

ORDINANCE NO.: 2012 - 7

**AN ORDINANCE OF THE HERNANDO COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO SECONDARY METALS RECYCLERS; PROVIDING FOR INTENT AND DEFINITIONS; ESTABLISHING MANDATORY REQUIREMENTS FOR SECONDARY METALS RECYCLERS INCLUDING THE ELECTRONIC MAINTENANCE AND ELECTRONIC TRANSMISSION OF PURCHASE TRANSMISSION DATA; ADMINISTRATION AND ENFORCEMENT; REFRIGERANT REMOVAL VERIFICATION; PROOF OF OWNERSHIP OF RESTRICTED REGULATED METALS; APPLICABILITY AND EXEMPTIONS; AND INCORPORATION OF STATE LAW BY GENERAL REFERENCE; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of County Commissioners of Hernando County, Florida, is a jurisdiction experiencing growing problems with the theft of ferrous and/or nonferrous metal materials; and

**WHEREAS**, the theft of such ferrous and/or nonferrous metal material often results in its unlawful sale to secondary metals recyclers, in violation of existing Florida law; and

**WHEREAS**, the Board of County Commissioners of Hernando County, Florida, are concerned with the potential inability of law enforcement to sufficiently and timely investigate such matters, due to the increase in such purchase transactions; and

**WHEREAS**, a mandatory uniform and electronic system of maintaining and transmitting such purchase transaction data kept by secondary metals recyclers will prove to be a more efficient system to assist law enforcement in their efforts to conduct thorough investigations in matters involving the sale of stolen ferrous and/or nonferrous metal material to secondary metals recyclers; and

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CLERK OF THE BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA

**WHEREAS**, Hernando County, as a political subdivision of the State of Florida, pursuant to its home-rule authority and Section 538.17, Florida Statutes, may enact more restrictive laws than found in state law to regulate secondary metals recyclers in the interest of public safety; and

**WHEREAS**, the Board of County Commissioners of Hernando County, Florida, desires to enforce violations of the Ordinance through prosecution in the same manner as misdemeanors are prosecuted, pursuant to Section 125.69, Florida Statutes; and

**WHEREAS**, the Board of County Commissioners of Hernando County, Florida, finds that implementation of this Ordinance as set forth herein will promote, protect and improve the health, safety and welfare of its citizens, consistent with the authority of and limitations on the County pursuant to the Florida Constitution and Florida Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, AS FOLLOWS:**

**SECTION 1. WHEREAS CLAUSES**

The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**SECTION 2. SHORT TITLE**

This Ordinance shall be known as and may be cited as the “Hernando County Secondary Metals Recyclers Ordinance.”

**SECTION 3. FINDING OF FACTS AND PURPOSE.**

The purpose of this Ordinance is to protect the health, safety, and welfare of the citizens of

Hernando County, pursuant to Chapter 125, Florida Statutes, by mandating the form of purchase transaction information kept by secondary metals recyclers, as defined herein, provided in an electronically formatted and maintained database to law enforcement officials. Such mandatory provisions shall assist law enforcement in their efforts to conduct timely and thorough investigations in matters concerning the theft of ferrous and/or nonferrous metals.

#### **SECTION 4. DEFINITIONS**

Unless the context otherwise requires, the following definitions shall apply to this Ordinance:

**Appliance** means any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller or freezer.

**Auction House** means any premises where any article of personal property is sold, via competitive bidding process between 1 or more parties, to the highest bidder or is sold at public outcry or any auction business as defined in section 468.382(1), Florida Statutes.

**Coin Dealer** means any person or entity who engages in the purchase, collecting or trading of coins or other forms of minted legal tender.

**Ferrous Metals** shall mean any metals containing significant quantities of iron or steel.

**Fixed Location** shall mean 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 three hundred sixty four (364) days.

**Flea Market** means a market, usually held outdoors or indoors in such places as a warehouse or other large open area, on any premises where new items, articles labeled as antiques, second hand goods, or precious metals are the subject of a transaction to be sold, exchanged, bartered, traded or accepted for consignment. A Flea Market may also include a market where inexpensive merchandise or food and drink are sold as incidental to the transaction of secondhand goods or precious metals.

**Flea Market Merchant** means any person who occupies any portion of any premises used for a Flea Market which engages in a transaction involving secondhand goods.

**Flea Market Operator** means any person who rents space to others for purpose of conducting a Flea Market.

**Garage Sale, Estate Sale or Lawn Sale** means any transaction or secondhand goods or precious metals by any Seller on premises, owned by the seller, and which must be primarily used as a dwelling or residence of the seller, and can occur no more than four (4) times on the same premises within a calendar year.

**Jewelry** means a personal ornament that contains precious metals and may contain gemstones.

**Mall – Mini Mall** means any premises where secondhand articles of personal property including but not limited to articles labeled or referred to as “antique” are sold, exchanged, bartered or accepted for consignment and/or new merchandise is sold as an incident thereto.

**Mail-In Secondhand Precious Metals Dealer** means any person or entity that conducts business within Hernando County and, contracts with other persons or entities to buy secondhand goods or precious metals through an Internet website, the United States mail, or telemarketing.

**Nonferrous Metals** shall mean 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 part I.

**Personal Identification Card** shall mean a valid driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles under Sections 322.03 and 322.051, Florida Statutes, or an equivalent form of identification issued by another state, a military identification card, a passport, or an appropriate work authorization issued by the United States Bureau of Citizenship and Immigration Services, which contains a photograph.

**Precious Metals** means any item containing any gold, silver, platinum, or any combinations thereof.

**Precious Metals Dealer or Gold Dealer** means a secondhand dealer who normally or regularly engages in the business of buying Precious Metals, including but not limited to coins and jewelry.

**Purchase Transaction** shall mean a transaction in which a secondary metals recycler gives consideration for regulated metals property.

**Refrigerant** means for these purposes, any substance consisting in part or whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect.

**Regulated Metals Property** shall mean any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers. The term shall include stainless steel beer kegs.

**Restricted Regulated Metals** means any of the following specific regulated metal items:

- (a) manhole cover;
- (b) electric light pole or other utility structure and its fixtures, wires, and hardware which are readily identifiable as coming from the utility structure;
- (c) guard rail;
- (d) street sign, traffic sign or traffic signal or its fixtures and hardware;
- (e) communication, transmission, distribution, and service wire, from a utility including copper or aluminum bus bars, connectors, and grounding plates or grounding wire;
- (f) funeral marker or funeral vase;
- (g) historical marker;

(h) railroad equipment, including, but not limited to; any track or rail, tie plate, signal house, control box, switch plate, E clip or rail tie junction;

(i) any metal item that is observably marked, upon reasonable inspection with any form of the name, initials or logo of a governmental entity, utility company, cemetery or railroad;

(j) any copper, aluminum or aluminum-copper condensing or evaporator coil, including its tubing or rods, from a heating, air conditioning or heat exchange unit (excluding coils from window air conditioning units and automobiles):

(k) aluminum or stainless steel container or bottle designed to hold propane for fueling forklifts;

(l) stainless steel beer kegs;

(m) catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a vehicle;

(n) metallic wire that was burned in whole or in part to remove insulation;

(o) brass or bronze commercial valves or fittings, referred to as FDC valves, that are commonly used on structures for access to water for the purpose of extinguishing fires;

(p) brass or bronze residential or commercial potable water backflow preventer valves that are valves commonly used to prevent backflow of potable water into municipal or domestic water systems from commercial or residential structures; or

(q) shopping cart.

**Secondary Metals Recycler** shall mean any person who 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 has facilities for 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, other than by the 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.

**Secondhand Dealer** means any person, corporation or other business organization or entity which is not a Secondary Metals Recycler and who is transacting in Secondhand Goods. The term includes any person who conducts business as an Antique Dealer, Auction House, Coin Dealer, Flea Market Merchant, Gold Dealer, Precious Metals Dealer, Swap Shop Operator or Mail-In Secondhand precious metal dealer.



**Secondhand Goods** means personal property previously owned or used. The term includes precious metals and coins, with an intrinsic value greater than their face value due to their precious metal content. The term does not include Regulated Metals, Restricted Regulated Metals, Firearms, Office Furniture, Pianos, Books, Clothing, Organs, Motor Vehicles, Costume Jewelry, and Secondhand Sports Equipment that is not permanently labeled with a serial number.

**Seller** means any person from whom the items regulated under this Article are acquired.

**Swap Shop** means the fixed or non-fixed place or premises at which a person engages in transactions involving secondhand goods.

**Technician** means any person who performs maintenance, service, repair or disposal of appliances that could be reasonably expected to release refrigerants from appliances into the atmosphere.

**Transaction or Transacting** means any purchase, consignment, barter or exchange.

**Transaction Form** means the written record of a Transaction completed by a Secondhand Dealer or Secondary Metals Recycler approved by the Florida Department of Law Enforcement and the Hernando County Sheriff's Office.

**Utility** means any 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, water, oil, sewer service, telephone service, telegraph service, radio service or telecommunication service.

## SECTION 5. ELECTRONIC TRANSACTION RECORDS REQUIRED

A secondary metals recycler shall maintain a legible electronic record, in the English language, of all purchase transactions to which such secondary metals recycler is a party. Such electronic format shall be specified by the Hernando County Sheriff's Office and promulgated by way of the Hernando County Sheriff's Office Secondary Metals Recyclers Data Specifications. It shall be the responsibility of the individual secondary metals recycler, or any employee thereof, to obtain the most current data specifications from the Hernando County Sheriff's Office. Such data specifications may be subject to amendments by the Hernando County Sheriff's Office from time to time.

The following information shall be maintained and transmitted in the specified electronic format and method:

- (a) the name and address of the secondary metals recycler;
- (b) the name, initials, or other identification of the individual entering the information regarding the transaction;
- (c) the date and time of the transaction;
- (d) the weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction to include the make, model, and serial number of the regulated metals if present;
- (e) The amount of consideration given in a purchase transaction for the regulated metals property;

(f) the distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler;

(g) A description of the person from whom the goods were acquired, including:

(1) full name, current residential address, workplace, home and work phone numbers;

(2) height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks;

(3) a vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property;

(4) any other information required by the form approved by the Department of Law Enforcement, as specified in Section 538.19, Florida Statutes.

(h) a digital image clearly depicting the regulated metals property which are the subject of the transaction with the secondary metals recycler;

(i) a sworn acknowledgement, signed by the person involved in the transaction with the secondary metals recycler, verifying that they are the rightful owner of the regulated metals property or that they are otherwise entitled to purchase, sell, consign, or trade the regulated metals property.

Such information shall be electronically transmitted to the Hernando County Sheriff's Office no later than 10:00 A.M. on each day the secondary metals recycler is open for business and no later than twenty-four (24) hours following the transaction.

A secondary metals recycler shall maintain or cause to be maintained the information required by

this section for a period of no less than five (5) years from the date of the purchase transaction.

If a purchase transaction involves the transfer of regulated metals property from a secondary metals recycler registered with the department to another secondary metals recycler registered with the department, the secondary metals recycler receiving the regulated metals property shall record the name and address of the secondary metals recycler from which it received the regulated metals property in lieu of the requirements of Section 5(g) listed above.

A secondary metals recycler, who maintains the information required in this Section in an electronic database, shall have the form approved by the Florida Department of Law Enforcement, as provided in Section 538.19, Florida Statutes, upon request by law enforcement officers. If the thumbprint is obtained electronically, it must be captured at 1000 dpi or higher.

#### **SECTION 6. INSPECTION OF PREMISES**

Law enforcement officers shall have the power to inspect in a lawful manner at all reasonable business hours any premises which are subject to this Ordinance for the purpose of determining whether the provisions of this Ordinance are being violated or to secure such other evidence as may be necessary for prosecution under this Ordinance.

#### **SECTION 7. NOTICE TO SELLERS**

All secondary metals recyclers shall at all times, maintain in a prominent place, in open view to a seller, a notice, in not less than two-inch lettering that contains the following language:

“ANY PERSON ATTEMPTING TO SELL ANY REGULATED METALS OR RESTRICTED REGULATED METALS MUST PRESENT: A CURRENT, VERIFIABLE, GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION CARD, SIGNATURE, AND LEGIBLE THUMBPRINT.

ANY PERSON WHO KNOWINGLY VIOLATES THIS REQUIREMENT COMMITS A FELONY UNDER SECTION 538.19, FLORIDA STATUTES.”  
“WE WILL NOT ACCEPT ANY WHOLE, PARTIALLY DISMANTLED, DISMANTLED, OR CRUSHED APPLIANCE FOR DISPOSAL WITHOUT ACCOMPANYING DOCUMENTATION FROM A CERTIFIED TECHNICIAN OF PROPER REFRIGERANT REMOVAL.”

This notice may be on a single sign or combined with any other sign required by law to be displayed.

#### **SECTION 8. REGISTRATION**

A secondary metals recycler shall not transact in any goods, without previously registering that location with the Florida Department of Revenue and Tax Collector, regardless of whether that location is temporary or permanent. The secondary metals recycler shall notify the Hernando County Sheriff’s Office upon application for any new location and must prominently display such license bearing that location address.

#### **SECTION 9. VIOLATION**

A violation of this Ordinance shall occur when a secondary metals recycler or any employee thereof fails to comply with the requirements of Section 5 listed above. Violations of this Ordinance shall be enforced pursuant to Section 10 below.

#### **SECTION 10. ADMINISTRATION AND ENFORCEMENT.**

The responsibility of initiating and administering enforcement of this section shall be vested in the authority having jurisdiction over the respective secondary metals recycler. Pursuant to Section 125.69, Florida Statutes (2010), a secondary metals recycler or any employee thereof who violates any provision of this Ordinance shall be subject to prosecution in the name of the State in the same manner as misdemeanors are prosecuted; and, upon conviction, such person shall be

punished by a fine not to exceed Five Hundred Dollars (\$500.00), or by imprisonment in the County Jail not to exceed sixty (60) days, or by both such fine and imprisonment. Each day or fraction thereof the violation continues shall be considered as a separate offense.

#### **SECTION 11. STOLEN GOODS; PETITION FOR RETURN.**

If a secondary metals recycler contests the identification or ownership of the regulated metals property, the person, other than the secondary metals recycler claiming ownership of any stolen goods in possession of a secondary metals recycler may, provided that a timely report of the regulated metals property was made to the proper authorities, bring an action for replevin in the county or circuit court by petition, pursuant to the procedures outlined in Section 538.24, Florida Statutes.

#### **SECTION 12. REFRIGERANT REMOVAL VERIFICATION**

The standards for evacuation of refrigerant to a recovery or recycling machine in 40 C.F.R. Part 82, and as may be amended from time to time, are hereby incorporated into this section by general reference. References to 40 C.F.R. Part 82 in this section shall be as a general reference and incorporate the regulations contained therein as may be amended from time to time.

All secondary metals recyclers shall comply with the requirements of 40 C.F.R. Part 82.

No person or business maintaining, servicing, repairing, or disposing of appliances or equipment, including secondary metals recyclers, may knowingly vent or otherwise release into the environment, any refrigerant(s) and/ or substitute(s) from such appliances or equipment as outlined in 40 C.F.R. Part 82.

All persons, including secondary metals recyclers, must evacuate any refrigerant(s) or have

evacuation performed prior to their purchase by a certified technician and/ or substitute(s) in the entire unit, or the part to be serviced, to a recovery or recycling machine that is certified pursuant to 40 C.F.R. Part 82.

Consistent with 40 C.F.R. Part 82, a certified technician must verify that the applicable level of evacuation has been reached in the appliances or equipment.

Secondary metals recyclers must ensure that all refrigerant(s) and or substitute(s) have been properly removed before any item is buried, shredded, dismantled, sold, or otherwise disposed of either by verifying its removal prior to arrival at the facility; or having the refrigerant(s) and/ or substitute(s) removed in accordance with 40 C.F.R. Part 82.

Consistent with 40 C.F.R. Part 82, secondary metals recyclers must obtain from each seller of appliances or equipment, a written and signed statement from a certified refrigerant recovery technician that the refrigerant has been properly removed from the appliances or equipment being sold. This statement must include the name, address, and phone number of that certified technician, and the specific date the refrigerant(s) and/ or substitute(s) was/ were removed, regardless of whether the appliances or equipment are whole, partially dismantled, dismantled or crushed. These requirements shall be in addition to the data collection requirements contained in Section 5 above.

Secondary metals recyclers must post a warning, in at least two-inch high lettering, stating that they will not accept any whole, partially dismantled, dismantled, dismantled, or crushed appliance for disposal without accompanying documentation of proper refrigerant removal as outlined in Section 7 above.

All records required to be maintained pursuant to this section must be kept on-site and made available to law enforcement upon request, for a minimum of five (5) years unless otherwise indicated.

### **SECTION 13. PROOF OF OWNERSHIP OF RESTRICTED REGULATED METALS**

A secondary metals recycler shall not purchase restricted regulated metals without obtaining reasonable written proof that the seller owns the property such as a receipt or bill of sale or reasonable proof that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, business, or entity owning the property and that the seller is authorized to sell the restricted regulated metals on behalf of that, business, or other entity owning the property.

Reasonable proof of ownership shall include an official document on the letterhead of the entity, indicating that the seller is authorized to sell the restricted regulated metals. However, such a letter must be dated within ninety (90) days of the transaction. A secondary metals recycler must maintain any such record for a minimum of five (5) years unless otherwise indicated.

If at any time a secondary metals recycler or any employee thereof, has reason to believe that a seller is no longer authorized to sell restricted regulated metals, that employee shall make a reasonable inquiry into such authorization and receive confirmation that the seller is authorized, prior to completing the transaction.

### **SECTION 14. APPLICABILITY AND EXEMPTIONS**



This Article shall be applicable in both the unincorporated and incorporated areas of Hernando County, except to the extent that a municipality has adopted or adopts its own Ordinance in conflict with this Ordinance. To the extent that this Ordinance is applicable within a municipality, the County and the municipality shall have concurrent authority and jurisdiction to apply and enforce the Ordinance within the entirety of their jurisdictional boundaries.

**SECTION 15. INCORPORATION OF STATE LAW BY GENERAL REFERENCE**

The provisions of state law governing secondary metals recyclers, and their transactions are hereby incorporated by general reference as they may exist and be amended from time to time. To the extent that the provisions of this Article are more stringent than those of state law, then this Article shall apply.

**SECTION 16. REPEALER**

Any Ordinance provisions in conflict herewith are hereby repealed only to the extent of such conflict.

**SECTION II. SEVERABILITY.**

It is declared to be the intent of the Board of County Commissioners of Hernando County, Florida, that if any section, subsection, clause, sentence, phrase, or provision of this Ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this Ordinance.

**SECTION III. INCLUSION IN THE CODE**

It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Hernando County Code of Ordinances. To this end, any section or subsection of this Ordinance may

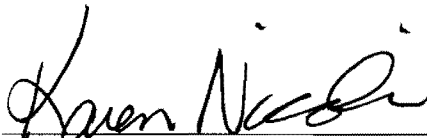
be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section, "article", or other appropriate designation.

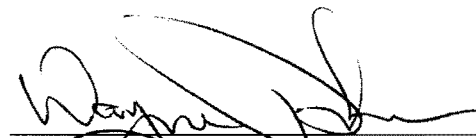
**SECTION IV. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the office of the Secretary of State of Florida that this ordinance has been filed with said office.

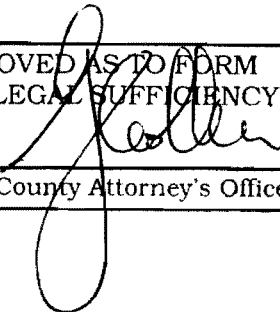
**ADOPTED** in Regular Session this 14 day of February 2012.

**BOARD OF COUNTY COMMISSIONERS  
HERNANDO COUNTY, FLORIDA**

Attest:   
**KAREN NICOLAI**  
Clerk

By:   
**WAYNE DUKES**  
Chairman



APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY   
County Attorney's Office