purchase the following types of scrap metal:
- 1) Scrap metal marked with the initials of an electrical, a telephone, a cable, or other public utility;
 - 2) Utility access covers;

- 3) Street light poles and fixtures;
- 4) Road and bridge guard rails;
- 5) Highway or street signs;
- 6) Water meter covers;
- 7) Traffic directional and control signs;
- 8) Traffic light signals;
- 9) Any scrap metal visibly marked or painted with the name of a governmental entity, business, company or the name of the owner of such metal;
- 10) Property owned by a telephone, a cable, an electric, a water, or other utility or by a railroad and marked or otherwise identified as such; and
- 11) Unused and undamaged historical markers, or grave markers and vases.

(b) It is an exception to application of this section that the person attempting to sell the scrap metal provides reasonable, written documentation that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner. The dealer shall make a photo copy of any documentation provided pursuant to this subsection and retain the copy as part of the transaction record, and maintain such photocopy for a period of two years following the transaction. All photocopies shall be made available for inspection upon request by law enforcement officials.

(c) 1) A violation of this section shall be punishable by a fine not to exceed \$50.00 for each transaction offered or accepted.

2) Nothing in this section shall be construed to preclude a person violating this section from also being prosecuted for any applicable criminal offense.

- H. The junk or scrap metal dealer shall keep on hand and in separate packages, and not allow to be mixed or confused with other purchases, in order that identification may be easy, all air conditioner evaporator coils and condensers or any portion of an air conditioner coil or condenser, catalytic converters, scrap brass, copper, wire, cable, solder, lead, and all other metals (except scrap iron and castings), bought or gotten from any person, the same to be kept separate and subject to easy and convenient inspection of anyone desiring to investigate for a period of not less than ten (10) days after purchase or in any way acquired; provided, that this section does not apply to scrap iron and castings.
- I. If it appears from the requirements of this section that the seller is in lawful possession of the scrap metal and buying or otherwise receiving the metal from the seller would not violate this chapter, the dealer shall give the seller a voucher for the amount of metal, other than aluminum cans, purchased. Such voucher shall include the same information required under subsection C of this section, the date on which the voucher can be redeemed and a reference number as to where the metal purchased is stored. The voucher can only be redeemed by the person whose name appears on the voucher as the seller at the location the voucher was issued. No voucher may be redeemed by the voucher holder for a period of three (3) business days from the date of the scrap metal transaction.

SECTION 7, BE IT FURTHER ORDAINED, That the new Chapter 24, Article III, Section 24-63 is hereby amended by deleting the current language and replacing it with the following:

No junk or scrap metal dealer shall purchase or otherwise receive from a minor under the age of eighteen (18) any personal property of any kind with the exception of aluminum cans. No voucher shall be required for the sale and purchase of aluminum cans.

SECTION 8, BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 9, BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

DEDRICK BRITTENUM, JR.
JACK SAMMONS
Council Members

TOM MARSHALL
Council Chairman

Attest:
Patrice Thomas, Comptroller