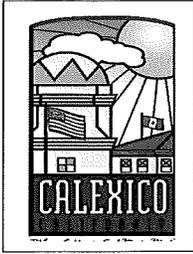


**AGENDA
ITEM**

07



AGENDA STAFF REPORT

DATE: January 23, 2019

TO: Mayor and Councilmembers

APPROVED BY: David B. Dale, City Manager *DD*

PREPARED BY: Carlos Campos & Jill Tremblay, City Attorney

SUBJECT: Second Reading and Adoption of Ordinance No. 1195 - An Ordinance of the City Council of the City of Calexico, California, Repealing and Readopting Chapter 5.60 of the Calexico Municipal Code Regarding Junk Dealers and Recyclers

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Recommendation:

Conduct a second reading of and adopt Ordinance No. 1195.

Background:

Copper prices, as well as aluminum and other non-ferrous metals, have increased sharply over the past few years as the demand for these metals has increased worldwide. These rising prices and high demand are fueling a wave of scrap metal theft. In Calexico, the Police Department has received numerous calls relating to the theft of metals. Metal thieves have been known to steal telephone wires, air conditioner coils, and car radiators. Aluminum gutters, copper downspouts and aluminum bleachers from residences, schools and churches are sought after items for thieves. Residential and commercial construction sites are often targeted for their ample supply of wire and plumbing fixtures.

Existing state law requires scrap metal dealers and recyclers to maintain a written record of all sales and purchases made during the course of their business. For each transaction, scrap dealers and recyclers are required to record:

- 1) The place and date of each transaction;
- 2) The name, valid driver license number or ID card, and vehicle license number;
- 3) A description of the items purchased or sold, including the type, quantity and identification if visible;
- 4) A statement either that the seller is owner of it or the name of the person he obtained it from.

These businesses are also required to allow periodic inspection of their premises and produce their records for inspection by law enforcement. When a law enforcement agency has probable cause to believe that a dealer is in possession of stolen property, they may place a hold for up to 90 days on the sale of the property.

Existing law, however, is inadequate to stem the increase in metal thefts. The high price for these metals has made the theft of these metals very attractive and

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has made thieves bolder and more inventive in their efforts. While most junk dealers and recyclers conscientiously follow state law, others ignore the reporting requirements and purchase metals that are obviously stolen property.

Additional regulations are necessary to discourage metal theft and give law enforcement a better chance to identify and capture these thieves.

Discussion & Analysis:

The attached Ordinance repeals and readopts Chapter 5.60 in an effort to create an ordinance that provides the City with additional tools and resources to effectively and efficiently regulate recyclers in the City of Calexico.

The proposed ordinance establishes new protocols, procedures, and enforcement mechanisms for the businesses and parties involved in recycling, selling, buying, or receiving non-ferrous and ferrous metals, "junk", or scrap metals.

The current municipal code does not adequately address the problem and essentially defers to State law with regard to junk dealers and recyclers. The proposed changes to the municipal code partially focus on the practices, reporting requirements, retention periods, and record collection of the referenced businesses.

Additionally, the proposed ordinance allows for inspections and compliance evaluations by City staff in addition to law enforcement officers. The proposed ordinance is modeled on others throughout the State and should aid in curbing theft, receipt of stolen property, and property loss to businesses and residences.

California Environmental Quality Act

The Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Fiscal Impact:

None.

Attachments:

1. Ordinance No. 1195 An Ordinance of the City Council of the City of Calexico, California, Repealing and Readopting Chapter 5.60 of the Calexico Municipal Code Regarding Junk Dealers and Recyclers

ORDINANCE NO. 1195

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, REPEALING AND READOPTING CHAPTER 5.60 OF THE CALEXICO MUNICIPAL CODE REGARDING JUNK DEALERS AND RECYCLERS.

WHEREAS, state law currently sets out certain reporting requirements for secondhand and junk dealers; and,

WHEREAS, the City's Municipal Code does not provide for such reporting requirements; and,

WHEREAS, the City wishes to address the serious and increasing criminal trafficking in stolen metals now occurring within the City and other communities throughout the Imperial Valley due to the rising market prices of used "commodity" metals such as iron and ferrous metal, copper, brass, aluminum, nickel, stainless steel, and alloys; and,

WHEREAS, the increasing theft of such commodity metals has been documented by the Calexico Police Department arrest records and incident reports which provide clear and convincing evidence of such escalating criminal activity for profit; and,

WHEREAS, such thefts cause substantial physical and economic damages, losses and costs to victims; and,

WHEREAS, the purpose of these amendments to Chapter 5.60 of the Municipal Code is to protect the safety, property interests, health and welfare of the City and its residents by regulating the sale of scrap metals to try to prevent such theft by making them difficult to market.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of this ordinance.

Section 2. Amendment to Municipal Code. Chapter 5.60 is repealed in its entirety and readopted to read as follows:

"Chapter 5.60 Junk Dealers and Recyclers

Section 5.60.010 Definitions

As used herein, the following words shall have the meanings set out below:

"Junk" means any and all secondhand and used machinery and all ferrous and nonferrous scrap metals and alloys, including any and all secondhand and used furniture, pallets, or other personal property, other than livestock, or parts or portions thereof.

“Junk dealer” includes any person engaged in the business of buying, selling and dealing in junk, any person purchasing, gathering, collecting, soliciting or traveling about from place to place procuring junk, and any person operating, carrying on, conducting or maintaining a junk yard or place where junk is gathered together and stored or kept for shipment, sale or transfer.

“Junkyard” includes any yard, plot, space, enclosure, building or any other place where junk is collected, stored, gathered together and kept.

“Person” or “persons” means any individual, partner or partnership, firm, trust, business, corporation, association, joint venture, club, society or any other entity.

“Recycler” means any processor, recycling center, or noncertified recycler, as those terms are defined in Chapter 2 (commencing with Section 14502) of Division 12.1 of the Public Resources Code, who buys or sells scrap metal that constitutes junk.

“Scrap metals” includes, but is not limited to, materials and equipment commonly used in construction, agricultural operations and electrical power generation, railroad equipment, oil well rigs, nonferrous materials, stainless steel, and nickel which are offered for sale to any junk dealer or recycler, but does not include scrap iron, household generated waste, or aluminum beverage containers, as defined in Chapter 2 (commencing with Section 14502) of Division 12.1 of the Public Resources Code.

5.60.020 Register of purchases required for all junk dealers and recyclers.

A. Every junk dealer or recycler within the City shall keep a register in which such person shall enter and preserve a record of all articles purchased by or delivered into the possession of such person, together with the name, street address and city or post office box and city, driver’s license number or social security number of the person from whom such articles were purchased or received. Such entry shall be made on the date and at the time of purchase or receipt of such article and shall set forth such date, complete list of articles purchased along with the color, make, size, model, serial number, price paid and must display all articles so purchased or received in an area open to the public and in public view.

B. Such register must meet the requirements of state and federal law.

C. Such register shall be retained for two (2) years after the final entry of purchase of junk. Failure to retain such register for that period of time shall be punishable as set out in Section 5.60.090 below.

D. The register shall at all times during business hours be open to the inspection of the chief of police, his or her designee or code enforcement officers.

E. In addition to the requirements of this Section 5.60.020, a junk dealer or recycler also shall comply with the requirements of Section 5.60.040 through 5.60.070 regarding the acquisition and transfer of scrap metals.

5.60.030 Business hours and inspection of premises required for all junk dealers and recyclers.

(a) It is unlawful for any junk dealer or recycler to conduct business or to operate within the City of Calexico between the hours of nine p.m. (9 p.m.) of one day and seven a.m. (7 a.m.) of the next day. Any City Police Department or Code Enforcement Officer may enter and inspect the place or premises of the business during business hours to verify out compliance with the provisions of this Chapter. The junk dealer or recycler shall during those hours produce for inspection his or her records of sales and purchases as well as all property purchased incident to those transactions which is in the possession of the junk dealer or recycler for inspection.

(b) Nothing in this section or chapter, however, shall be construed to limit the authority or ability of the Police Department in carrying out its law enforcement powers and duties or to otherwise enter the reporting business' place or premises at any time for any lawful purpose.

Section 5.60.040 Scrap metal acquisition and transfer - Additional requirements for holding and transfer.

In addition to the requirements of federal and state law and regulations as well as this Chapter, the requirements of Sections 5.60.040 through 5.60.070 shall apply to any junk dealer or recycler who deals in or with scrap metals of any kind (the "reporting business").

A. Any junk dealer or recycler of scrap metals shall submit to the City Police Department or its designee, at least once per calendar week, in person or by email, a full and complete copy of all scrap metal invoices and receipts in the form provided by the Police Department.

B. A second invoice copy shall be held by the reporting business in numerical or chronological order. All records must be kept for a period of two (2) years from the final date of the transaction.

C. The required invoices shall legibly document all of the following information:

1. The place and date of each sale or purchase of scrap metals;

2. The full name of each seller(s) or person(s) transferring and transporting scrap metals with the valid driver's license numbers and state of issue or the California issued identification card number(s), and California issued contractor's number, and any of the following forms of identification will suffice for purposes of this section: (A) A passport of the United States (B) A driver's license issued by any state or Canada (C) An identification card issued by any state (D) An identification card issued by the United States (E) A passport from any other country in addition to another item of identification bearing an address (F) A Matricula Consular in addition to another item of identification bearing an address.

3. If the seller or transferor of any scrap metal has no vehicle license plate number on the vehicle or trailer, then the vehicle identification number (VIN) of any motor vehicle and trailer used in transporting the metals shall be recorded;

4. The name and street address (no post office box) of each person to whom scrap metal is sold or transferred by the reporting business and the license number or VIN number of

any motor vehicle and trailer used in transporting the scrap metals from the control of the reporting business;

5. A full, true and detailed description of the scrap metals purchased, transferred or sold, including but not limited to the item metal type, quantity, and identification number if visible;

6. A statement indicating either that the seller of the scrap metals is the owner of the original scrap metal item or the name of the person from whom the scrap metals were obtained as shown on a signed transfer document;

7. The full name and signature of persons authorizing on behalf of the reporting business the transfer or sale of the scrap metal;

8. A clearly legible thumbprint of each seller or transferor of the scrap metal. Notwithstanding, inspection or seizure of the thumbprint shall only be performed by a peace officer acting within the scope of his or her authority in response to a criminal search warrant signed by a magistrate and served on the junk dealer or recycler by the peace officer. Probable cause for the issuance of that warrant must be based upon a theft specifically involving the transaction for which the thumbprint was given.

5.60.050 Holding period for scrap metal.

A. For a period of ten (10) calendar days after receipt of any scrap metal, each reporting business shall retain such scrap metal in its possession in the same size, shape and condition in which it was received. The ten (10) calendar day holding period shall commence with the date the report of acquisition was made by the reporting business to the Police Department.

B. During the ten (10) calendar day holding period, each reporting business shall produce any items reported under this chapter for inspection upon request by any Police Department or Code Enforcement Officer.

C. Property subject to inspection that is stored off the premises of the reporting business shall, upon such request for inspection, be produced at the reporting business' premises within one business day of the request.

5.60.060 Payment by check after ten-day holding period.

Any reporting business buying scrap metal for more than five dollars (\$5.00) shall pay for such scrap metal only by paper business check payable to the seller and delivered to a physical address provided by the seller not sooner than the day after termination of the ten (10) calendar day holding period.

5.60.070 Immediate notice of certain transactions.

A. Each reporting business immediately shall notify the Police Department by telephone (non-emergency lines) or other means likely to reach the Police Department without delay, of the sale or purchase, or attempted sale or purchase; of any scrap metal, that reasonably appears to be used only by governments, utilities, railroads, or farms, such as guardrails, manhole covers, high voltage transmission lines, agricultural irrigation pumps, residential and commercial copper pipes

and wiring, construction-grade aluminum, historical markers, cemetery plaques, light poles, and metal bleachers.

B. Any attempted transfer, sale, or purchase of materials suspected to be stolen property, shall be reported to the Police Department immediately.

C. A junk dealer or recycler shall request to receive theft alert notifications regarding the theft of commodity metals, including, but not limited to, ferrous metal, copper, brass, aluminum, nickel, stainless steel, and alloys, in the junk dealer's or recycler's geographic region from the theft alert system maintained by the Institute of Scrap Recycling Industries, Inc., or its successor.

5.60.080 Exemptions.

The requirements of Sections 5.60.040 through 5.60.070 shall not apply to any of the following:

A. The redemption and recycling of metal beverage and liquid containers;

B. The transfer of household generated scrap metal waste (exclusive of air conditioning components, coils, and compressors);

C. A secondhand or used car dealer, merchant or person conducting motor vehicles and farm machine sales which are not conducted or operated in conjunction with a junkyard, junk dealer, auto dismantler (as identified, licensed, and regulated by the California Vehicle Code, California Code of Regulations, Government Code, and Health & Safety Code) or recycler;

D. A motor vehicle or farm machine parts dealer, merchant or person selling new equipment that accepts or takes as part payment or credit used equipment of the same kind and thereafter selling or disposing of the same;

E. A secondhand or used oil, water, or geothermal well supply and equipment dealer, merchant or person which is not conducting or operating their business in conjunction with a junkyard, junk dealer, or recycler;

F. Coin sales;

G. Secondhand furniture merchants;

H. Pawnbrokers;

I. Secondhand clothing merchants and ragpickers;

J. Any person who buys or sells junk acquired in the conduct of any business other than that of a junk dealer or recycler; and

K. Scrap metal purchased or received from another junk dealer or recycler who has recorded, reported, and held the material as required. The purchase or receipt shall also be exempt from further holding or reporting provided that the selling party gives the buyer written assurance of this fact. The seller shall be held responsible for any failure to report or hold.

5.60.090 Penalties and enforcement.

A. A junk dealer or recycler who fails in any respect to keep any written record required by this Chapter or to set out in that written record any matter required by this Chapter to be set out therein, is guilty of a misdemeanor.

B. Every junk dealer or recycler who refuses, upon demand by any Police Department or Code Enforcement Officer, to exhibit any written record required by this Chapter, or who destroys that record within two (2) years after making the final entry of a purchase or sale of junk therein, is guilty of a misdemeanor.

C. Any knowing and willful violation of subdivisions A. or B. shall be punishable as follows:

1. For a first offense, by a fine of not less than one thousand dollars (\$1,000), or by imprisonment in the county jail for not less than 30 days, or by both that fine and imprisonment.

2. For a second offense, by a fine of not less than two thousand dollars (\$2,000), or by imprisonment in the county jail for not less than 30 days, or by both that fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court may order the defendant to stop engaging in business as a junk dealer or recycler for a period not to exceed 30 days.

3. For a third or any subsequent offense, by a fine of not less than four thousand dollars (\$4,000), or by imprisonment in the county jail for not less than six months, or by both that fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph the court shall order the defendant to stop engaging in business as a junk dealer or recycler for not less than one year.

D. Any unauthorized disclosure of personal identification information collected from a seller by a junk dealer or recycler is prohibited, and any such disclosure shall render the violator liable for a civil fine of up to five thousand dollars (\$5,000).

E. Any reporting business violating any provision of this Chapter, including but not limited to any knowing or intentional misrepresentation of information required under this Chapter or who is personally convicted of any felony involving theft, burglary, robbery, embezzlement or other felonious crime of moral turpitude involving dishonesty, deception or fraud, shall be subject to having their business license, or their application for a business license, revoked or denied by the City of Calexico pursuant to the procedures set forth in the Municipal Code.

F. Nothing in this Chapter shall be construed or deemed preventative or limiting the City of Calexico and/or the Imperial County District Attorney Office from seeking some or all penalties provided for or from seeking any other available enforcement procedure or remedy at law against the reporting business.

G. Nothing in this section shall be construed or deemed to prevent or limit the Police Department from carrying out any arrest, enforcement action, seizure of property, or other duties as permitted by law."

SECTION 3. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 5. Certification. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

SECTION 6. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

ORDINANCE PASSED AND APPROVED at a regular meeting of the City Council of the City of Calexico this 23rd day of January, 2019.

Lewis Pacheco, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney

I, Gabriela T. Garcia, City Clerk, City of Calexico, California, certify that the foregoing Ordinance No. 1195 was adopted by the City Council at a regular meeting of the City Council held on the 23rd day of January 2019 and was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gabriela T. Garcia, City Clerk