

Administrative Rules
For
City of Houston Code of Ordinances
Chapter 7- Article III
Metal Recyclers

In accordance with section 7-53 of the Code of Ordinances (the “Code”), the Director of the City of Houston, Administration and Regulatory Affairs Department (“ARA”) and the Houston Chief of Police, (“HPD”), hereby promulgate the following rules for the administration and implementation of the City of Houston Ordinance No. 2007-295, as amended by Ordinance No. 2007-1191, as amended by Ordinance No. 2009-410, as amended by Ordinance No. 2009-931, as amended by Ordinance No. 2009-1346, as amended by Ordinance No 2016-964. These rules outline the roles and responsibilities of ARA and HPD, as well as the procedural rules applicable to metal recycling entities, metal recyclers, and scrap metal business as related to the referenced ordinance provisions.

These rules are to be in effect for a trial period of six months beginning the day that the City Council of the City of Houston passes Ordinance No. 2016-964. Upon the expiration of the trial period, the Director of ARA, the chief of police of HPD and the individuals designated by the Recycling Council of Texas may review the rules and make any agreed-upon changes necessary to effectively administer the provisions of Article III, Chapter 7 of the City of Houston Code of Ordinances.

The referenced ordinance requires all metal recycling entities to collect and maintain specific information using different forms of media to document daily business transactions. In addition:

Division 1. General

1. Definitions: Terms used but not defined in these Administrative Rules which have definitions provided in Chapter 7 of the Code shall be deemed to have the same meanings as provided in the Code.

Division 2. Licenses

1. Terms of License.

- (a) A license to conduct business as a metal recycler is valid for two (2) years from the date of issuance. (Sec. 7-55)
- (b) All metal recyclers must display on the premise, in unobstructed public view, a current license for the operation of their facilities. (Sec. 7-54)
- (c) A person whose license has expired may not act as a metal recycler, represent to the public the person is a metal recycler, or perform collections or purchase

material or operate as a metal recycler until the license has been renewed. (Sec 7-51, 7-54)

- (d) Metal recyclers purchasing or otherwise acquiring regulated material from the public, must have a Metal Recycling Entity certificate license from the Texas Department of Public Safety (TxDPS). (Sec. 7-55)
- (e) The applicant for a license to conduct business as a metal recycler will be given the city issued license number in order to apply with TxDPS. The license will not be issued until the TxDPS license number is obtained.(Sec. 7-55)
- (f) Prior to the expiration of the current license, a new application must be submitted to ARA. All requirements of the ordinance must be met prior to the issuance of the renewed license. An HPD Metal Theft Unit investigator will inspect the applicant facility to ensure compliance with all ordinance requirements at least 30 calendar days, but not more than 60 calendar days prior to the expiration of the license. An applicant who fails to meet any requirement will not be issued a license. Any facility that does not comply with the ordinance or any provision of Chapter 1956 of the Texas Occupations Code will be subject to enforcement. All enforcement activity, including periodic inspections to ensure compliance with state law and the issuance of citations, will be performed by HPD. ARA will be responsible for the approval of all applications for new licenses, including the renewal applications. (Sec. 7-55)
- (g) A new application must include all supporting documents as described in the ordinance. (Sec. 7-55)
- (h) Any individual required to submit fingerprints as part of a new or renewal application shall do so in accordance with the process promulgated by ARA, including reporting to a third-party vendor as designated by ARA to have digital fingerprints taken to gather criminal history information. In instances in which the quality of an individual's digital fingerprints is not sufficient to gather criminal history information, the individual may be required to submit fingerprints in ink form. The gathering of criminal history information based on fingerprints in ink form takes significantly longer than gathering such information based on digital fingerprints. For this reason, a new license will be issued conditioned on the applicant's passing of the background check for applicants who:
 - a. Submit fingerprints in ink form because of the insufficient quality of digital fingerprints;
 - b. Are seeking to renew a license; and
 - c. Have a current license that expires prior to the criminal history information being returned to ARA.

In the instance cited above regarding a license issued conditioned on the applicant's passing of a background check using fingerprints in ink form, the license will be revoked upon the return of a failing background check for an applicant. Except in the event that a designated

on-site representative fails the background check, the facility will have 10 days to submit a new name or names which cannot be someone that has previously failed a background check.

Division 3. Operational Rules and Regulations

1. Cash transaction card; application; issuance and use. (Sec. 7-56)

A cash transaction card is required for all purchases of regulated material in a public transaction. For which payment is made in cash. There is no minimum dollar amount in which a cash transaction card is not required.

2. Records required to be kept by metal recyclers (Sec 7-58)

Descriptions of the material purchased must accurately reflect the type of material. Material descriptions must reflect commonly used commodity types. Business specific terminology may be used in addition to the commodity types. Example; Aluminum HAVC reefer coil, Copper wire #2, Lead Battery.

3. Serial Numbers, Heat Numbers and Owner applied markings, on material Purchases from the public (Sec 7-58(16))

(a) Serial numbers, heat numbers, foot numbers, and owner applied markings must be entered into the serial number section of the electronic database.

(b) A VIN for each motor vehicle purchased must be entered into the electronic database serial number section.

(c) Material containing any identifiers listed in section 3(a) must be entered into the electronic database. Each item's identifier must be entered. Material with the number(s) obliterated or missing may be documented by noting "none."

This requirement applies only to the following:

1. Whole units of computer towers or desktop computers;
2. Whole units of window air conditioner units;
3. Insulated wire 400mcm and larger, markings may include manufacturer name/number(s), company number(s) and beginning and ending foot number(s);
4. Romex with owner applied markings such as "master bedroom, kitchen" or other markings identified with newly installed wiring;
5. Water meters; and
6. Commercial batteries commonly used in cell towers or other telecommunications applications.

(d) Material containing an industry applied heat number(s) or markings must have the heat number(s) or markings entered into the electronic database. Each item's heat number must be entered separately.

This requirement applies to the following:

1. Ferrous and nonferrous items containing heat numbers or markings;
2. Raw, blank or drop material;

3. Material machined into its final industry form;
 4. Valves; and
 5. Flanges
- (e) Specifically excluded from the requirement of having identifiers listed in 3(a) entered into the electronic database are common household appliances and commercial restaurant equipment and other nonregulated materials commonly purchased in mixed loads such as shred tin and bailing scrap. Any material from a mixed load which is segregated to be purchased is subject to the requirement. Examples of nonregulated materials included are:
1. Refrigerators;
 2. Dish washing machines;
 3. Clothes washing machines;
 4. Clothes drying machines;
 5. Water heater tanks;
 6. Stoves and Ranges;
 7. Installed microwave ovens;
 8. Countertop microwave ovens;
 9. Commercial restaurant equipment;
 10. Shred tin; and
 11. Bailing scrap

4. Photographs (Sec. 7-58(a),(c))

- (a) Photographs must be of sufficient quality to enable the identification of each item received. Photographs of the material may be used in court. Material of the same commodity type and form may be contained in the same photo. Material photographed in bags, bucket or barrels that do not clearly identify the material inside do not meet the requirement. Photographs must be taken of all the material purchased or received; pictures of representative samples do not meet the requirement.
- (b) Business to business transactions transported by commercial vehicle may be documented by taking a photograph of the entire load inside the trailer or the loaded trailer on the scale. Material photographed as a “check weight” is not required to be re-photographed after separation but it is encouraged for documentation. Material separated and weighed as part of the normal course of business must be photographed on the scale.

5. Commercial batteries commonly used in cell towers or other telecommunications applications. (Sec. 7-58)

When a metal recycler purchases commercial batteries commonly used in cell towers or other telecommunications applications in a public transaction, the metal recycler must notify the HPD Metal Theft Unit immediately by phone. The metal recycler must provide the HPD Metal Theft Unit with the information required in section 7-58 of the Code.

6. Hold period; exceptions. (Sec. 7-60)

(a) The 72-hour hold applies to all material purchased in a public transaction not exempted by the Code or these rules.

(b) Specifically excluded from the 72 hour hold period are common household appliances, nonregulated tin, and nonregulated ferrous materials.

Examples of nonregulated materials included are:

1. Mixed loads of shred tin or bailing scrap;
2. Refrigerators;
3. Dish washing machines;
4. Clothes washing machines;
5. Clothes drying machines;
6. Water heater tanks;
7. Stoves and Ranges;
8. Installed microwave ovens;
9. Countertop microwave ovens;
10. Sinks stainless steel or other material; and
11. Commercial restaurant equipment stainless steel or other material

(c) Materials containing alloys or stainless steel not specifically excluded in section 7(b) above are subject to the 72-hour hold period.

Examples of nonregulated material included are:

1. Ferrous and nonferrous items containing heat numbers or markings;
2. Raw, blank or drop material;
3. Material machined into its final industry form
4. Valves; and
5. Flanges

(d) Materials in a form commonly used in industrial processes/applications or products in a usable form are subject to the 72-hour hold period.

Examples of nonregulated material included are:

1. Ferrous and nonferrous items containing heat numbers or markings;
2. Raw, blank or drop material;
3. Material machined into its final industry form
4. Valves;
5. Flanges; and
6. Large plates used in road construction

(e) Motor vehicles purchased in a public transaction are subject to the 72 hour hold period.

(f) Noncommercial transactions of nonregulated material transported to the metal recycler conforming to the Bill of Lading addressed to the metal recycler are excluded from the 72-hour hold period.

7. Acceptance of property suspected stolen; peace officer requested holds.

(Sec. 7-63)

HPD, Metal Theft Unit uses Scrap Theft Alert and email notifications to alert metal recyclers about reported stolen property. Each metal recycler shall have a valid email address to receive notification. Metal recyclers may have multiple email addresses for notifications. It shall be the duty of every metal recycler to report immediately to the Metal Theft Unit any property acquired that meets the description of a stolen item from a theft alert. A metal recycler shall provide the information required in section 7-58 of the Code.

8. Inspections. (Sec. 7-69)

(a) Pursuant to §1956.035 of the Texas Occupations Code, a metal recycling entity shall cooperate fully with any investigation or inspection conducted by a peace officer, a representative of the police department, or a representative of a county, municipality, or political subdivision that issues a license or permit under §1956.003(b) of the Texas Occupations Code.

(b) After an inspection, HPD Metal Theft Unit will email a completed inspection form(s) to the metal recycler. The inspection form will indicate any noncompliance issues and violations found at the location. The metal recycler shall take actions to correct any noncompliance issues and violations. A metal recycler shall operate in compliance with all applicable state laws and city ordinances.

9. Operation of yards used by a metal recycler; hours for purchasing materials. (Sec. 7-70)

(a) Enclosed Structures.

A standard roll off container with a lid meets the requirement of an enclosed structure. The lid must be one piece, solid construction and cover all edges of the container. Covers such as wood planks and tarps do not meet the requirement. For the purpose of outside storage, the container must be covered when the metal recycler is closed.

(b) Removal of flammable liquids and other fluids from vehicles.

A metal recycler that purchases motor vehicles with fluids or flammable liquids shall have a designated area for the removal of fluids and flammable liquids. The removal of fluids and flammable liquids shall be in compliance with all applicable state laws and city ordinances. The metal recycler shall ensure all fluids and flammable liquids are removed from the vehicle before the vehicle is placed in another area of the yard for processing or storage.

10. Purchases of catalytic converters. (Sec 7-58)

A catalytic converter purchased or otherwise received by a metal recycler shall be subject to the following administrative rules.

A catalytic converter is defined by TOC 1956.001(1)(O) catalytic converters not attached to a vehicle.

The purchase or transfer of catalytic converters from a business or metal recycler is subject to Sec 7-58(c).

A metal recycler who receives a catalytic converter containing an industry applied marking or serial number or owner applied identifier must enter that information into the real-time electronic web-based database as defined by Chapter 7 and shall be uploaded by the close of business day.

A person selling or presenting to be received, a catalytic converter, or loose catalyst removed from the catalytic converter, to a metal recycler, shall be required to present documentation to complete the sale or transfer of the catalytic converter, or loose catalyst removed from the catalytic converter. The metal recycler shall be required to keep a copy of the documentation, (1)-(6), on file for each catalytic converter received, or loose catalyst removed from the catalytic converter.

Additionally, a metal recycler who receives a catalytic converter, or loose catalyst removed from a catalytic converter must request, obtain, and maintain from the person selling or presenting the catalytic converter;

- (1) A receipt showing that the seller had the catalytic converter replaced at a licensed facility as defined by Chapter 8 - AUTOMOTIVE DEALERS AND AUTO WRECKERS;
- (2) A receipt showing that the seller purchased the catalytic converter from a licensed facility as defined by Chapter 8 - AUTOMOTIVE DEALERS AND AUTO WRECKERS;
- (3) A receipt, showing that the seller purchased a replacement catalytic converter from a licensed facility as defined by Chapter 8 - AUTOMOTIVE DEALERS AND AUTO WRECKERS;
- (4) A receipt, bill of sale, or other documentation showing that the seller has purchased the catalytic converter;
- (5) A receipt, bill of sale, or other documentation showing that the seller has purchased the vehicle, from which the catalytic converter was removed;
- (6) A copy of the title for motor vehicle or motor vehicle registration, in the seller's name, for a catalytic converter removed from the seller's vehicle;
- (7) A receipt from a licensed MRE, or a facility licensed by Chapter 8 - AUTOMOTIVE DEALERS AND AUTO WRECKERS, showing the sale of the motor vehicle from which the catalytic converter was removed.

A list of licensed facilities may be found in Chapter 8 - AUTOMOTIVE DEALERS AND AUTO WRECKERS, examples include;

Automotive repair facility
Mobile automotive repair business
Retail supply dealer

References:

TOC 1956

Chapter 7

Chapter 8