

**Montgomery County, Texas**  
**Metal Recycling Entity Rules and Regulations**

**Article 1**  
**AUTHORITY**

The *Metal Recycling Entity Rules and Regulations* (“Rules”) contained herein are adopted pursuant to the authority granted in Texas Occupations Code § 1956.003, as amended, and shall be interpreted with reference to Chapter 1956 of the Texas Occupations Code. These Rules impose requirements that are in addition to the requirements contained in Chapter 1956 of the Texas Occupations Code, as written or hereafter amended.

**Article 2**  
**DEFINITIONS**

*Person.* An individual, partnership, corporation, joint venture, trust, association, and any other legal entity.

*Regulated Material* means:

- (A) manhole covers;
- (B) guardrails;
- (C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;
- (D) beer kegs made from metal other than aluminum;
- (E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;
- (F) unused rebar;
- (G) street signs;
- (H) drain gates;
- (I) safes;
- (J) communication, transmission, and service wire or cable;
- (K) condensing or evaporator coils for central heating or air conditioning units;
- (L) utility structures, including the fixtures and hardware;
- (M) aluminum or stainless steel containers designed to hold propane for fueling forklifts;
- (N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, railroad spikes, and rail tie functions;
- (O) catalytic converters not attached to a vehicle;
- (P) fire hydrants;
- (Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;
- (R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;
- (S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;

- (T) backflow valves;
- (U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals;
- (V) any battery, including but not limited to lead-acid batteries, that is marked with any form of the name, initials, or logo a governmental entity, utility company, or private company (other than the name, initials, or logo of the battery manufacturer);
- (W) products made from aluminum, an aluminum alloy, or an aluminum by-product, including aluminum wiring and an aluminum beer keg, but not including any other type of aluminum can used to contain a food or beverage;
- (X) any cemetery vase, receptacle, or memorial made from bronze, a bronze statuary, or other material readily identifiable as bronze, including bronze wiring; and
- (Y) insulated or non-insulated copper wire or cable of the type used by a public utility or common carrier that contains copper or an alloy of copper or zinc, a copper or brass item of a type commonly used in construction or by a public utility, or copper pipe or copper tubing.

*Metal Recycling Entity.* Any business which is operated from a fixed location and is predominantly engaged in:

- (A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method that in part requires the use of powered tools and equipment, including processes that involve processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal;
- (B) the use of raw material products described under Paragraph (A) in the manufacture of producer or consumer goods; or
- (C) purchasing or otherwise acquiring scrap, used, or obsolete ferrous or nonferrous metals for the eventual use of the metal for the purposes described by Paragraph (A) or (B).

This definition specifically excludes any type of recycling facility operated by Montgomery County.

*Real-time electronic web-based database.* An electronic filing system, such as Leads Online (LeadsOnline.com), in which data is organized by fields and records and that is capable of transmitting a file or responding to input immediately via the internet.

*Sheriff.* The Sheriff of Montgomery County, Texas, or his/her designee.

*Seller.* Any person who, in a purchase transaction, receives consideration from a Metal Recycling Entity in exchange for Regulated Material.

### Article 3

## **LICENSE REQUIRED**

- a) A person may not act or operate as a Metal Recycling Entity in any unincorporated area of Montgomery County, Texas, unless the person holds a valid Metal Recycling Entity license issued by Montgomery County under these Rules.
  
- b) Persons wishing to obtain a Metal Recycling Entity license may apply for a license at the Montgomery County permit office. In order for license application to be considered, applicants must provide a completed application and payment of applicable fees. The minimum age at which a person may apply for a license is 18. If the person applying for the license is a legal entity, including but not limited to a corporation, partnership, association, or joint venture, then each individual who has a 20 percent or greater legal or equitable interest in the entity must sign the application for a license as an applicant.
  
- c) A Metal Recycling Entity license issued under these Rules is valid for one year and expires on the first anniversary of the date of issuance. A person holding a current Metal Recycling Entity license issued hereunder who meets the eligibility requirements for an original license may renew an unexpired license before the expiration date of the license by submitting the required applications and renewal fee. A person whose Metal Recycling Entity license has expired may not engage in activities that require a license until a valid license has been obtained.
  
- d) Metal Recycling Entity licenses issued hereunder are non-transferable to another person, and may not be used operate a Metal Recycling Entity business at any location other than the address designated on the license application.
  
- e) A Metal Recycling Entity license issued under these Rules must be prominently displayed upon the premises of a Metal Recycling Entity at a location that allows for access and inspection of said license by members of the general public.
  
- f) Non-refundable fees for Metal Recycling Entity licenses shall be as follows:
  - 1) The fee for a Metal Recycling Entity license shall be \$250.00 for the first year.
  - 2) The fee for each annual renewal of a Metal Recycling Entity license shall be \$250.00.
  
- g) The following shall disqualify a person from being licensed under these Rules:
  - 1) Submitting incomplete, false, or misleading information on the application form or any supporting documents;
  - 2) Having been found to have previously violated these Rules or Texas Occupations Code Chapter 1956; or
  - 3) Applicant fails to demonstrate to County the ability of applicant to comply with the electronic reporting requirements of these Rules.
  
- h) The County may revoke any Metal Recycling Entity license issued when such license is obtained by submitting an application containing false or misleading information.

- i) The County may cancel, suspend, or revoke a Metal Recycling Entity license for any Person that:
  - 1) violates these Rules; or
  - 2) fails to comply with all requirements contained in Texas Occupations Code Chapter 1956.
  
- j) If the County determines that a Person's Metal Recycling Entity license should be denied, cancelled, suspended or revoked, then the County shall send notice of the proposed action to the Person, by registered or certified mail, stating the facts or conduct alleged to warrant the action. A Person that receives notice of proposed adverse action by the County may submit a written request for appeal or protest to the Montgomery County Commissioners Court, and may submit documentary evidence to demonstrate compliance with all requirements for the issuance, retention, or reinstatement of their license. All decisions related to license appeals or protests shall be subject to final review and determination by the Montgomery County Commissioners Court.
  
- k) Montgomery County must report the issuance of each license under these Rules to the Texas Department of Public Safety per TX Occupations Code Section 1956.003(c).

**Article 4**  
**SEGREGATION AND HOLD OF REGULATED MATERIAL**

- a) A Metal Recycling Entity shall segregate each item of Regulated Material purchased and shall attach to each item, or to the container in which the item is held, a label indicating the name of the seller, the date and time on which the item was purchased, and the number of the receipt on which the item purchase information is recorded. If in any single purchase transaction there are multiple items of Regulated Material of the same type, only one representative sample item from each type of Regulated Material must be segregated and labeled in accordance with this paragraph. All items segregated pursuant to this paragraph shall remain segregated throughout the hold periods set forth in the Sections 4(b) and 4(c) below.
  
- b) A Metal Recycling Entity may not dispose of, process, sell, desegregate, or remove from the premises an item of Regulated Material unless the Metal Recycling Entity acquired the specific Regulated Material item more than:
  - i) 192 hours (eight days), excluding weekends and County holidays, before the disposal, processing, sale, desegregation, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material; or
  - ii) 120 hours (five days), excluding weekends and County holidays, before the disposal, processing, sale, desegregation, or removal, if the item is not an item described by subsection 4(b)(i) above.
  
- c) If the Sheriff or any other Montgomery County law enforcement officer has reasonable

suspicion to believe that certain items of Regulated Material in the possession of a Metal Recycling Entity are stolen, the Sheriff or officer may issue a hold notice to the Metal Recycling Entity. The hold notice must specifically identify the items of Regulated Material alleged to be stolen and subject to the hold, and inform the Metal Recycling Entity that the items must not be altered or removed from the Metal Recycling Entity's place of business until said hold is released in writing by the Sheriff or officer or by an order from a court of competent jurisdiction.

- d) At any reasonable time, without requirement of judicial warrant, writ or other process, a Metal Recycling Entity shall allow a peace officer to:
- i) inspect the Metal Recycling Entity's place of business;
  - ii) examine a Metal Recycling Entity's transactions, books, accounts, papers, correspondence, or other records that relate to the business of the Metal Recycling Entity; and
  - iii) examine or inspect Regulated Material on the premises.

## **Article 5 RECORDS AND REPORTING**

a) A Metal Recycling Entity shall keep records in a Real-time electronic web-based database, in a form and method approved by the Sheriff, and the Metal Recycling Entity shall make daily entries into the Real-time electronic web-based database, in English, of a full description of each transaction in which Regulated Material is purchased or otherwise received by the Metal Recycling Entity. Such description shall include:

- 1) The date and time of receipt of any item of Regulated Material;
- 2) The full name and current address of the person or place of business from whom each item of Regulated Material was received;
- 3) a clear thumbprint impression of the person from whom each item of Regulated Material is received, which shall be excluded from the requirement for electronic transmission set forth in Section 5(b) of these Rules but shall be maintained by the Metal Recycling Entity for not less than two years and made available to the Sheriff or other law enforcement officer in accordance with these Rules;
- 4) evidence that the person transferring, selling or otherwise giving the items of Regulated Material is at least 18 years of age by presentation of valid identification, including a photograph of the face of person transferring, selling or otherwise giving the item, in the form of:
  - i. A current driver's license from Texas or another state within the United States;
  - ii. An identification card issued by the Texas Department of Public Safety; or
  - iii. A United States military identification card.
- 5) A description of the motor vehicle and/or trailer or other mode of transportation in or on which each item of Regulated Material received was carried to, delivered or transported to the Metal Recycling Entity, including the state and license plate number, if applicable;

- 6) The individual transaction number assigned by the Metal Recycling Entity to each item of Regulated Material received;
- 7) A description of the items of Regulated Material received as part of the transaction including, where customary in the business, the size, weight, material, length, capacity, and any other designations or descriptions customarily employed in the sale and purchase of such items;
- 8) If the item received is a junked, abandoned or wrecked automotive vehicle, documentation of ownership and any other information required for receipt of such vehicles as provided in state or federal laws or regulations;
- 9) The name or employee number of the Metal Recycling Entity employee who facilitates or conducts the transaction.
- 10) Whether the person either:
  - i. Presented a written document evidencing that the person is the legal owner or is lawfully entitled to sell the Regulated Material; or
  - ii. Signed a written statement that the person is the legal owner of or is lawfully entitled to sell the Regulated Material offered for sale.

b) The Metal Recycling Entity shall forward the required records and descriptions set forth in Section 5(a) of these Rules to the designated Real-time electronic web-based database before 11:59 p.m. on each day on which the Metal Recycling Entity is open for business.

c) In addition to the requirements contained in Paragraph 5(a) above, for each purchase of an item of Regulated Material, the Metal Recycling Entity shall obtain a digital photograph or video recording that accurately and clearly depicts:

- 1) the seller's entire face;
- 2) each item of Regulated Material purchased from the seller;
- 3) the motor vehicle and/or trailer or other mode of transportation used to carry, deliver, or otherwise transport each item of Regulated Material to the Metal Recycling Entity; and
- 4) the state and license plate number of the motor vehicle and/or trailer or other mode of transportation used to carry, deliver, or otherwise transport each item of Regulated Material to the Metal Recycling Entity.

d) A Metal Recycling Entity shall preserve the photographs and video recordings required by Section 5(c) of these Rules until the 181st day after the date of the transaction. The photographs and recordings must be made available immediately for inspection upon request by the Sheriff or other law enforcement officer.

e) The Metal Recycling Entity, or their agents or employees shall obtain a consecutively numbered receipt from the seller or transferor of the item of Regulated Material. Such receipt shall be dated on the actual date of the transaction and shall list the items sold or otherwise transferred. A printed version of the receipt record input and transmitted to the Real-time electronic web-based database as described in this Article 5 shall satisfy the requirement of this Section. An accurate

copy or record of receipts obtained shall be retained for a period of not less than three (3) years.

f) If a Metal Recycling Entity purchases Regulated Material that is a cemetery vase, receptacle, memorial, or statuary, the Metal Recycling Entity shall immediately notify the Sheriff's Office by telephone of said purchase.

g) If the combined total weight of all separate or sequential purchases from a single seller exceeds one-thousand pounds (1,000 lbs.) of Regulated Material in a 48 hour time period, the Metal Recycling Entity shall immediately notify the Sheriff's Office by telephone of said purchase(s).

h) A Metal Recycling Entity shall not buy insulated wire or cable that has been burned wholly or partly to remove the insulation unless the seller presents a) documentation from the Montgomery County Fire Marshall, or another Fire Marshall or similar government official holding jurisdiction over the location of the fire, identifying the location of the fire from which the burned insulated wire or cable was salvaged, or b) other documentation acceptable under the rules adopted pursuant to TX Occupations Code Section 1956.032(h). The documentation required in this paragraph shall be retained by the Metal Recycling Entity as part of the record of purchase for each transaction involving burned insulated wire or cable.

i) A Metal Recycling Entity shall not purchase or receive any central air conditioning unit parts from any person offering such property for sale unless the seller presents a valid state or local government-issued HVAC permit, state-issued professional HVAC license, or a permit issued by the state or local government to a homeowner for the installation, alteration, or repair of an air-conditioning system at a particular address. This provision shall not apply to window air conditioning units. The documentation required in this paragraph shall be retained by the Metal Recycling Entity as part of the record of purchase for each transaction involving central air conditioning unit parts.

j) A Metal Recycling Entity shall furnish all required reports to the Texas Department of Public Safety consistent with TX Occupations Code Section 1956.036.

## **Article 6 OFFENSES AND PENALTIES**

a) A person who violates any provision of these Rules commits a Class C misdemeanor offense punishable by a fine not to exceed \$500. Each violation of these Rules shall be considered a separate Class C misdemeanor offense. Any continuous violation shall be considered a separate Class C misdemeanor offense for each calendar day that the violation occurs.

b) Conviction of three (3) Class C misdemeanor offenses under these Rules in a calendar year shall result in an automatic suspension of a Metal Recycling Entity license for a period of thirty (30) days from the date of the third conviction.

c) Conviction of six (6) Class C misdemeanor offenses under these Rules in a calendar year shall result in an automatic suspension of a Metal Recycling Entity license for a period of sixty

(60) days from the date of conviction.

d) These Rules are not applicable to persons excepted pursuant to Section 1956.002 of the TX Occupations Code.

**Article 7**  
**GENERAL PROVISIONS**

a) The invalidity or unenforceability of any provision or provisions of these Rules shall not affect the validity or enforceability of any other provision of these Rules, which shall remain in full force and effect. These Rules constitute the entire ordinance with respect to the subject matter hereof and supersede all prior ordinances with respect to the subject matter hereof.

b) Montgomery County reserves the right to amend these Rules as deemed necessary.

This ordinance shall be in full force and effect on March 1, 2014.

DATE ADOPTED: January 27, 2014

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Alan B. Sadler, County Judge

\_\_\_\_\_  
Mike Meador, Commissioner Pct. 1

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Craig Doyal, Commissioner Pct. 2

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James Noack, Commissioner Pct. 3

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Ed Rinehart, Commissioner Pct. 4

Attest:

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Mark Turnbull, County Clerk