

ORDINANCE NO. 2837-11

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA CREATING NEW SECTIONS IN CHAPTER 78, OF THE MUNICIPAL CODE REGULATING SECONDHAND GOODS, WHICH NEW SECTIONS SHALL BE ENTITLED “SECONDARY METALS RECYCLERS”; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, increasing demand for metals and the associated rising price of metals have contributed to increased criminal activity, including the theft and sale of stolen copper wiring from construction sites, underground telecommunication wires and cables, utility wires, air conditioning units and beer kegs; and

WHEREAS, law enforcement have testified that increased criminal activity relating to the 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 the City of Winter Park; and

WHEREAS, in 2008, Florida Law was enacted with a goal of ending secondary metal theft (Chapter 2008-69, Laws of Florida; Sections 538.18-538.26, Florida Statutes); and

WHEREAS, law enforcement of the City of Winter Park have identified areas in the law where additional regulation will be helpful to curb the theft of secondary metals; and

WHEREAS, under the Home Rule authority of the City of Winter Park, the City may pass additional legislation to further regulate secondary metals recycling and may enforce through ordinance the police power in the interest of the City of Winter Park so long as the additional regulations and ordinances of the City are not preempted by state law and are not inconsistent with state law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS

Section 1. Sections 78.1 through 78.4 of the City of Winter Park Municipal Code of Ordinances are added, and by ordinance the Municipal Code shall now provide as follows:

1. Definitions. The following definitions apply:
 - a. “Ferrous Metals” means any metals containing significant quantities of iron or steel. For purposes of this definition, the item or product is considered “primarily” containing such metals if the composition of the material is more than fifty percent (50%) iron or steel. The quantities will be deemed significant if the material has value in the secondary recycling or other markets.

- b. “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 or usage agreement providing for occupation of the site by the Secondary Metals Recycler. It is intended that any arrangement, written or unwritten, by which a Secondary Metals Recycler has use of a facility for the conduct of a secondary metals recycling business shall constitute a fixed location within the meaning of this provision with respect to such location allowed by such arrangement, regardless of the term of the lease.
- c. “Money” means a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency. The term “money” shall also include any manner of consideration including but not limited to credit, barter, extinguishment of debt, or any other thing of value given in connection with an exchange or delivery of metal containing material.
- d. “Non-Ferrous 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. The materials shall be deemed to contain a significant quantity of a Non-Ferrous Metal if the material has a commercial value in the secondary recycling market or any other market.
- e. “Purchase Transaction” means a transaction in which a Secondary Metals Recycler gives consideration for Regulated Metals Property.
- f. “Regulated Metal Property” means any item comprised primarily of Non-Ferrous Metals or Ferrous Metals, but shall not include aluminum beverage containers, used beverage containers or similar small beverage containers or coins. However, the term shall include stainless steel beer kegs. An item is considered “primarily” containing such metals if the composition of the material is more than fifty percent (50%) either Ferrous Metals or Non-Ferrous Metals, or is more than fifty percent (50%) comprised of any combination of Ferrous Metals and Non-Ferrous Metals.
- g. “Secondary Metals Recycler” means any person who:
 - i. Is engaged from a Fixed Location or otherwise, in the business of gathering or obtaining Ferrous or Non-Ferrous Metals, or is in the business of performing the manufacturing process by which Ferrous Metals or Non-

Ferrous Metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

- ii. Has facilities for performing the manufacturing process by which Ferrous Metals or Non-Ferrous Metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing or changing the physical form or chemical content thereof.

- h. “Seller” means a person from whom Regulated Metal Property is acquired.

This Section entitled “Definitions” shall be codified at Section 78.1 in the Municipal Code of Ordinances. This paragraph providing for the placement of this Section in the Municipal Code shall not be included in the Municipal Code.

2. Recyclers; Limitations on Cash Transactions.

- a. Secondary Metals Recycler shall not enter into any cash transaction for the purchase of Regulated Metals Property.

- b. Payment by a Secondary Metals Recycler for the purchase of Regulated Metals Property shall be made by check issued to the Seller of the metal and payable to the Seller, or by electronic payment to the Seller’s or employee of the Seller’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. Payment shall not be mailed to a post office box. Electronic payments shall be sent to an 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) days of the Purchase Transaction.

This Section entitled “Recyclers; Limitations on Cash Transactions” shall be codified at Section 78.2 in the Municipal Code of Ordinances. This paragraph providing for the placement of this Section in the Municipal Code shall not be included in the Municipal Code.

3. Restrictions on Purchases.

- a. A Secondary Metals Recycler shall not purchase any of the following items of Regulated Metal Property without obtaining proof that the Seller owns the property. Proof of ownership shall include a receipt or bill of sale, or proof that the Seller is an employee, agent or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other person, business or entity owning the property from which the Regulated Metal Property came, and a statement of authorization that the Seller is authorized to sell the item of Regulated Metal Property on behalf of the owner of the property from which the Regulated Metal Property was removed. These requirements shall apply to the following types of Regulated Metal Property:
 - i. A manhole cover
 - ii. Electric light pole or other utility structure and fixtures, wires and hardware related to such utility structure/light pole
 - iii. A guardrail
 - iv. Street sign, traffic sign or traffic signal, and any fixtures and hardware associated with the same
 - v. Communication, transmission, distribution, and service wire or wires, including copper or aluminum busbar, connectors and grounding plates or grounding wire
 - vi. Funeral marker or funeral vase
 - vii. Historical marker
 - viii. Railroad equipment, including but not limited to a tie plate, signal house, control box, switch plate, E-clip or rail tie junction

- ix. Any metal item marked with any form of the name, initials or logo of an owner, including but not limited to a governmental entity, utility company, cemetery or railroad
 - x. Copper or aluminum condensing or evaporator coil, including tubing or rods, from a heating or air conditioning unit
 - xi. Aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts or other equipment
 - xii. Stainless steel beer kegs
 - xiii. Catalytic converter or any part of a catalytic converter
 - xiv. Metallic wire that was burned in hole or in part to remove insulation
 - xv. Brass or bronze commercial valves or fittings referred to as "F.C. Valves" commonly used on structures for access to water for the purpose of extinguishing fires
 - xvi. A shopping cart
 - xvii. Brass or bronze 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
- b. When any Seller engages in a Purchase Transaction or attempts to engage in a Purchase Transaction of any of the items listed above, the Secondary Metals Recycler shall notify the Winter Park Police Department within twenty-four (24) hours of the Purchase Transaction or attempted Purchase Transaction. Notification for a Purchase Transaction shall include all of the records required pursuant to Section 538.19, Florida Statutes. Notification for an attempted Purchase Transaction shall include any information the Secondary Metals Recycler is able to obtain that identifies the individual who attempted the Purchase Transaction, and showing the Regulated Metal Property including, but not limited to photographs, video, vehicle description, vehicle tag, physical description of the Regulated Metal Property and the individual who attempted to sell the Regulated Metal Property.

- c. The Secondary Metals Recyclers shall comply with all of the provisions in Section 538.19, Florida Statutes in addition to the requirements imposed in this subsection entitled “Restrictions on Purchases.” This subsection is supplemental to the requirements of Section 538.19, Florida Statutes.

This Section entitled “Restrictions On Purchases” shall be codified at Section 78.3 in the Municipal Code of Ordinances. This paragraph providing for the placement of this Section in the Municipal Code shall not be included in the Municipal Code.

4. Penalty

- a. A violation of this Code may be prosecuted in the manner provided in Chapter 1 of the Winter Park Municipal Code, and shall be a Class III violation. This provision is supplemental to the provisions in Section 538.23, Florida Statutes.
- b. A violation of any of the provisions in Section 538.23 Florida Statutes, may be prosecuted in the manner provided in that statute.

This Section entitled “Penalty” shall be codified at Section 78.4 in the Municipal Code of Ordinances. This paragraph providing for the placement of this Section in the Municipal Code shall not be included in the Municipal Code.

Section 2. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance 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 portion or portions hereof or hereto. A reference to a statute in this Ordinance shall also include amendment to the statute.

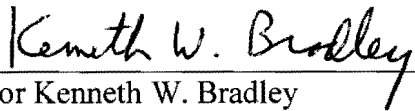
Section 4. Codification. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of this Ordinance approved by the electors shall become and be made a part of the Code of Ordinances of the City of Winter Park, Florida; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; that the word “ordinance” may be changed to “section”, “article” or other appropriate word.

Sections 1-23 and 1-24 of the Municipal Code of Ordinances shall be amended to include a violation of Sections 78.1 through 78.4 (“Secondary Metals Recyclers”) as a scheduled Class III violation.

Section 5. Reservation of Sections in the Municipal Code. After codification of the sections provided for herein in Chapter 78 of the Municipal Code, Sections 78.5 through 78.25 shall continue to be reserved, Article I will be renamed "Secondary Metals Recyclers", Article II will be renamed "In General" and will refer to and include those sections that are still reserved following the adoption of this Ordinance, and Article II shall be renumbered to Article III for "Garage Sales".

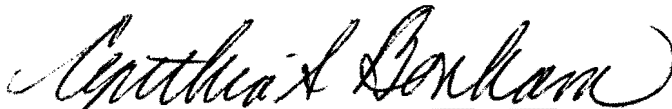
Section 6. Effective Date of Ordinance. This ordinance shall take effect immediately upon its final passage and adoption.

Passed and adopted this 11th day of April, 2011, by the City Commission of the City of Winter Park, Florida.



Mayor Kenneth W. Bradley

ATTEST:



Cynthia S. Bonham, City Clerk