

ORDINANCE NO _____

An Ordinance to amend Chapter 21, Code of Ordinances, City of Memphis, to amend certain sections of Ordinance No. 5217, Article III of the Code of Ordinances regulating Junk and Scrap Metal Dealers

WHEREAS, Ordinance 5217 was enacted on December 4, 2007, to control crimes associated with the theft of junk and scrap metal and assure that the proper environmental procedures are in place to protect public health; and

WHEREAS, it is deemed appropriate to clarify certain sections to increase enforcement efforts and to improve compliance among scrap metal dealers.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Ordinance 5217, codified as Chapter 24, Article III, Section 24-56 is hereby revised to amend the definitions as follows:

"Scrap metal" means any ferrous or nonferrous metal or metal product 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, air conditioner evaporator coils, radiators, and condensers (in whole or part), and other similar obsolete ferrous or nonferrous metal or metal products, but not including recyclable aluminum cans.

"Scrap metal dealer" means a person who obtains scrap metal through purchase, barter or exchange, or an employee or agent of such dealer who has the express or implied authority to so obtain scrap metal on behalf of the dealer.

SECTION 2. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 24-57-4 is hereby amended to add the following language:

(F) Notwithstanding the foregoing, a permit shall not be denied under this Article solely because the applicant failed to comply with the version of this Ordinance that was adopted on third reading in December, 2007, and signed by the Mayor in January, 2008. A material and intentional violation of this amended Ordinance occurring after the effective date of this amended ordinance may be a basis for denying a permit application or renewal application.

SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (B) is hereby amended by deleting the current language and replacing it with the following language:

(B) Any person selling, exchanging or trading scrap metal, as defined herein, to or with a junk or scrap metal dealer 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 identification or passport) to the junk or scrap metal dealer.

SECTION 4. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (D) is hereby amended by deleting the current language and replacing it with the following language:

(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 dealers copy of the record of the 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 or other records of purchase shall at all times be open to the inspection of any city, county, state or federal law enforcement officer and any person who has filed a police report of metal theft in the previous month, if such person is accompanied by such law enforcement officer during normal business hours without warrant or subpoena and shall be kept in good faith and preserved on site by such dealer for convenient inspection for a period of three (3) years from the date of the scrap metal sale.

SECTION 5. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (F) (a) is hereby amended by to add the following language at the end of this section.

(a) This provision shall not apply to an air conditioner evaporator coil or condenser still contained within a window unit air conditioner.

SECTION 6. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (F)(b) is hereby amended by deleting the current language and replacing it with the following language:

(b) It is an offense for a scrap metal dealer to ever 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. This provision shall not apply to an air conditioner evaporator coil or condenser still contained within a window unit air conditioner. An air conditioner evaporator coil or condenser still contained within a window unit air conditioner is subject to the tag-and-hold (Section 6(H)) and voucher (Section 6(I)) provisions of this ordinance.

SECTION 7. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (F)(c)(2) is hereby amended by substituting the words "*three (3) business days*" with "*five (5) business days.*"

SECTION 8. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (H) is hereby amended by deleting the current language and adding the following:

(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 readily made, all scrap metal as defined herein, in any form, of:

- (1) telephone wire or cable such as is used for telecommunications purposes, waveguide, copper bus bar, catalytic converters, back flow preventers, new copper tubing over 20 ft. long still in roll form (as it comes from mfg), bare copper grounding wire still on spools;
- (2) copper tubing or copper wire that bears sufficient id or unique descriptive markings which may likely prove chain of custody that the copper is a victim's property;
- (3) air conditioner evaporator coils, radiators, and condensers in whole or part, including air conditioner evaporator coils and condensers still contained within a window unit air conditioner; and
- (4) any metal that accurately fits a description containing distinguishing characteristics provided either by voice or in writing to a scrap metal dealer by either a victim or by representatives / agents of the City of Memphis or Shelby County law enforcement that such metal so described has been stolen,

that is bought or obtained from any person, the same to be kept on site, separate and subject to easy and convenient inspection during normal business hours without warrant or subpoena by any city, county, state or federal law enforcement officer and any person who has filed a police report of metal theft in the previous month, if such person is accompanied by such law enforcement officer,-for a period of not less than the longer of (a) ten (10) days after purchase or in any way acquired, or (b) ten (10) days after the scrap metal dealer delivers notice to either the victim or appropriate law enforcement official with respect to items that have been reported stolen.

SECTION 9. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, Section 24-60 (I) is hereby amended by substituting the word three (3) with the word five (5).

SECTION 10. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS 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 11. 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.

Reid Hedgepeth

Harold Collins
Council Chairman