

BILL NO.49-17

ORDINANCE NO.10536-17

AN ORDINANCE OF THE COMMON COUNCIL OF SOUTH BEND, INDIANA, AMENDING SECTION 4-51 OF CHAPTER 4, ARTICLE 4 OF THE SOUTH BEND MUNICIPAL CODE PERTAINING TO LICENSING AND REGULATION OF SCRAP METAL, JUNK DEALERS, VALUABLE METAL DEALERS AND RECYCLING OPERATIONS

STATEMENT OF PURPOSE AND INTENT

The City of South Bend's regulation of the City's Scrap Metal Dealers, Junk Dealers, Valuable Metal Dealers and Recycling Operations does not reflect the current community business standards relating to the permitted business hours of these businesses. Most businesses, unless prohibited by state statute are permitted to operate on Sundays. This amendment is intended to eliminate the prohibition of Sunday business hours for these businesses. The amendment is also intended to update the state statutory references to comply with current statutes now in effect.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, as follows:

Section I. Chapter 4, Article 4, Section 4-51 is hereby amended to read as follows:

Sec. 4-51. - Scrap metal dealers, junk dealers, valuable metal dealers and recycling operations.

(a) *Definitions.* As used in this section:

- (1) *Business records* mean the records of any purchase, trade, barter or other transaction that involves the receipt of scrap metal and/or valuable metals which are required as part of the licensing procedures addressed herein, but do not include correspondence, tax returns or financial statements.
- (2) *Ferrous metals* mean those metals which will attract a magnet.
- (3) *Junk dealers means* any person who keeps or maintains a yard, covered or uncovered, space or place, within the City for the purpose of, and engaging in the business of, buying or selling, exchanging or storing of old or used materials, bottles, glassware, paper, bagging, rags or rope, or any other type of material commonly referred to as "junk."
- (4) *Nonferrous metals* mean those metals which will not normally attract a magnet, including copper, brass and aluminum.
- (5) *Purchase* means acquiring an item of value where consideration is to be paid.

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- (6) *Purchase of valuable metal* means acquiring a valuable metal product or products by a valuable metal dealer in a single transaction of less than one hundred dollars (\$100.00), but does not include purchases between scrap metal processing facilities which are defined in IC 8-12-1-3(d).
- (7) *Recycling operators* means any person who keeps or maintains a yard, covered or uncovered, space or place, within the City for the purpose of, and engaging in the business of, buying or selling, exchanging or storing of old or used materials, junk, scrap metals, or scrap materials.
- (8) *Scrap metal dealer* means any person who keeps and maintains a yard, covered or uncovered, space or place, within the City for the purpose of, and engaging in the business of, buying or selling, exchanging or storing of old or used metals, tinware, brass, copper, iron, lumber, old automobiles, or any other such type of material commonly called and referred to as "scrap metals."
- (9) *Scrap metals* include insulated and uninsulated metallic cables.
- (10) *Scrap or junk materials* means any used metal, both ferrous and nonferrous, lumber, old automobiles, bottles, old glassware, old tinware, paper, rags, iron, lumber or any other such materials commonly called and referred to as "scrap or junk materials"; with aluminum beverage cans or tin cans being excluded.
- (11) *Scrap or junkyard* means any yard, area, space or place, either covered or uncovered, enclosed or unenclosed, maintained and actually used for the purpose of the accumulation or the buying or selling, storing or exchanging of any such scrap metals, junk or scrap materials.
- (12) *Transfer station* means a place or location where scrap metals, junk, trash or garbage or scrap materials are deposited and then transferred in larger quantities by a different carrier, which are governed by extensive state and federal regulations and further regulated by the Indiana Department of Environmental Management (IDEM), the Solid Waste Management Board and the Environmental Protection Agency (EPA) and exempt from the provisions of this Section.

(13) *Valuable metal* means any product made of copper, copper alloy, brass, aluminum, aluminum alloy, ferrous metals or nonferrous metals. means any product made of metal that readily may be resold. The term:

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- (1) includes metal bossies and small component motor vehicle parts; and
- (2) does not include the following:
 - o (A) A beverage can.
 - o (B) Used jewelry regulated under IC 24-4-13.
 - o (C) Precious metal regulated under IC 24-4-19.

(14) *Valuable metal dealer* means any individual, firm, corporation, limited liability company, or partnership engaged in the business of purchasing and reselling valuable metal either at a permanently established place of business or in connection with a business of an itinerant nature, including junk shops, junk yards, junk stores, auto wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers in junk, and junk carts or trucks. The term includes a core buyer. The term does not include a person who purchases a vehicle and obtains title to the vehicle.

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- (b) *Rule-making authority of Board of Public Works.* The Board of Public Works may have the authority to adopt rules and regulations related to the monitoring and enforcement of this Section, pursuant to the following procedure:
 - (1) The Board shall give at least two (2) weeks' written notice of the meeting date, time and location at which any rules or regulations may be considered for adoption. Said notice shall be sent to the City Clerk, Common Council Members, Fire Prevention Bureau, and the Neighborhood Code Enforcement Office; and such notice must be conspicuously posted on the City's website.

- (2) The Board shall enclose a verbatim copy of all proposed rules and regulations with each notice sent pursuant to this subsection; and must conspicuously post such proposed rules and regulations verbatim on the City's website.
 - (3) No rule or regulation shall be adopted which would in effect amend the procedures included in Section 4-51 of this Code; nor shall the Board adopt any rule or regulation which broadens the intent of that section.
 - (4) Upon the adoption of any rule or regulation, the Clerk of the Board of Public Works shall send a copy of the same to the City Clerk, Common Council Members, Fire Prevention Bureau, and the Neighborhood Code Enforcement Office; with this taking place within twenty-four (24) hours after the Board's action. The Clerk of the Board of Public Works shall also be required to post such rules or regulations on the City's website within twenty-four (24) hours after the Board's action. Rules and/or regulations which are not in compliance with this subsection shall be null and void.
- (c) *Resolution required.* No person shall engage in the scrap or junk material business or hold himself forth as a dealer in scrap materials or scrap metals, or as a valuable metal dealer, or keep or maintain a scrap or junkyard, or recycling operation within the City without first procuring from the Common Council, a resolution approving the issuance of a license for the conduct of such business and the maintenance and operation of such metal yard, junkyard or recycling operation.
- (d) *Application; zoning restrictions.*
- (1) An application for a license under this section shall be filed with the Office of the City Clerk and it shall be accompanied by a drawing or diagram showing the property lines of the proposed scrap or junkyard, or recycling operation. Filing of this application with the Office of the City Clerk shall satisfy the requirements of Section 4-6 of this Chapter.
 - (2) No license shall be issued to any proposed scrap or junkyard, recycling operation or transfer station for a location within one thousand (1,000) feet of any lot being lawfully used, entirely or in part, as a single-family, two-family or multifamily dwelling, or any of the following zoning use districts as defined by the zoning chapter of this Code:
 - a. SF1 Single-Family and Two-Family District
 - b. SF2 Single-Family and Two-Family District
 - c. MF1 Urban Corridor Multifamily District
 - d. MF2 High-Density Multifamily District
 - e. OB Office Buffer District
 - f. MU Mixed Use District
 - g. "O" Office District
 - h. LB Local Business District
 - i. CB Community Business District
 - j. CBD Central Business District
 - k. GB General Business District

unless such footage requirement is waived by specific resolution of the Common Council. Such resolution must incorporate one of the following considerations for such a waiver: that the majority of the business operation would take place within an enclosed structure, that the business would be located beyond one-half (½) of the footage requirement or that a majority of the owners affected by the new business which are within the one thousand-foot requirement give approval.
 - (3) The foregoing subsection (2) shall not apply to any scrap or junkyard licensed as of the effective date of this section. If the license for the scrap or junkyard lapses for any period of time, is revoked

or is not renewed for any reason, then the provisions of the foregoing subsection (2) shall apply to the scrap or junkyard.

(e) *Approvals required.*

- (1) Upon receipt of an application for the issuance of a license for the maintenance and operation of a scrap or junkyard, or recycling operation at a location not previously licensed, the Office of the City Clerk shall upon receipt, date-stamp the application and immediately submit the application to the Fire Prevention Bureau and the Department of Code Enforcement for their inspections; and also provide notice of the filing of said application via email to the Department of Administration and Finance and the Common Council. The Bureau and Department of Code Enforcement shall cause the premises where such proposed scrap or junkyard, or recycling operation is to be located to be visited and inspected for the purpose of determining whether such premises are fit and proper for the maintenance and operation of such a business. All inspections must be completed by the Code Enforcement and the Fire Department's Fire Prevention Bureau within ten (10) business days of the receipt of an application by the City.
- (2) The application shall also be referred to the South Bend Police Department for review and recommendation. The Police Department shall conduct an investigation of each applicant and make a recommendation as to whether the application should be granted. In making its recommendation, the Police Department shall consider the criminal history of the applicant, if any, and the likelihood that granting the application will endanger the health, safety or welfare of the public. A report of the investigation and a copy of the traffic and police record of the applicant, if any, and the recommendation of the Police Department shall be attached to the application and forwarded to the Office of the City Clerk.
- (3) The Office of the City Clerk shall forward to the Common Council President with a copy to the City Controller, the recommendation of the Police Department, and all information provided with or in support of the application in determining whether the application should be granted. Upon receipt of the application and comments or recommendations of the South Bend Departments of Police, Fire and Code Enforcement, the Common Council by resolution shall approve or disapprove such application at its next regular meeting.

In the event that an applicant does not meet current Code requirements as evidenced in writing through the City Administration's inspection process, the Office of the City Clerk may recommend an interim license for such an applicant, with notice being given to the City Controller and the Common Council. The Controller may issue the interim license upon the Clerk's recommendation. Interim licenses shall expire within sixty (60) days, unless the applicant can prove to the Office of the City Clerk that there are extenuating circumstances requiring an extension, which shall require notice to the City Clerk and Council of the date of expiration.

(f) *License procedure; posting of license required.*

- (1) In determining whether to approve and adopt a resolution to issue a permit under this section, the Common Council shall consider the effect or appropriateness of a scrap or junkyard upon the surrounding area, as well as any comments or recommendations provided by the Fire Prevention Bureau, the Department of Code Enforcement or the Board of Public Works. No license application shall be approved without the written approval endorsed upon the application by the Fire Prevention Bureau and Department of Code Enforcement.
- (2) Upon final approval of the application by the Common Council, the Office of the City Controller shall issue or renew the license for maintenance and operation of a scrap or junkyard, or recycling operation. All licenses issued by the Office of the City Controller shall be conspicuously displayed by the applicant by the check-out area of their business. If such application is disapproved by the Fire Prevention Bureau, the Department of Code Enforcement, the Board of Public Works, or the Common Council, the license shall not be issued. The issuance of all licenses under this section shall be subject to compliance with all applicable rules and regulations.

(3) Any applicant may appeal a denial of a license pursuant to the procedures set forth in Section 4-16 of this chapter.

(g) *License fee.*

(1) The fee for an annual license to operate a scrap or junkyard, or recycling operation shall be, two hundred fifty dollars (\$250.00) payable to the Office of the City Controller at the time of the issuance of such license.

(2) The fee for an interim license to operate a scrap or junkyard, or recycling operation shall be seventy-five dollars (\$75.00).

(3) The fee for each sixty-day extension of an interim license to operate a scrap or junkyard, or recycling operation shall be fifty dollars (\$50.00).

(h) *Business hours.* No person licensed under this section shall receive or purchase any property whatever from any person between the hours of 8:00 p.m. and 7:00 a.m., or on **Sundays or legal holidays.**

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(i) *Purchases from and sales by minors.*

(1) No person licensed under this article shall receive or purchase any property whatever from a minor at any time, except rags, paper and/or aluminum beverage cans or tin cans.

(2) No minor shall sell or offer for sale to any person having a license as a junk dealer any of the articles mentioned in this article as coming under the term "junk," except the sale of rags, paper, and/or aluminum beverage cans or tin cans as provided in subsection (i)(1).

(j) *Business records of purchases required; information required; notice to law enforcement agencies; exceptions for aluminum beverage cans and/or tin cans.*

(1) Every dealer or operator required to be licensed under this section shall keep at his place of business a record of all purchases in accordance with accepted accounting practices. Each dealer or operator shall maintain at the place of business a bound book with consecutively numbered pages, in which the dealer or operator shall enter or cause to be entered in writing using permanent ink.

(2) Every transaction involving ferrous or nonferrous metal where a single transaction involves less than one hundred dollars (\$100.00), but does not include purchases between scrap metal processing facilities which are defined in IC 8-~~12-1-3(a)~~**23-1-36** shall require the following to be obtained from each person involved in bringing such terms for the transaction on a form signed under pains and penalties of perjury. Said form shall be provided by the Department of Administration and Finance to all dealers or operators licensed under this section. All such dealers or operators shall retain completed forms for a period of two (2) years. The following information shall be entered on the forms:

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a. Date, time of purchase and street address where the ferrous and/or nonferrous metal was located prior to being brought to the licensed business for remuneration;

b. Name, address, telephone (landline and cell, if any) of the individual or individuals from whom the scrap metal and/or valuable metal was purchased;

c. Copy of individual(s) driver's license or other government issued identification card which has a picture of the individual or individuals from whom the scrap metal and/or valuable metal was purchased;

d. Thumbprint impressions from the individual or from whom the scrap metal and/or valuable metal was purchased;

e. Motor vehicle license number of the vehicle or conveyance on which the scrap metal and/or valuable metal was delivered and the year, make and model thereof;

f. The price paid for the scrap metal and/or valuable metal;

- g. A description and weight of the scrap metal and/or valuable metal purchased;
 - h. In the alternative, the dealer or operator may maintain the information required by this subsection in a computer program compatible with a program maintained by the South Bend Police Department or pre-approved by the South Bend Police Department. All business records shall be required to be retained for a period of two (2) years.
- (3) *Exceptions for aluminum beverage cans and/or tin cans.* Dealers or operators shall not be required to maintain records for aluminum beverage cans and/or tin cans, nor shall such items be required to be held for seven (7) or three (3) days under subsection (k)(3).
 - (4) *Exceptions for scraping of motor vehicles.* Any municipality who brings in a motor vehicle(s) for scraping shall be exempt from the completion of the form addressed in this section with such municipality complying with all applicable provisions of IC 9-22-1 and other applicable State and/or Federal law requirements.
- (k) *Electronic Report to Police and Records Required for Inspection and Holding Requirements for Scrap Metal and/or Valuable Metals; Ferrous and/or Nonferrous Metal.* ⁶
- (1) Every dealer or operator shall maintain a physical sales report of scrap metal and/or valuable metals. Each dealer or operator shall keep and preserve data on or through an electronic or computer data system database on a daily basis for the preceding twenty-four-hour period of all purchases of any scrap metal and valuable metal items, unless exempted by this section. Such information shall be sent via electronic forms of transmission to the South Bend Police Department using the Records Management System being used by the South Bend Police Department for the preceding twenty-four-hour period on a daily basis. The data shall include the time of purchase of any article of any scrap metal and/or valuable metals and include whether any is marked with a serial number or marked with an owner's engraving or mark. The reports must contain the seller's full legal name, physical address, date of birth, gender, race, height and width, the price paid for each item, the purchase date and time, a description of each article purchased, including identifying marks, engravings, the manufacturer of the item, model number of the item, the serial number of the item, and the seller's driver's license number or the number of any other identification issued by a governmental authority bearing the sellers' photograph with the dealer or operator being required to make a photocopy of the photographic identification presented at the time of transaction. Every dealer or operator is further required to record the motor vehicle license number of the vehicle of conveyance that delivered the valuable metal, the address from where the valuable metal was located before being brought to the dealer or operator, and a photograph of the valuable metal being sold, as well as a photograph of the person from whom the valuable metal is being purchased. The form shall also bear a digital photograph of the items being purchased and a clear, inked, or digital, impression of the seller's right thumb print and the same transaction number as recorded in the dealer's record book as required by paragraph (2) below.

If the right thumb is missing any of the customers' fingerprints may be used with an identification of what finger is used in the right thumb's absence written adjacent to the inked or digital fingerprint on the form. The inked or digital fingerprint shall be made in a manner readable by the Police Department and shall not be blurred or obliterated.
 - (2) Any dealer or operator who is required to be licensed under this section and who has a record with the City of having violated any of the provisions of this section within the past calendar year, shall be required to place a hold on all ferrous and/or nonferrous metal purchased for a minimum period of five (5) business days after notification to the local law enforcement agency required by subsection (1) above, with any additional holding period required for enforcement and investigative purposes being determined on a case by case basis by the South Bend Police Department. The license issued under this section shall specify the amount of time the items are to be held.

- (3) The dealer or operator shall also record the seller's physical description and a description of the property purchased, as required by this section, and shall retain the physical sales report and information for three (3) years from the date of the last purchase recorded therein.
 - (4) Any records required to be kept or maintained under this section shall be available at all times for inspection by the Police Chief or person duly authorized by him or her to inspect the records.
- (l) *Operation and maintenance rules and regulations.*
- (1) All scrap and junkyards, and recycling operations, shall be maintained and operated in compliance with all applicable fire, health and public safety laws of the State and the provisions of this Code and other ordinances of the City.
 - (2) The operators of such yards shall conform with the following rules and regulations:
 - a. Minimum lot area for new yards: All new scrap and junkyards, and recycling operations shall have a minimum lot area of five (5) acres and shall be zoned GI General Industrial District pursuant to the zoning provisions of this Code.
 - b. Fencing: There shall be two (2) types of fencing required to enclose all scrap and junkyards, and recycling operations:
 1. Type A fencing shall consist of fireproof material and shall be a minimum of six (6) feet in height, and constructed so that it can retain all scrap and junk materials within such yards. This fencing shall be of uniform material and color and shall be kept in good repair at all times. Type A fencing shall be used except when Type B fencing is specifically required.

Type B fencing shall consist of opaque or solid fireproof material, and shall be a minimum of eight (8) feet in height. It shall be erected along or near the outside edges of the scrap or junkyard, or recycling operation, and shall completely surround the scrap or junk materials to be stored on the premises. Such fencing shall be of uniform material and color, and shall be kept in good repair at all times. Provided, that any Type B fencing which shall be erected, as required by this section, shall be a minimum of eight (8) feet in height. All new businesses or existing businesses which expand or replace Type B fencing in its entirety after October 1, 1990, shall have opaque fencing which, for purposes of this section, shall mean a barrier of solid material such as wood, metal, or similar material whereby one cannot see through such opaque fence, thereby screening the operation from public view. A chain link fence of said height with metal, wood, or other opaque material through it which entirely blocks the view of the operation is an example of the minimum required opaque fence, as used in this section.
 - c. Buffer strip: All new businesses or existing businesses which expand after July 1, 1980, shall have a buffer planting strip of at least fifteen (15) feet in depth and shall be provided and maintained between the property lines and Type B fencing which abuts public streets, highways and alleys. Such buffer planting strip shall include a compact hedge, row of shrubbery or row of evergreen trees and the property lines shall be planted in grass, other suitable ground cover and/or shrubbery, maintained in good condition, and kept free of litter. Said area may also include pedestrian walkways, driveways, flagpoles and off-street parking subject to the off-street parking regulations of this Code. Any existing scrap or junkyards may provide and maintain a buffer strip as described in this section.
 - d. Storage location restrictions: No scrap or junk materials shall be placed or stored outside of the fencing required by this section. Such junk or scrap stored in such yard, if combustible or inflammable, shall not be stored closer than three (3) feet to such fence enclosing such yard.
 - e. Maintenance of premises: The operators of such businesses shall:

1. Remove therefrom all combustible materials and all inflammable rubbish, leaves, grass, dead trees, brush and other materials not being stored thereon as a part of the business conducted thereon.

Keep storerooms and garages free from rubbish, waste materials and old rags and paper not being stored thereon as a part of the business conducted thereon.

3. Keep all oil, gasoline, oily waste and other greasy material in metal waste cans.
4. Install and keep available fire extinguishers in close proximity to areas within such scrap or junkyards, and recycling operations wherein trash, metal or other waste materials may be burned, and keep and maintain therein an unobstructed fire truck lane of at least ten (10) feet in width into such yard from the main entrance thereof.
5. Cause such scrap or junkyard, and recycling operations to be checked and serviced at reasonable intervals for the effective extermination of rodents in accordance with Health Department standards.
6. Papers, rags and other loose scrap and junk material shall be handled, stored and maintained in such a way as to prevent the same from being loose in such junk or scrap yard, and recycling operations.

- f. Compliance with all noise regulations: Compliance with all stationary noise regulations set forth in Section 13-82 of the South Bend Municipal Code addressing loud and unreasonable noise.

(m) *Semi-annual inspection by Fire Prevention Bureau.* The Fire Prevention Bureau shall inspect each junk or scrap yard, and recycling operations once every six (6) months for the purpose of determining whether or not the owner or operator is in compliance with this Code, and report such findings to the Department of Administration and Finance and the Office of the City Clerk.

(n) *Applications to be filed.* All persons required to be licensed under this section must file an application or renewal application with the Office of the City Clerk. Any specific requirements of the rules and regulations herein which cannot be met by the applicant due to unusual hardship, such as adverse weather conditions, may be granted a thirty-day grace period to complete such requirement(s), however such applicant shall be subject to complying with the interim licensing provisions during such period of time. Such additional time shall be upon proper resolution being petitioned for before the City Clerk's Office setting forth in detail the reasons needed for the additional time. The City Clerk's Office shall notify promptly the Department of Administration and Finance of any such resolution being filed along with a recommendation about granting such interim license. In no event shall more than two (2), sixty-day interim license extensions be granted by the City Controller to any applicant in one (1) licensing year.

(o) *Penalty.* Any violation of the provisions of this section shall be deemed an offense and, upon conviction, the offender shall be fined not less than two hundred dollars (\$200.00), nor more than two thousand five hundred dollars (\$2,500.00). Each violation shall constitute a separate offense and be punishable as such. The imposition of a fine shall be in addition to the exercise by the Department of Administration and Finance or the City of any other right or remedy available in law or equity to address such violation(s).

(p) *License denial and/or revocation.* Suspension or revocation of any license issued under this section shall be governed by the provisions set forth in Section 4-16 of the South Bend Municipal Code.

(q) *Video surveillance.* Effective September 1, 2006, all businesses required to be licensed under this section shall be required to have a video surveillance system monitoring all business transactions which records on video tape when a person tenders his or her signed and verified completed form required by subsection (j)(2) herein, receives remuneration for items regulated under this section, and videos the vehicle in which the scrap metal/valuable metal was delivered to the dealer. Video cameras shall date and time-stamp the video tape. Such tapes shall be retained for thirty (30) days from the date of transaction. Such video surveillance systems shall be operable during all regular business hours when the dealer is accepting valuable metals and/or scrap metals for purchase and shall be

available for any member of the South Bend Police Department to review during the hours of ordinary business. Violation of this subsection shall be considered a separate offense.

- (r) *Providing of false information.* If a person or persons who apply for a license under this section provides false information, such action shall be considered a violation of this section. Such action shall be grounds for suspension, revocation or a denial of a license, in addition to being considered a separate offense for which a citation may be issued.

SECTION II. This Ordinance shall take effect upon passage by this Common Council, approval by the Mayor, and any publication required by law.

Passed on August 28, 2017 by the Common Council of the City of South Bend, Indiana.

Presented to approved and signed by Mayor Peter Buttigieg on September 1, 2017.

Approved: Tim Scott, President of the Common Council

Kareemah Fowler, City Clerk