

RECYCLING ENTITIES ARTICLE VII. METAL RECYCLING ENTITIES

Sec. 14-301 Authority

This article is adopted pursuant to the authority of Texas Occupations Code Section 1946.003 and shall be interpreted with reference to that code. It is the intent of this article to impose standards that are in addition to and more stringent than the requirements of Occupations Code Chapter 1956 but which do not conflict with such state law.

Sec. 14-302 Definitions

In this article:

Licensee means a person who holds a metal recycling business license issued under this article.

Metal Recycling Entity has the meaning given that term by Texas Occupations Code Sec. 1956.001(7).

Minor means any person under 18 years of age.

Personal Identification Document means a photo identification document that is (1) a valid driver's license issued by a state in the United States, (2) a U.S. military identification card, or (3) a personal identification certificate issued under Texas Transportation Code Section 521.101 or a corresponding card or certificate issued by another state.

Regulated Material has the meaning given that term by Texas Occupations Code Section 1956.001(9), and includes, but is not limited to wiring, pipe, or conduit that is composed of or contains aluminum, copper, bronze or brass.

Sec. 14-303 License required; posting

A person may not act as a metal recycling entity or represent to the public that the person is a metal recycling entity unless the person has a valid metal recycling business license issued under this article. The license shall be posted in a conspicuous place upon the licensed premises.

Sec. 14-304 Bond or Letter of Credit from a Financial Institution

(a) The City of Angus shall require that an applicant for a metal recycling business license file a bond or letter of credit with the application. The bond or letter of credit must be:

- (1) Satisfactory to the City;
- (2) In the amount of \$5,000.00 for each license;

(3) Issued by a United States surety company or financial institution, in the case of the letter of credit authorized to do business in the state; and

(4) Valid at the time of the application and remain in effect during the entire term of the license.

(b) The aggregate liability of the surety or letter of credit may not exceed the amount of the bond.

The bond or letter of credit must be in favor of the City for the use of the City and the use of a person who has a cause of action under this article against the metal recycling entity.

(c) The bond or letter of credit must be conditioned on:

(1) The metal recycling entity's compliance with this article and rules adopted under this article; and

(2) The payment of all amounts that become due to the City or to another person under this article.

Sec. 14-305 Application and issuance or refusal of license

(a) Any person desiring a license required by this article shall make application therefore in writing to the City of Angus on an application form provided for that purpose. On the application the applicant shall set forth:

(1) The full name and residential address of the applicant;

(2) A statement indicating whether the applicant is a citizen of the United States or an alien legally residing in the United States;

(3) The applicant's social security number or business Federal tax identification number;

(4) The full name and address of each partner if the applicant is a partnership;

(5) The full name and address of each officer and director if the applicant is a corporation;

(6) The fixed and permanent location where the business is to be conducted and proof of his ownership of the private property or a written statement including the name, address and telephone number of the property owner or authorized agent, granting permission for operation of the business at the proposed location where his business will be in operation. If the property owner is a partnership or corporation, the statement shall include the name, address and the telephone number of one of the partners or one of the principals prior to

issuance of any license;

(7) The regular days and hours of operation;

(8) The applicant's date of birth, place of birth, and each address where he has resided in the five years immediately preceding his application;

(9) A statement of whether the individual applicant, any partner in a partnership, or any officer or director of a corporation, has been arrested, charged, or convicted for any criminal offense in this state or any other state or country. If he has been arrested or jailed for any such offense, he shall set out the offense for which he was arrested, jailed or imprisoned, the date of the arrest or confinement, and the place, court and case number of the case.

(10) A statement that neither the applicant nor any business partner, nor, in the case of a corporation, any corporate officer or director, has had a license governing the businesses described herein revoked;

(11) The signature of the applicant;

(12) A sworn and notarized statement that all matters stated in the application are true and correct;

(13) Evidence that he is at least 18 years of age by presentation of valid identification, including a photograph showing the fact of the applicant, in the form of:

a. A current driver's license from Texas or another state with the United States;

b. An identification card issued by the Texas Department of Public Safety; or a corresponding card or certificate issued by another state; or,

c. A United States military identification card; and

(14) Such other information as the City finds relevant.

(b) The City of Angus shall review and approve the application and issue a license unless it finds:

(1) The information provided in the application is incomplete, materially false, or incorrect or the application has failed in any material way to comply with this article and applicable rules and regulations; and

(2) The applicant has had a license raveling during the preceding one-year period.

Sec. 14-306, License fee, term and renewal

The fee for issuance of a metal recycling business license is \$250. A license shall be valid for two years from the date of issuance and shall be subject to bi-annual renewal. The renewal fee will be \$250.

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Sec. 14-307 Revocation or suspension of license; appeals

(a) The City may revoke or suspend a metal recycling business license for any conduct that is contrary to this article or an applicable state law or regulation concerning the metal recycling business, including but not limited to the failure to maintain any records required by this article.

(b) No license issued under this article may be revoked or suspended without a hearing. Written notice of the hearing, the administrative action to be taken, and the grounds therefore shall be given to the license holder by certified or registered mail at least ten (10) days prior to the hearing. Mailing of such notice to the last known business address of the license holder shall constitute sufficient notice. A record of such hearing shall be made. Within ten (10) days of the hearing, the City council shall make a written decision setting forth the reason or grounds for such administrative action. Such decisions shall be mailed by certified or registered mail to the license holder affected by the decision. The effective date of any revocation shall be stated in the decision. The decision of the City shall be final.

(c) At the discretion of the City, both criminal prosecution and suspension or revocation, may be pursued, provided, however, unsuccessful or no criminal prosecution shall not preclude suspension or revocation.

Sec. 14-308 Facsimile, telecopier, or similar equipment required

A metal recycling entity 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 Police Department. The equipment must be operable at all times during the usual and customary business hours of the metal recycling entity. The metal recycling entity shall maintain the facsimile number or other access number of the equipment on file with the City and shall notify the City within 24 hours after any change in the number.

Sec. 14-309 Restrictions on the purchasing regulated materials from the general public

(a) A metal recycling entity may not purchase regulated materials from the general public except between the hours of 7:00 a.m. and 7:00 p.m. All payments for purchased materials shall be by check. Cash payments are prohibited. Exception: Cash payments may be made for up to \$20 for aluminum cans only.

(b) A metal recycling entity may not purchase any item of regulated metal property from an individual who appears intoxicated.

(c) A metal recycling entity may not purchase any of the following items of regulated metal property without obtaining proof that the seller owns the property (such as by 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 and the seller is authorized to sell the item or regulated metal property on behalf of the person, business, or entity owning the property:

- (1) A manhole cover.
- (2) An electric light pole and its fixtures and hardware.
- (3) A guard rail.
- (4) A street sign, traffic sign, or traffic signal and its fixtures and hardware.
- (5) Communication, transmission and service wire..
- (6) A funeral marker or funeral vase.
- (7) An historical marker.
- (8) Railroad equipment, including but not limited to a tie plate, switch plate, E clip, or rail tie junction.
- (9) Any metal item that is marked with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
- (10) A copper or aluminum condensing or evaporator coil from a heating or air conditioning unit.
- (11) An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.

(d) A metal recycling entity shall maintain on file the information required by Subsection (c) or this section for not less than one year from the date of the purchase of the item of regulated metal property. A metal recycling entity shall make these records available for inspection by any police officer, upon request, at the metal recycling entity's place of business during the usual and customary business hours of the metal recycling entity.

(e) The requirements of Subsections (c) and (d) of this section do not apply to purchase transaction involving regulated metal property composed solely of the following nonferrous metal materials for which definitions, record keeping requirements, and other regulations are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended.

- (1) Cooper or brass material in excess of 50 pounds.
- (2) Bronze material.
- (3) Aluminum material in excess of 40 pounds.

Sec. 14-310 Purchasing or receiving goods from minors

(a) No metal recycling entity shall purchase or otherwise receive in the course of business, any item, ownership of which is claimed by any minor, or which may be in the possession or under control of a minor, unless:

- (1) The only items offered for sale by the minor are aluminum cans.
- (2) Not to exceed \$20.

Sec. 14-311 Records to be kept by metal recycling entities

(a) Each metal recycling entity shall maintain a record of the following information with respect to each transaction in which regulated materials are purchased or received by the entity:

- (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 photocopy of a personal identification document reflecting that the person is at least 18 years of age;
- (4) A description of the motor vehicle and/or trailer or other mode of transportation on which the item was delivered, including the license plate information;

(5) Information concerning the origin of the regulated materials;

(6) Each item received together with a description of the size, weight, material, and other information customarily employed in the sale and purchase of such items;

(7) A copy of the check, or can produce an electronic copy of the check at a later date issued by the recycling entity as payment for the purchase of the regulated materials.

(b) The records required by this section shall be maintained in English and must be completed no later than the end of the business day in which the transaction occurs. The recycling business entity shall maintain paper records of the required information.

(c) The records required by this section shall be maintained for a period of at least three (3) years following the date of the transaction.

Sec. 14-312 72-hour hold on regulated metal property; segregation, labeling, and inspection of regulated metal property; exceptions

(a) A metal recycling entity shall retain possession of purchased copper at the metal recycling entity's local place of business and withhold the property from alteration, processing, resale, or salvage use for 72 hours after purchase, unless the property is released sooner by written order of the City or by order of a court of competent jurisdiction.

(b) While in possession of purchased regulated metal property, a metal recycling entity shall make the property available for inspection by any police officer at the metal recycling entity's place of business during the usual and customary business hours of the metal recycling entity.

Sec. 14-313 Hold on stolen regulated metal property; hold notice

(a) Whenever a peace officer has reasonable cause to believe that certain items of regulated metal property in the possession of a metal recycling entity are stolen, the City may issue a hold notice. The hold notice must:

(1) Identify those items of regulated metal property alleged to be stolen and subject to hold; and

(2) Inform the metal recycling entity of the restrictions imposed on the regulated metal property under Subsection (b) of this section.

(b) A metal recycling entity may not, for 60 days from the date of receiving a hold notice under this section, process or remove from the metal recycling entity's place of business any

regulated metal property identified in the hold notice, unless the property is released sooner by the City or by order of a court of competent jurisdiction. At the expiration of the hold period, the hold is automatically released, and the metal recycling entity may dispose of the regulated metal property unless otherwise directed by a court of competent jurisdiction.

(c) This section does not apply to items of regulated metal property composed solely of the following nonferrous metal materials for which definitions and hold notice requirements are provided by Chapter 1956, Subchapter A of the Texas Occupations Code, as amended:

- (1) Copper or brass material in excess of 50 pounds.
- (2) Bronze material.
- (3) Aluminum material in excess of 40 pounds.

Sec. 14-314 Penalty

(a) A person who violates any provision of this chapter, or who fails to perform a duty required of him under this chapter, commits an offense. A person is guilty of a separate offense for each item of regulated metal property involved in a violation of this chapter. An offense under this chapter is punishable by a fine not to exceed \$500.

(b) It is a defense to prosecution under this chapter that the regulated metal property involved

- (1) was purchased from a charitable, philanthropic, religious, fraternal, civic, or patriotic, social, or school-sponsored organization or association or from any organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended;
- (2) was purchased from any public officer acting in an official capacity as a trustee, administrator, or receiver, from any public official acting under judicial process or authority; or from a sale on the execution or by virtue, of any process issued by a court;
- (3) consists of aluminum food or beverage containers, used food or beverage containers, or similar food or beverage containers for the purpose of recycling, other than beer or beverage kegs; or
- (4) was purchased from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metal property in the ordinary course of its business.


Sec. 14-315 Severability

It is hereby declared to be the intention of the city council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance, since they would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

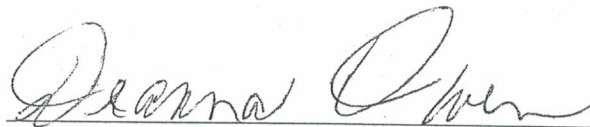
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Angus, Texas, that Article VII of the City Code of Ordinances is hereby adopted regulating metal recycling entities.

PASSED and **APPROVED** by the City Council of the City of Angus, Texas this 8 day of JULY, 2008.


Eben Dale Stover, Mayor


Eben Dale Stover, Mayor

ATTEST:


_____, City Secretary