

ORDINANCE NO. _____-2012

AN ORDINANCE CREATING SECTION 13-54.1 OF THE CODE OF ORDINANCES RELATED TO REGULATED SCRAP MATERIAL TO DEFINE FERROUS METAL, HVAC, NONFERROUS METAL, PLASTICS, REGULATED SCRAP MATERIAL, RESTRICTED METALS, SCRAP METAL DEALER, , SCRAP METAL DEALER'S LICENSE, TRANSPORT VEHICLE, AND VEHICLE; CREATING SECTION 13-54.2 OF THE CODE OF ORDINANCES RELATED TO REGULATED SCRAP MATERIAL, TO CREATE THE APPLICATION AND REVIEW PROCESS FOR A SCRAP METAL DEALER'S LICENSE; CREATING 13-54.3 OF THE CODE OF ORDINANCES RELATED TO REGULATED SCRAP MATERIAL TO DEFINE THE ADMINISTRATIVE REQUIREMENTS OF A SCRAP METAL DEALER; CREATING SECTION 13-54. 4 OF THE CODE OF ORDINANCES RELATED TO REGULATED SCRAP MATERIAL TO CREATE THE RETENTION REQUIREMENTS FOR CERTAIN PURCHASED REGULATED SCRAP MATERIALS; CREATING SECTION 13-54.5 OF THE CODE OF ORDINANCES RELATED TO REGULATED SCRAP MATERIAL TO DEFINE PROHIBITED PURCHASES BY A SCRAP METAL DEALER; CREATING SECTION 13-54.6 OF THE CODE OF ORDINANCES RELATED TO REGULATED SCRAP MATERIAL TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS SECTION AND TO PROVIDE FOR AN APPEALS PROCESS FOR ANYONE AFFECTED BY THIS SECTION.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the purpose of this ordinance is to establish regulations for buying, selling, and processing regulated scrap materials.

Section 2 – That Section 13-54.1 of the Code of Ordinances of the Lexington-Fayette Urban County Government, be and hereby is created to read as follows. For the purpose of Sections 13-54.1 to 13-54.6 the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) Ferrous metal - is defined as materials containing iron which are, pure iron steel, and certain steel alloys but not limited to these examples. These metals often have magnetic properties but not exclusively.
- (2) HVAC - Heating, Ventilating, Air Conditioning systems used in residential, commercial, and automotive environments, also included are the parts associated with such systems.
- (3) Nonferrous metal - is defined as material with little or no iron such as copper brass, titanium, and aluminum or alloys there of. These metals often contain no magnetic properties.
- (4) Plastics - Any polymer based (natural or synthetic) material or any material further defined by the Society of Plastics Industry and or the American Chemistry Council and further stamped with a numbering

symbol identifying its composition.

- (5) Regulated Scrap Material – catalytic converter, metal beverage container that is capable of holding more than two (2) liters of beverage and is marketed as returnable, railroad rails, nonferrous metal or an alloy thereof, or an object containing nonferrous metal or an alloy thereof, ferrous metal or an alloy there of, an object containing ferrous metal or an alloy there of, vehicles sold for scrap, or plastics or other secondhand recyclable material.
- (6) Restricted metals – means any of the following metal items: manhole covers; electric light poles or other utility poles; guardrails; street signs, traffic signs, or traffic signals; whole road tiles; funeral markers or funeral vases; railroad equipment, including but not limited to a tie plate, signal house, control box, switch plate, e-clip, or rail tile junctions; condensing or evaporating coils made from copper, aluminum, or aluminum-copper, including the tubing or rods from a heating or air conditioning unit that is not from a window air conditioning unit or automobile air conditioning unit; stainless steel beer kegs; a catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a vehicle; storm drain covers.
- (7) Scrap metal dealer - is defined as a person, business, or corporation who: engages in the business of purchasing, trading, bartering or otherwise receiving regulated scrap material; and or uses machinery and equipment for processing and manufacturing ferrous or nonferrous scrap into prepared grades, and whose principal product is ferrous or nonferrous metallic scrap or use similar equipment for the same purposes with other regulated scrap material.
- (8) Scrap metal dealer's license - a license issued to a scrap metal dealer conducting business in Fayette County.
- (9) Transport vehicle - any conveyance used to move ferrous and nonferrous metals for the purpose of selling, trading, bartering, or processing.
- (10) Vehicle - means every device in, upon or by which any person or property

is or may be transported or drawn upon a public highway other than by muscular power to include, but not limited to, heavy machinery i.e.; farm equipment and construction equipment.

Section 3 – That Section 13-54.2 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows. **Scrap metal dealer license application process:**

- (1) Scrap metal dealer licenses
 - (a) Any “scrap metal dealer” located inside of Fayette County shall be required to obtain the license established in Section 13-13 by making application for the same to the Division of Police in order to conduct business as described under the definition of a scrap metal dealer.
 - (b) The license or copy shall be displayed at the final point of sale of the location notated on the permit so as to be clearly visible.
- (2) Application and Review Process
 - (a) The applicant for a license to engage in the business of scrap metal dealer shall file an application with the Lexington Division of Police on a form provided by that Division.
 - (b) The following information shall be provided in or with the application:
 - (1) Business name in which license is sought;
 - (2) Business address, including street address, and zip code;
 - (3) Telephone number;
 - (4) The location(s) of the facility sought to be licensed;
 - (5) Name and address of person responsible for management of the operation of the business, and shall include such other information as the Division of Police deems necessary to investigate the applicant and the applicant’s proposed place of business. The Division of Police shall, within thirty (30) days of receipt of a completed application form, make a complete review of the accuracy of the information contained

therein, including a criminal records check on any individuals named therein. If the application is to be approved, the Division of Police shall provide the applicant with such written notification, for presentation to the Division of Revenue. The Division of Revenue shall issue the license if the application is approved. If the application is to be denied, the Division of Police shall provide the applicant with such written notification, including a statement of the reasons for denial. An aggrieved applicant shall, within ten (10) days of receipt of such notice, have a right to request, in writing, a hearing before the Commissioner of Public Safety, as authorized by Section 13-54.8.

- (3) The cost of each license is \$500 per year. The license shall expire on December 31 of each year, unless suspended or revoked. Application for the next year's license should be made at least thirty (30) days prior to the expiration date.

Section 4 – That Section 13-54.3 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows.

Administrative Requirements of Scrap Metal Dealers:

- (1) Every scrap metal dealer, whether such dealers have established places of business or operate a business of an itinerant nature, with regard to any regulated scrap material shall:
 - (a) Keep a register that contains:
 - (1) A photocopy of a valid driver's license or other government-issued identification card of the seller. If the purchaser has a copy of the seller's valid photo identification on file, it shall not be necessary for the purchaser to make another copy of the identification document for each purchase if the purchaser references the number on the identification document in the register at the time of each purchase;

however, a photocopy of a valid driver's license or government-issued identification card must be presented with each purchase.

- (2) The state and license number of the motor vehicle used to transport the regulated scrap materials to the place of purchase, which shall be provided by the seller of the items. If the displayed registration plate is a temporary license plate then the VIN number of the transport vehicle shall be recorded;
- (3) The time and date of the transaction;
- (4) A description in the usage of the trade of the kind and weight of the regulated scrap materials and information regarding the material acquired stating the weight and a detailed description of the materials. If the material is tubing, the diameter will be recorded and noted as new or used. All items for purchase shall be photographed in digital format from a position that is capable of revealing a true depiction of the material and,
- (5) The amount paid for the regulated scrap material and the unit basis of the purchase, such as by ounce or pound, etc.;
- (6) Purchases made from a utility, telecommunications, and/or data communication's company should be documented in a manner that accurately depicts the type of regulated scrap material purchased and the total weight of the purchase. If a mix of material is purchased then an accurate notation of the various materials shall be noted in the registry, including the company making the sale and the employee or representative of the company making the transaction;
- (7) If the scrap is a vehicle as defined, the VIN number or other identifying number or mark shall be recorded along with a photograph of the VIN, other identifying number, or mark.

The photograph shall be taken in digital format for future processing. If the VIN or other identifying number or mark is not readily accessible then photographs in the listed manner shall be taken from four vantage points to accurately depict the description of the scrapped vehicle in the manner in which it was purchased;

- (8) Retain the information required by this section for a period of two (2) years, after which time, the information may be retained or destroyed in a manner that protects the identity of the owner of the regulated scrap material and the seller of the material.
- (9) If the purchaser ceases business, transfer all records and information required by this section to the Chief of Police;
- (10) Upon written request of the Chief of Police, as appropriate, upload the required data to a secure, electronic database approved by the Chief of Police no later than the close of business on the day the regulated scrap material was purchased by the scrap metal dealer.
- (11) Comply with a written request pursuant to paragraph (10) of this subsection until a written notice to cease sending the reports required by paragraph (10) of this subsection is received by the purchaser. A request may relate to:
 - (a) All records of purchases;
 - (b) Records of a specific class of metals or items purchased;
 - (c) Records of purchases during a specific period of time;
 - (d) Records of a specific purchase or purchases; and
 - (e) Photographs of regulated scrap material purchased.
- (12) The police department receiving records pursuant to this section shall retain the records for two (2) years, after which time, it may either retain or destroy the records in a manner

that protects the identity of the owner of the regulated scrap material, the seller of the material, and the purchaser of the material; or if uploaded to a secure data base, the retention schedule will be regulated by that company's policy and procedure;

(13) Any record required to be made or reported pursuant to this section may be kept and reported in hard copy and uploaded to a secure database in digital or in electronic format.

(14) A scrap metal dealer shall not enter into any cash transaction for the purchase of any restricted metals as defined in this ordinance.

(a) Payment by a scrap metal dealer for the purchase of restricted metals shall be made by check issued to the seller and payable to the seller.

(b) Each check for payment shall be mailed by the scrap metal dealer directly to the street address of the seller. Payment shall not be mailed to a post office box.

(c) Each check shall be mailed by the scrap metal dealer to the seller no sooner than one (1) day after the purchase transaction.

(15) Scrap metal dealers or their designee shall meet at least every quarter with the designee from the Chief of Police.

Section 5 – That 13-54.4 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows: **Retention of certain purchased regulated scrap material by scrap metal dealers:**

(1) Retain copper gutters and downspouts; copper roofing and flashing material; backflow preventer valves; cast iron sinks and bathtubs; and new or bare copper wiring or plumbing materials weighing ten pounds or more in its original form for a period of three business days from the date of purchase unless notified by a peace officer having reasonable cause to

believe that the material may be stolen material, in which case, the material may be seized as evidence by the peace officer or, if not seized, shall be retained for an additional 30 days unless earlier notified by a peace officer that the material may be sold. All materials purchased will be maintained, in its received form, in addition, all purchased items will be tagged and stored separately in a manner so that no intermingling of material will occur;

(a) The material purchased from a utility, telecommunications, and or data company need not be held on site for the required time previously stated and may be processed immediately upon acquisition by the scrap metal dealer;

(b) Material purchased from another scrap metal dealer, whether located in Lexington-Fayette Urban County, another County in the State of Kentucky or from out of state need not be held on site for the required time previously stated and may be processed immediately upon acquisition by the scrap metal dealer;

(c) Material purchased from an industrial or commercial account, non-profit organization (civic, religious fraternal, philanthropic, social, patriotic or school sponsored), or a municipal waste department or licensed waste hauler need not be held on site for the require time previously stated and may be processed immediately upon acquisition by the scrap metal dealer.

(2) It shall be the duty of every scrap metal dealer, his agents or employees to hold all suspected stolen regulated scrap material in a secure place for 30 business days upon request by a peace officer. The metal scrap metal dealer, his agents or employees, may not process or remove the material from the dealer's premises before the 30th business day after receipt of the request from a peace officer to hold the material unless;

1. The material is released into a peace officer's care, custody and control at an earlier time;

2. A peace officer releases the hold on the material upon an earlier date;
 3. A peace officer makes a written request to extend the holding period for up to 90 business days from the date the original request is received; or
 4. A court orders release of the material.
- (3) Permit any peace officer to inspect the register, and if the peace officer deems it necessary to locate specific stolen regulated scrap material, may inspect the regulated scrap materials received during business hours. This section also includes the inspection of holding areas where the materials are stored;

Section 6 – That Section 13-54.5 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows. **A scrap metal dealer shall not make any of the following purchases:**

- (1) Any regulated scrap material from a person who:
 - (a) Is less than eighteen (18) years of age or;
 - (b) Is unable or refuses to provide the identification and information required in Section 13-54.4(1)(a)(1) or,
 - (c) Is visibly intoxicated by way of an alcoholic beverage or other impairing substance;
 - (d) Is on the restricted sellers list as provided to the scrap metal dealer by the Division of Police.
- (2) A vehicle sold for scrap, less than ten years of age, without a valid title or copy of title produced at the time and location of the sale. Failure to produce the title will result in the recycler, scrap metal dealer, dealer in junk or metals, dealer in secondhand articles, vendor of bottles or rags, collector of or dealer in articles found in ashes, garbage, or other refuse, not completing the sale. Vehicles whose title has been surrendered pursuant to KRS 186A.295 are exempt from this section.
- (3) Any Heating, Ventilating, Air Conditioning (HVAC) equipment in whole units or parts without the seller, while being an employee of a business

that provides such services, producing an urban county government-issued HVAC permit or state-issued professional license while selling within the scope of their employment.

(a) Any individual wishing to sell Heating, Ventilating, Air Conditioning (HVAC) equipment must provide a permit issued by a city to a homeowner for the installation, alteration, or repair of an air-conditioning system at a particular address and an invoice or repair order for work completed which would show the location and customer name where the units or parts were serviced. Failure to produce any of the required information will result in the scrap metal dealer not completing the sale;

(1) The scrap metal dealer will maintain a copy of the invoice or repair order for work completed at the business location of the sale for a period of time not to exceed two years.

(2) This provision shall not apply to window air conditioning units.

(4) It shall be unlawful for a scrap metal dealer, his agents or employees to purchase any of the following items of regulated scrap materials 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 of regulated scrap materials 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) A funeral marker or funeral vase.

- (6) An historical marker.
 - (7) Railroad equipment, including but not limited to a tie plate, switch plate, E clip, or rail tie junction.
 - (8) Any metal used by, or that is the property of, or any item that is marked with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
 - (9) An aluminum or stainless steel container or bottle designed to hold propane for fueling fork lifts.
- (5) An item of regulated scrap metal in its original packaging unless the person selling such item presents a receipt or proof of purchase for that material.
 - (6) An item of regulated scrap metal that is marked with any form of the name or initials of a private company (excludes manufactures labeling) or that the scrap metal dealer knows or should reasonably be expected to know belongs to a private company unless the person selling such material presents at the time of sale a written, signed statement from the seller attesting to lawful ownership of the material, a receipt from the lawful owner, or a written, signed statement from the lawful owner of the property providing that the seller has authorization to sell or otherwise transfer that property.
 - (7) Any regulated scrap material that has been smelted, burned, or melted unless, in addition to the other requirements of this subsection, the seller provides the following and the purchaser maintains a copy thereof:
 - (a) A signed certificate of ownership stating that he or she is the owner of the material and is entitled to sell it; or
 - (b) A signed certificate from the owner of the material stating that he or she is the owner of the material and that the person selling the material is authorized to sell the material on behalf of the owner;
 - (8) Any regulated scrap material that is stolen or by reasonable diligence one should know is stolen. The scrap metal dealer, his agents, or employees, shall report to police any attempt to sell such stolen material or material

acquired by the dealer subsequently determined or reasonably suspected to be stolen material, and the scrap metal dealer, his agents or employees, shall furnish such other information as might be helpful to the police in investigating the matter.

Section 7 – That Section 13-54.6 Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is created to read as follows. **The following are penalties and appeals process for this section:**

- (1) Convictions of three or more incidents in violation of any provision in this ordinance during a twelve (12) month period shall result in a probationary period imposed on the scrap metal dealer convicted for such offences not to exceed a six month period. If further convictions of violations pertaining to this ordinance occur during the probationary period then a revocation of the scrap metal dealer's/seller's license will occur for a period not to exceed thirty (30) calendar days.
 - (a) Upon conviction of three or more incidents in violation of any section in this ordinance during a twelve (12) month period or upon a conviction of a violation of this section during the probationary period, the scrap metal dealer shall have the right to an administrative hearing to appeal the probationary period and or license revocation or license denial. The hearing will be held before the Commissioner of Public Safety or his/her designee.
 - (b) Before the institution of the probationary period or license revocation, the Commissioner of Public Safety shall notify the scrap metal dealer in writing of his intent to institute the probationary period or revoke the license, including a summary of the grounds for the action. The notice shall be sent to the scrap metal dealer by certified mail to the person and address specified on the license. Within ten (10) days of receipt of such notice, the scrap metal dealer may provide to the Commissioner of Public Safety, in writing, a response which shall include a statement of reasons why the license should not be put in probation or revoked and may include a

request for a hearing. If a response is not received by the Commissioner of Public Safety within ten (10) days, the notice shall be a final administrative act of probation or revocation. If a response is received by the Commissioner of Public Safety within ten (10) days, he shall schedule a hearing and shall give notice of such hearing to the scrap metal dealer. The hearing shall be conducted within thirty (30) days of the Commissioner of Public Safety's receipt of the scrap metal dealer's response. The commissioner or designee shall render a written decision within (10) days after the completion of the hearing and shall serve the scrap metal dealer with a copy of the decision by certified mail. The scrap metal dealer may appeal the decision to the Fayette Circuit Court within thirty (30) days after receipt of the written notice of the decision.

- (c) It shall be the responsibility of the general manager or principal facility manager of the scrap metal dealer to see that the employees of the business understand the provisions set forth in this ordinance and that those provisions are adhered to.
- (d) Any violations of this ordinance shall constitute a misdemeanor and any person who is convicted shall upon the first conviction thereof be fined not less than one hundred (\$100.00) nor more than two hundred fifty dollars (\$ 250.00), or imprisoned for not more than six (6) months or both; and for the second and each subsequent conviction shall be fined not less than two hundred fifty dollars (\$ 250.00) nor more than five hundred dollars (\$500.00), or imprisoned for not more than six (6) months, or both.
- (e) There will be a thirty (30) day grace period from the date that this ordinance goes into effect. No enforcement action shall be taken during this grace period to help educate scrap metal dealers of this new ordinance.

Section 10 – This Ordinance shall become effective on the date of passage.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL
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