# MEMORANDUM

PSHA
Substitute to
Agenda Item No. 1(E)2

**TO:** Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

**DATE:** March 8, 2011

**FROM:** R. A. Cuevas, Jr.
County Attorney

**SUBJECT:** Ordinance relating to scrap metal processors and junk dealers; amending Sections 8A-203 and 8A-237 of the Code; creating Sections 8A-9 – 8A-9.6 of the Code regulating scrap metal processors and junk dealers

**This substitute differs from the original item in that it provides that: Section 8A-9.1(j) is changed to include "without limitation" to clarify the definition of regulated metals property and Section 8A-9.5 is changed to provide that the ordinance is enforceable by the County in the incorporated areas without an interlocal agreement.**

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Vice-Chairwoman Audrey M. Edmonson, and Co-Sponsors Commissioner Lynda Bell and Commissioner Jean Monestime.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

# MEMORANDUM

(Revised)

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**TO:** Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

**DATE:** January 20, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

**SUBJECT:** Substitute
Agenda Item No. 4(D)

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**Please note any items checked.**

_____ **"3-Day Rule" for committees applicable if raised**

✓ **6 weeks required between first reading and public hearing**

✓ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Substitute
Agenda Item No. 4(D)
1-20-11

ORDINANCE NO. _____

ORDINANCE RELATING TO SCRAP METAL PROCESSORS AND JUNK DEALERS; AMENDING SECTIONS 8A-203 AND 8A-237 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CREATING SECTIONS 8A-9 – 8A-9.6 OF THE CODE OF MIAMI-DADE COUNTY; FLORIDA; REGULATING SCRAP METAL PROCESSORS AND JUNK DEALERS; PROVIDING DEFINITIONS; PROVIDING FOR RECORDKEEPING AND INSPECTION; PROHIBITING CASH TRANSACTIONS AND RESTRICTING PURCHASES OF CERTAIN ITEMS; PROVIDING APPLICABILITY, ENFORCEMENT AND PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, skyrocketing prices for metals, especially copper, has resulted in a significant increase in the theft of copper, aluminum and other ferrous and nonferrous metals material in Miami-Dade County; and

**WHEREAS**, such thefts include metals material from light poles which create power outages and endanger the health, safety and welfare of the public particularly the elderly and children; and

**WHEREAS**, such thefts are economically burdensome on the County since the County is required to expend funds to replace or repair stolen or vandalized street signs and street lights owned by the County; and

**WHEREAS,** for example, since 2009, the County's Public Works Department has spent thousands of dollars to repair or replace vandalized light poles; and

**WHEREAS**, such thefts damage or interrupt utilities which endanger the public's health, safety and welfare; and

**WHEREAS**, such thefts also result in increased costs to businesses and homeowners that have been victimized by thefts and have suffered damages; and

**WHEREAS**, the economic recession has resulted in many residential and commercial properties in foreclosure which are either unoccupied or under renovation and thus more likely targets for burglars to steal or vandalize personal property that contain ferrous and nonferrous metals material; and

**WHEREAS**, for example, air conditioning units have been vandalized because they contain copper material; and

**WHEREAS**, such criminal activity adversely affects the economic recovery in Miami-Dade County by hampering the ability of property owners, banks and mortgage holders to market and sell residential and commercial properties; and

**WHEREAS**, in 2010, over 800 burglaries of residential properties have been reported to the Miami-Dade Police Department's Northside District alone; and

**WHEREAS**, the criminal activity also affects the social and economic quality of life of the County's citizens by resulting in unsafe properties, business losses and higher insurance costs; and

**WHEREAS**, the theft of such metals material may result in its unlawful sale to junk dealers and scrap metal processors also known as secondary metals recyclers; and

**WHEREAS**, secondary metal recyclers are regulated under Chapter 538, Part II of the Florida Statutes; and

**WHEREAS**, under State law, secondary metals recyclers can pay up to $1000 in cash for the purchase of regulated metals property; and

**WHEREAS**, this Board finds that prohibiting cash transactions for purchase of regulated metals property by junk dealers and scrap metal processors is necessary to enable law enforcement authorities to impede unlawful activity including the sale of stolen regulated metals property; and

**WHEREAS**, this Board finds that restricting certain items that may be purchased by junk dealers and scrap metal processors without proof that the sellers are authorized to sell such items is necessary to enable law enforcement authorities to impede unlawful activity including the sale of stolen regulated metals property; and

**WHEREAS**, this Board finds that implementation of this Ordinance as set forth herein will promote, protect and improve the health, safety and welfare of the people of Miami-Dade County, Florida,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 8A-203 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

**Sec. 8A-203. Junk dealers; local business tax requirements[[~~; penalty~~]].**

[[~~(1) In construing this section, unless the context requires otherwise, the following words or phrases shall mean:~~

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

~~(a) Junk means old or scrap copper, brass, rags, batteries, paper, trash, rubber, debris, waste, junked, dismantled or wrecked automobiles or parts thereof, iron, steel, and other scrap ferrous or nonferrous material.~~

~~(b) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.~~

~~(c) Person means any individual, agency, firm, association or corporation.~~

~~(d) Junk dealer means any person who is not a traveling junk dealer within the purview of Section 8A-203.1 and is engaged in the business of maintaining and operating a junkyard.~~

~~(e) Scrap metal processing plant means an establishment or place of business maintaining and operating machinery and equipment used to process scrap iron, steel and other metals to specifications prescribed by, and for sale to, mills and foundries.~~

~~f) Scrap metal processor means a person maintaining and operating a scrap metal processing plant.~~

~~(g) Metals means copper, brass, and bronze pipe, piping and tubing and wire which is or can be used for transmission or distribution in a utility communications system.~~

~~(h) Transmission or distribution means that part of a utility or communications system which extends from the point of origin of such utility or communications system to the service entrance of the consumer or user.~~]]

[[~~(2)~~]]>>(1)<<Every person engaged in business as a scrap metal processor as defined in Section 8A-9.1 shall pay a local business tax as provided for in the schedule of taxes, Section 8A-223.1.

[[~~(3)~~]]>>(2)<<Every person engaged in business as a junk dealer as defined in Section 8A-9.1 shall pay a local business tax as provided for in the schedule of taxes, Section 8A-223.1.

[[~~Recordkeeping~~]

~~(a) Every person receipted as a junk dealer or scrap metal processor when purchasing any article shall keep a full and complete record of each transaction showing from whom and when each article was purchased or acquired and to whom sold and the date of each sale.~~

~~(b) Every person receipted as a junk dealer or scrap metal processor when purchasing metals shall keep the following additional information:~~

~~The record shall include a receipt signed by the seller; and a copy of such receipt shall be given to the seller. This receipt shall reflect the quality and quantity of metals purchased, the seller's name and address, the license number of the seller's motor vehicle conveying the metals, and the number of the seller's driver's license.~~

~~(c) The records required to be kept by subparagraphs (a) and (b) shall be maintained by the purchaser for a period of not less than one (1) year and shall at all times be subject to inspection by any law enforcement officer Commissioned in the State.~~

~~(4) Purchase of metals from minors in excess of ten dollars ($10.00) is prohibited.~~

~~(5) Any person violating any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand ($1,000.00) or by imprisonment in the County Jail not to exceed six (6) months or both.~~]]

**Section 2.** Section 8A-237 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 8A-237. Junk dealers; local business tax requirements[[~~; penalty~~]].**

~~(1) In construing this section, unless the context requires otherwise, the following words or phrases shall mean:~~

~~(a) Junk means old or scrap copper, brass, rags, batteries, paper, trash, rubber, debris, waste, junked, dismantled or wrecked automobiles or parts thereof, iron, steel, and other scrap ferrous or nonferrous material.~~

~~(b) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.~~

~~(c) Person means any individual, agency, firm, association or corporation.~~

~~(d) Junk dealer means any person who is not a traveling junk dealer within the purview of Section 8A-203.1 and is engaged in the business of maintaining and operating a junkyard.~~

~~(e) Scrap metal processing plant means an establishment or place of business maintaining and operating machinery and equipment used to process scrap iron, steel and other metals to specifications prescribed by, and for sale to, mills and foundries.~~

~~(f) Scrap metal processor means a person maintaining and operating a scrap metal processing plant.~~

~~(g) Metals means copper, brass, and bronze pipe, piping and tubing and wire which is or can be used for transmission or distribution in a utility communications system.~~

~~(h) Transmission or distribution means that part of a utility or communications system which extends from the point of origin of such utility or communications system to the service entrance of the consumer or user.~~]]

[[~~(2)~~]]>>(1)<<Every person engaged in business as a scrap metal processor as defined in 8A-9.1 shall pay a local business tax as provided for in the schedule of taxes, Section 8A-247.1.

[[~~(3)~~]]>>(2)<<Every person engaged in business as a junk dealer as defined in 8A-9.1 shall pay a local business tax as provided for in the schedule of taxes, Section 8A-247.1.

[[~~(4) [Recordkeeping]~~

~~(a) Every person receipted as a junk dealer or scrap metal processor when purchasing any article shall keep a full and complete record of each transaction showing from whom and when each article was purchased or acquired and to whom sold and the date of each sale.~~

~~(b) Every person receipted as a junk dealer or scrap metal processor when purchasing metals shall keep the following additional information:~~

~~The record shall include a receipt signed by the seller; and a copy of such receipt shall be given to the seller. This receipt shall reflect the quality and quantity of metals purchased, the seller's name and address, the license number of the seller's motor vehicle conveying the metals, and the number of the seller's driver's license.~~

~~(c) The records required to be kept by subparagraphs (a) and (b) shall be maintained by the purchaser for a period of not less than one (1) year and shall at all times be subject to inspection by any law enforcement officer Commissioned in the State.~~

~~(5) Purchase of metals from minors in excess of ten dollars ($10.00) is prohibited.~~

~~(6) Any person violating any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand ($1,000.00) or by imprisonment in the County Jail not to exceed six (6) months or both.~~]]

**Section 3.** Section 8A-9 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

>>**Sec. 8A-9. Short Title; Purpose.**

(1) Sections 8A-9 – 8A-9.6 shall be known and may be cited as the "Junk Dealers and Scrap Metal Processors Ordinance".

(2) The purpose of the Junk Dealers and Scrap Metal Processors Ordinance is to protect the public health, safety and welfare by impeding the sale of stolen regulated metals property and thereby deterring the theft of regulated metals property.

**Sec. 8A-9.1 Definitions.**

In construing this section, unless the context requires otherwise, the following words or phrases shall mean:

(a) Ferrous metals means any metals containing significant quantities of iron or steel.

(b) 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.

(c) Junk means old or scrap copper, brass, rags, batteries, paper, trash, rubber, debris, waste, junked, dismantled or wrecked automobiles or parts thereof, iron, steel, and other scrap ferrous or nonferrous material.

(d) Junk dealer means any person who is not a traveling junk dealer within the purview of Sections 8A-204 or 8A-237.1 and is engaged in the business of maintaining and operating a junkyard and includes a secondary metals recycler as defined herein.

(e) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(f) 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 such as gold, silver and platinum.

(g) Person means any individual, agency, firm, association or corporation.

(h) Personal identification card means any government-issued photographic identification card.

(i) Purchase transaction means a transaction in which a junk dealer, scrap metal processor or secondary metals recycler gives consideration for regulated metals property.

(j) Regulated metals property means any item composed primarily of any nonferrous metals. The term shall include<< >>, without limitation,<< >>copper, brass, and bronze pipe, piping and tubing and wire which is or can be used for transmission or distribution in a utility or communications system. The term shall also include stainless steel beer kegs but shall not include aluminum beverage containers, or similar beverage containers.

(k) Scrap metal processing plant means an establishment or place of business maintaining and operating machinery and equipment used to process scrap iron, steel and other metals to specifications prescribed by, and for sale to, mills and foundries.

(l) Scrap metal processor means a person maintaining and operating a scrap metal processing plant and shall include a secondary metals recycler as defined herein.

(m) Secondary metals recycler means any person who:

(1) 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

(2) 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.

**Sec. 8A-9.2 Recordkeeping.**

(a) Every person engaging in or operating as a junk dealer or scrap metal processor shall maintain a legible record of all purchase transactions to which such junk dealer or scrap metal processor is a party.

(b) The following information must be maintained on a form approved by the applicable law enforcement agency for each purchase transaction:

(1) The name and address of the junk dealer or scrap metal processor.

(2) The name, initials, or other identification of the individual entering the information on the ticket.

(3) The date and time of the transaction.

(4) The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.

(5) The amount of consideration given in a purchase transaction for the regulated metals property.

(6) A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold. If the purchase involves a stainless steel beer keg, the seller must provide written documentation from the manufacturer that the seller is the owner of the stainless steel beer keg or is an employee or agent of the manufacturer.

(7) The distinctive number from the personal identification card of the person delivering the regulated metals property to the junk dealer or scrap metal processor.

(8) A description of the person from whom the regulated metals property were acquired, including:

a. Full name, current residential address, workplace, and home and work phone numbers.

b. Height, weight, date of birth, race, gender, hair color, and any other identifying marks.

c. The right thumbprint, free of smudges and smears.

d. Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.

e. Any other information required by the form approved by the applicable law enforcement agency.

(9) A photograph, videotape, or digital image of the regulated metals being sold.

(10) A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.

(c) For the purchase of articles other than regulated metals property, the purchaser shall keep a full and complete record showing from whom and when each article was purchased or acquired and to whom sold and the date of each sale.

(d) The records required to be kept by sub-paragraphs (a), (b) and (c) and section 538.19, Florida Statutes, shall be maintained by the purchaser on a form approved by the applicable law enforcement agency for a period of not less than five (5) years and shall at all reasonable times be

subject to inspection by any local law enforcement officer commissioned in the State.

**Sec. 8A-9.3 Prohibitions of Cash Transactions.**

(a) A junk dealer or scrap metal processor shall not enter into any cash transaction in payment for purchase of regulated metals property.

(b) Consideration for the purchase of regulated metals property by a junk dealer or scrap metal processor shall be made by check issued to the seller of the regulated metals property and payable to the seller.

**Sec. 8A-9.4 Restrictions on Purchases.**

A junk dealer or scrap metal processor shall not purchase any of the following items of regulated metal property without obtaining proof that the seller owns the property or that the seller is an employee, agent, or contractor of a governmental entity, utility company, cemetery, railroad, manufacturer, or other business or entity owning the property and the seller is authorized to sell the item of regulated metal property on behalf of the person, business, or entity owning the property:

(a) manhole cover.

(b) An electric light pole or other utility structure and its fixtures, wires and hardware.

(c) A guard rail.

(d) A street sign, traffic sign, or traffic signal and its fixtures and hardware.

(e) Communication, transmission, distribution, and service wire, including copper or aluminum busbars, connectors and grounding plates or grounding wire.

(f) A funeral marker or funeral vase.

(g) An historical marker.

(h) Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.

(i) Any metal item that is marked with any form of the name, initials, or logo of a governmental entity, utility company, cemetery or railroad.

(j) A copper or aluminum condensing or evaporator coil, including tubing or rods, from a heating or air conditioning unit.

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

(l) Stainless steel beer kegs.

(m) A catalytic converter or any part of a catalytic converter.

(n) Metallic wire that was buried 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 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.

(q) A shopping cart.

**Sec. 8A-9.5 Applicability and enforcement.**

This<< [[~~section~~]][2] >>ordinance<< >>shall apply to<< >>and be enforced in<< >>both the incorporated areas and unincorporated areas<< >>of Miami-Dade County.<< [[~~and unincorporated areas, and in the unincorporated areas shall be enforced by the County and in the incorporated areas shall be enforced by the municipalities unless the County is notified by municipalities, in the form of a resolution of the governing council or commission that it is desirous of having the County enter into an Interlocal Agreement to enforce this section in which event enforcement within the incorporated areas shall be by the County if such Interlocal Agreement is approved by the County.~~]]

[2] The differences between the substitute and the original item are indicated as follows: words double stricken through and/or [[double bracketed]] shall be deleted, words double underlined and/or >>double arrowed<< constitute the amendment proposed.

**Sec. 8A-9.6 Penalty.**

Any person violating sections 8A-9.2, 8A-9.3 or 8A-9.4 shall, upon conviction, be punished by a fine not to exceed five-hundred dollars ($500.00) or imprisonment in the County jail for not more than 60 days, or by both such fine and imprisonment. Any person who is convicted of a second or subsequent violation of sections 8A-9.2, 8A-9.3 or 8A-9.4 shall, upon conviction, be punished by a fine not to exceed one thousand dollars ($1,000.00) or by imprisonment in the County jail not to exceed six (6) months or by both such fine and imprisonment.<<

**Section 4.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 5.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections 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 word.

**Section 6.** This ordinance shall become effective thirty (30) days after approval unless vetoed by the Mayor within ten (10) days of enactment, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Henry N. Gillman

Prime Sponsor: Vice Chairwoman Audrey M. Edmonson
Co-Sponsors: Commissioner Lynda Bell
Commissioner Jean Monestime