

**ORDINANCE NO. 11-26**

**AN ORDINANCE ESTABLISHING REGULATIONS PERTAINING TO SECONDARY METALS RECYCLERS; PROVIDING FOR A TITLE; LEGISLATIVE FINDINGS; PURPOSE AND INTENT; APPLICABILITY; DEFINITIONS; PAYMENT LIMITATIONS PERTAINING TO PURCHASE TRANSACTIONS INVOLVING RESTRICTED REGULATED METALS PROPERTY; EXEMPTIONS FROM THE LIMITATIONS; PROVIDING SPECIFIC EXAMPLES OF RESTRICTED REGULATED METALS PROPERTY; PROOF OF OWNERSHIP; ELECTRONIC TRANSACTION RECORDS REQUIRED; ENFORCEMENT; CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR CONFLICTS OF LAW; SEVERABILITY; CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Florida Statutes (FS) Ch. 125 and the Lee County Charter, the Board has the power and authority to adopt regulations not inconsistent with state law for the protection of its citizens; and

**WHEREAS**, the increasing worldwide demand for, and associated rising prices of, metals has contributed to increased thefts within Lee County of copper wiring from construction sites, underground telecommunications wires, utility wires, air conditioning units, beer kegs and a variety of other items; and

**WHEREAS**, based upon the testimony of local law enforcement officials, the Board finds that increased criminal activity relating to the theft of secondary metal products such as those described above, is adversely impacting the health, safety and welfare of Lee County residents; and

**WHEREAS**, in 2008 the State of Florida enacted Chapter 2008-689, Laws of Florida, now codified in FS Ch. 538, Part II, for the purpose of reducing secondary metals theft and increasing the penalties for a violation of this state law; and

**WHEREAS**, law enforcement in Lee County, and its municipalities, have identified areas where additional regulations on the sale of restricted regulated metals property would be instrumental in reducing the thefts of secondary metals in Lee County; and

**WHEREAS**, the Board recognizes the State of Florida has specific goals for increasing recycling within the state and that recycling secondary metals is a vital part of preserving the County and the State environment; and

**WHEREAS**, local law enforcement officials have sought the cooperation of interested persons within the County to find a way to work together to reduce or completely eliminate the theft of restricted regulated metals property by sharing information; and

**WHEREAS**, the cooperative efforts and the law enforcement actions taken pursuant to FS Ch. 538, Part II, have not been effective in significantly reducing the theft of restricted regulated metals property; and

**WHEREAS**, the Board finds that adoption of the provisions set forth in this ordinance establishing additional protocols pertaining to the sale of regulated metals property is in the best interest of the citizens of Lee County.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:**

**SECTION ONE: TITLE**

This ordinance will be known and may be cited as the "Lee County Secondary Metals Recyclers" Ordinance.

**SECTION TWO: LEGISLATIVE FINDINGS**

(a) The worldwide demand and associated rising price of metal has contributed to increased theft in Lee County of copper wiring from air conditioning units and construction sites, underground telecommunication wires, utility wires, beer kegs and other regulated metal property.

(b) Based upon the testimony of law enforcement officials, the Board of County Commissioners finds that the increased criminal activity relating to the theft of regulated metal property is adversely impacting the health, safety and welfare of County citizens.

(c) Local law enforcement officials, in cooperation with interested secondary metal recycling entities, have identified additional regulatory protocols on the sale of regulated secondary metal property that would be instrumental in precipitating a significant reduction in the theft of regulated metals.

(d) The Board finds that adoption of the additional regulatory protocols will not conflict with the State of Florida goals to increase recycling as a vital part of preserving the environment; and, will be beneficial to the health, safety and welfare of its citizens.

**SECTION THREE: PURPOSE AND INTENT**

The purpose of this ordinance is to supplement the provisions of FS Ch. 538, Part II, pertaining to the purchase and disposition of regulated secondary metal property within

Lee County. This ordinance is not intended to regulate secondhand dealers engaged in the sale or purchase of precious metals under FS Ch. 538, Part I.

#### **SECTION FOUR: APPLICABILITY**

This ordinance is applicable Countywide. However, any duly adopted municipal ordinance covering the same topic will prevail in the respective municipality to the extent of any conflict.

#### **SECTION FIVE: DEFINITIONS**

The following words, terms and phrases will have the meanings as stated.

***Ferrous metals* means any metals containing significant quantities of iron or steel.**

*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 agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

*Money* means a medium of exchanged authorized or adopted by a domestic or foreign government as part of its currency.

***Nonferrous 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 subject to regulation under FS Ch. 538, Part I.**

***Personal identification card* means any government issued photographic identification card.**

*Purchase transaction* means a transaction in which a secondary metals recycler gives consideration (eg. money, payment) for regulated metals property.

***Regulated metals property* means any item composed primarily of any nonferrous metals, but for purposes of this ordinance does not include aluminum beverage containers, used beverage containers or similar containers. Under the provisions of this ordinance the term "regulated metals property" includes stainless steel beer kegs as well as all items specifically listed in Section Seven.**

***Reasonable proof* means a bill of sale or other document of a type customarily relied upon in the ordinary course of business to establish that a Seller is either the lawful owner or an authorized Seller of the regulated metals property. An example of appropriate documentation includes, but is not limited to, a letter on company letter head, signed by the owner, that specifically identifies the Seller as an authorized agent of the business entity with the power and authority to sell or dispose of the company's regulated metals**

property.

*Restricted regulated metals property* means the specific regulated metal items, whether whole or in parts, listed in Section Seven of this ordinance.

*Secondary metals* means ferrous or nonferrous metals that have served their original economic purpose; ferrous or nonferrous metals that are capable of being converted into raw material products consisting of prepared grades and having an existing or potential economic value.

*Secondary metals recycler* means any person who:

- (a) is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- (b) has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw materials products consisting of prepared grades and having an existing or potential economic value, other than by 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.

However, the term secondary metal recycler does not include any recognized solid waste disposal entity that may receive ferrous and nonferrous metals as part of the receipt of solid waste.

*Seller* means the individual/person from whom the regulated metal property is acquired. If the regulated metals property is acquired by the secondary metals recycler through an authorized employee/agent of a business entity, then the term "Seller" refers to the business entity.

*Utility* means any person, firm, corporation, association or political subdivision, whether private, municipal, county or cooperative, which is engaged in the sale, generation, provision or delivery of gas, electricity, heat, oil, water, sewer, telephone, telegraph, radio, television or telecommunication service.

*Vehicle used in the ordinary course of business of transporting nonferrous metals* means and includes, but is not limited to, vehicles used by gas, electric, communications, water, sewer, oil, plumbing, and climate conditioning service providers and their

employees, agents and contractors, in the course of providing these services; and, vehicles used by registered secondary metals recyclers in the conduct of their business.

## **SECTION SIX: PAYMENT LIMITATIONS ON TRANSACTIONS; EXEMPTIONS**

(a) *Prohibition.* A secondary metals recycler may not make a contemporaneous payment of cash, check, bank draft, money, coupon, voucher or other type of valuable consideration to the Seller of restricted regulated metals property.

(b) *Payment for purchase.* Payment by a secondary metals recycler for the purchase of restricted regulated metals property must be made by either:

(1) Check or bank draft complying with all of the following:

- a. The check or bank draft must be drawn on the secondary metals recycler's business account; and
- b. Be made payable to the Seller; and
- c. Be mailed by the secondary metals recycler through regular U.S. mail directly to the Seller's current street address on file with the secondary metals recycler. Delivery of payment to a Post Office box is prohibited; and
- d. Be mailed within three days of the regulated metals property acquisition.

OR

(2) Electronic bank draft or funds transfer complying with all of the following:

- a. The electronic bank draft or funds transfer must be made directly to a bank account on file with the secondary metals recycler and for which the Seller is the identified/authorized account holder; and
- b. The electronic bank draft or transfer must be completed no later than the close of business on the regular business day following the day of the regulated metals property acquisition.

(c) *Exceptions allowing contemporaneous payment at the time the regulated metals property is acquired.* The secondary metals recycler may provide a check, made out to the Seller, contemporaneous with the purchase/acquisition of the regulated metals property only if the Seller (or Seller's agent if appropriate) provides proof to the secondary metals recycler of being in one of the following categories:

- (1) Organization, corporation, or association registered with the state as a charitable, philanthropic, religious, fraternal, civic, patriotic, social or school-sponsored organization or association or from any nonprofit corporation or association;
- (2) A law enforcement officer acting in an official capacity;
- (3) A trustee in bankruptcy, executor, administrator, or receiver;
- (4) Any public official acting under judicial process or authority;
- (5) The sale is on the execution or by virtue of any process issued by a court; or
- (6) A manufacturing, industrial or other commercial vendor that generates regulated metals property in the ordinary course of business, and the business entity/Seller's authorized agent is selling the restricted regulated metals property actually produced in the normal course of business.

#### **SECTION SEVEN: RESTRICTED REGULATED METAL PROPERTY; PROOF OF OWNERSHIP REQUIRED**

(a) *Purchase/acquisition of restricted regulated metal property.* A secondary metals recycler may not purchase/acquire any items of restricted regulated metal property without first obtaining proof that the Seller either owns the property or is otherwise lawfully authorized to sell the property.

(b) *Reasonable proof.* It is the Seller's responsibility to provide reasonable proof as to ownership of the property offered for sale to the secondary metals recycler; or, if the Seller is acting through and agent, employee, contractor etc., that the Seller's representative is duly authorized to act on the Seller's behalf.

The secondary metals recycler must electronically scan and preserve in digital format, images of the documents upon which the secondary metals recycler relied to establish reasonable proof of ownership or authority to act on the Seller's behalf. These records must be preserved by the secondary metals recycler for five years from the date of the transaction.

(c) *Restricted regulated metal property.* The following items, or portions thereof, are deemed restricted regulated metal property:

- (1) A manhole cover.
- (2) An electric light pole or other utility structure and its fixtures, wires and hardware.

- (3) A guard rail.
- (4) A street sign, traffic sign or a traffic signal and its associated fixtures and hardware.
- (5) Communication, transmission, distribution and service wire for a utility including copper or aluminum wire bus bars, connections and grounding plates or grounding wire.
- (6) A funeral marker or funeral vase.
- (7) An historical marker.
- (8) Railroad equipment, including but not limited to a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.
- (9) Any metal item that upon reasonable inspection bears an observable mark with any form of the name, initials or logo of a governmental entity, utility company, cemetery or railroad.
- (10) A copper, aluminum or aluminum-copper condensing or evaporator coil, including its tubing or rods, from heating or air conditioning units (excluding motor vehicle air conditioning or heating units).
- (11) An aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts.
- (12) Stainless steel beer kegs.
- (13) A catalytic converter or similar device or any nonferrous part of a catalytic converter unless purchased as part of a whole vehicle.
- (14) Metallic wire that was burned in whole or part to remove its insulation.
- (15) Brass or bronze commercial valves or fittings, which are commonly used on structures for access to water for the purpose of extinguishing fires.
- (16) 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.
- (17) A shopping cart.
- (18) Storm drain gratings or covers.

## SECTION EIGHT: ELECTRONIC TRANSACTION RECORDS REQUIRED

(a) *Electronic record format.* All secondary metals recyclers must maintain electronic records, in the English language, of all purchase transactions to which the secondary metals recycler is a party. The format of the electronic records will be in the Florida Integrated Network for Data Exchange and Retrieval Software or such other software as is designated in writing by the Office of the Lee County Sheriff.

(b) *Responsibility to meet electronic data specifications.* It is the responsibility of the individual secondary metal recycler, or employee thereof, to obtain the most current data specifications of the designated electronic format.

(c) *Computer hardware/software assistance.* In the event a secondary metal recycler is unable to acquire the computer hardware and software necessary to create, store and transmit the records required under this section, the Office of the Sheriff may, at the Sheriff's option, provide the secondary metals recycler with the necessary computer hardware and software.

(d) *Required electronic information.* The following information must be maintained and transmitted by the secondary metals recycler to the Lee County Office of the Sheriff, in the electronic format prescribed by the Office of the Sheriff, for all regulated metals property transactions:

- (1) The name and address of the secondary metals recycler;
- (2) The name, initials, or other identification of the individual entering the information regarding the transaction;
- (3) The date and time of the transaction;
- (4) The weight, quantity, or volume and an accurate description of the type of regulated metals property acquired in the transaction;
- (5) The distinctive number from the personal identification card the Seller (or person delivering the regulated metals property as an agent of the Seller) presented at the time of the transaction;
- (6) A physical description of the Seller (or person delivering the regulated metals property as an agent of the Seller), including:
  - a. Full name, current residential address, workplace, and home and work phone numbers;

- b. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks (eg. scars, tattoos etc.);
  - c. A description of the vehicle used by the Seller to deliver the regulated metals property, including the make, model, and tag number of the vehicle and the trailer; and
  - d. Any other information required by the form approved by the Florida Department of Law Enforcement under FS §538.19.
- (7) The Seller's (or person delivering the regulated metals property as an agent of the Seller) fingerprint of the right thumb, free of smudges and smears.

(e) *Transmission to the Office of the Sheriff.* The required electronic information identified above with respect to the secondary metals recycler's business for the preceding day must be electronically transmitted to the Office of Lee County Sheriff by 10:00 a.m. on each day the secondary metals recycler is open for business.

(f) *Maintenance of electronic records.* A secondary metals recycler must maintain or cause to be maintained the information required by this section for not less than five years from the date of the purchase transaction.

**SECTION NINE: ENFORCEMENT**

Enforcement of the provisions of this ordinance will be by and through the Office of the Lee County Sheriff.

**SECTION TEN: PENALTIES–CIVIL/CRIMINAL**

(a) *Criminal penalties.* Pursuant to FS §125.69, any person violating the provisions of this ordinance may be subject to prosecution in the name of the state in the same manner as misdemeanors are prosecuted; and, upon conviction, the violator may be punished by a fine not to exceed \$500, or by imprisonment in the county jail for a period not to exceed 60 days, or by both fine and imprisonment.

(b) *Civil penalties.* The Office of the Sheriff may enforce the provisions of this ordinance using the procedures set forth in FS Ch. 162, Part II. Civil penalties for violating the provisions of this ordinance are as follows:

- 1<sup>st</sup> violation \$100.00
- 2<sup>nd</sup> violation \$250.00
- 3<sup>rd</sup> violation \$500.00

(c) *Attorney's fees and costs.* The Office of the Sheriff is entitled to seek and receive reasonable attorney's fees and costs for prosecuting a violation of this ordinance.

(d) Civil penalties assessed and paid under this ordinance will, to the extent funds are returned to the County through the Court system, be credited to an account string identified by the Office of the Sheriff.

(e) Nothing in this section prohibits the County from prosecuting a violation of this ordinance by any other legal means afforded the County.

#### **SECTION ELEVEN: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

#### **SECTION TWELVE: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

#### **SECTION THIRTEEN: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

#### **SECTION FOURTEEN: EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

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Commissioner Manning made a motion to adopt the foregoing ordinance, seconded by Commissioner Bigelow. The vote was as follows:

JOHN E. MANNING	<u>Aye</u>
BRIAN BIGELOW	<u>Aye</u>
RAY JUDAH	<u>Absent</u>
TAMMARA HALL	<u>Absent</u>
FRANK MANN	<u>Aye</u>

DULY PASSED AND ADOPTED THIS 8<sup>th</sup> day of November, 2011.

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BY: Marcia Wilson  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: J. C. Manning  
Chair

APPROVED AS TO FORM:

BY: Dawn E. Perry-Lehnert  
Dawn E. Perry-Lehnert  
Office of the County Attorney



STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby certify that the above and foregoing, is a true and correct copy of Ordinance No. 11-26, adopted by the Board of Lee County Commissioners, at their meeting held on the 8th day of November, 2011 and same filed in the Clerk's Office.

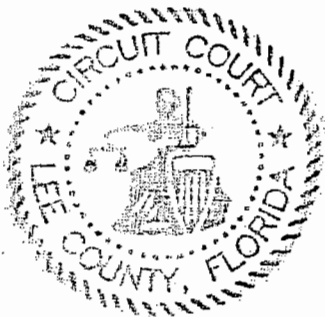
Given under my hand and seal, at Fort Myers, Florida, this 9th day of November 2011.

CHARLIE GREEN,  
Clerk of Circuit Court  
Lee County, Florida

By:

Marcia Wilson

Deputy Clerk



November 9, 2011

Liz Cloud  
Department of State  
Bureau of Administrative Code  
The RA Gray Building  
500 South Bronough St.  
Tallahassee, FL 32399-0250

RE: Ordinance No. 11-26  
Lee County, Florida

Dear Ms. Cloud:

Enclosed is a certified copy of Ordinance No. 11-26, adopted by the Board of Lee County Commissioners on November 8, 2011.

Please use the enclosed envelope when sending your acknowledgment to our office. Thank you for your cooperation.

Sincerely,

Charlie Green, Clerk



Marcia Wilson  
Deputy Clerk

Enclosure



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**DIVISION OF LIBRARY AND INFORMATION SERVICES**

**KURT S. BROWNING**  
Secretary of State

November 14, 2011

Honorable Charlie Green  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated November 9, 2011 and a certified copy of Lee County Ordinance No. 11-26, which was filed in this office on November 10, 2011.

Sincerely,

Liz Cloud  
Program Administrator

LC/srd

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2011 NOV 18 PM 3:45

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250

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