

## **Chapter 739: SECONDHAND DEALERS; JUNK YARDS**

### **739.01 Definitions.**

(a) “Bulk merchandise container” means a plastic or wooden carrier or holder used by a manufacturer or distributor to transport merchandise to wholesale and retail outlets.

(b) “Bulk merchandise dealer” means a dealer who is in the business of purchasing, reselling, exchanging, recycling, shredding, or receiving bulk merchandise containers.

(c) “Director” means the Parma City Director of Public Safety.

(d) “Secondhand dealer” means any person, including owners, agents, and employees, engaged in the business of purchasing or selling goods of any kind or description, having once been used or transferred from the manufacturer to the dealer and then received into the possession of third parties, including but not limited to iron or other metal, furniture, electronics, electronic games, articles of household utensils, articles of personal use, or jewelry of any kind or description including precious stones, or old gold or silver, plumbing fixtures, secondhand building material or other goods of the class considered personal, whether related to any of the goods specifically described herein or not, but “secondhand dealer” excludes secondhand clothing stores or any person dealing exclusively in secondhand clothing.

(1) “Secondhand/Used Merchandise Shop” means an establishment engaged in retailing used merchandise and second hand goods including furniture, electronics, electronic games, articles of household utensils, articles of personal use and clothing, but “secondhand/used merchandise shop” shall exclude establishments engaged in the selling of donated items, automobiles, recreational vehicles (RV’s), motorcycles, boats, vehicle parts, tires, mobile homes.

(e) “Junk yard” means an establishment or place of business that is maintained or operated for the purpose of storing, keeping, buying, or selling junk. For the purposes of sections 739.07 to 739.99 of the Codified Ordinances, “junk yard” includes scrap metal processing facilities that are located within 1,000 feet of the nearest edge of the right of way of a highway in the interstate or primary system.

(1) “Junk Dealer” means any person, including owners, agents, and employees, engaged in the business of buying, selling, or dealing in scrap or secondhand construction materials (including but not limited to copper, iron, aluminum, steel and wood), automobile parts, tires, bottles, siphons, papers, rags, or other similar articles and having a store, stand, place of business or junk yard.

(f) “Scrap metal dealer” means the owner or operator of a business that purchases or receives scrap metal for the purpose of sorting, grading, and shipping metals to third parties for direct or indirect melting into new products.

### **739.02 Duties of dealers.**

(a) “Personal identification card” means a current and valid driver’s license, military identification card, state identification card issued under sections 4507.50 to 4507.52 of the Revised Code, or a state identification card issued by another state on the condition that that card contains information substantially similar to the information contained on a state identification card issued under sections 4507.50 to 4507.52 of the Revised Code and also contains a photograph of the person to whom the card is issued.

(b) A person other than a scrap metal dealer, as defined in section 739.01(a) of the Codified Ordinances, purchasing, selling, exchanging, or receiving secondhand articles of any kind other than special purchase articles as defined in section 739.05 of the Codified Ordinances, scrap iron, and scrap metal, shall post in a conspicuous place in or upon the person’s shop, store, wagon, boat, or other place of business, a sign having the person’s name and occupation legibly inscribed thereon, and shall keep a separate record book or electronic file in which shall be written, in the English language, at the time of the purchase or exchange of such articles, a description thereof, the name, description, and residence of the person from whom purchased and received, and the day and time when such purchase or exchange was made, and shall make and keep a copy of the person’s personal identification card. Every entry shall be numbered consecutively, commencing with number one. The purchaser shall retain the record book or electronic file and copies of personal identification cards for at least one year after the purchase or exchange date and shall make the record or file and copies available for inspection by any law enforcement officer at all reasonable times.

### **739.021 Zoning**

Any applicant for a license to conduct business, and any business already acting, as a , as a scrap metal dealer, bulk merchandise container dealer, secondhand dealer, or junk dealer defined by section 739.01 of the Codified Ordinances, shall conduct business within the zoning regulations of permitted buildings and uses set forth in section 1170.03. of the Codified Ordinances.

### **739.022 Dealers in precious metals or jewels exempted.**

Sections 739.02 to 739.05 of the Codified Ordinances do not apply to the business of purchasing articles that are made of or contain gold, silver, platinum, or other precious metals or jewels. For purposes of this section, a person is engaged in the “business of purchasing articles that are made of or contain gold, silver, platinum, or other precious metals or jewels” if and to the extent that, in any manner, he holds himself out to the public as willing to purchase such articles for a consideration, and he intends to resell such articles, whether in the same or a different form or condition as when purchased.

### **739.023 Bulk merchandise containers; record keeping.**

(a) Notwithstanding division (a) of section 739.02 of the Codified Ordinance, a bulk merchandise dealer shall not purchase or receive plastic bulk merchandise containers that are marked with a company name or logo, or more than nine wooden bulk merchandise containers, from any other person at one time, unless the dealer maintains a record book or electronic file in which the dealer keeps an accurate and complete record of all containers purchased or received by the dealer. Every entry in the record book or electronic file shall be numbered consecutively. Until the registry developed by the director of public safety pursuant to section 739.055 of the Revised Code is operational, a dealer shall maintain the record for each container purchased or received for a minimum period of one year after the date the dealer purchased or received the container. Beginning on the date the registry is operational, a dealer shall maintain the record for each container purchased or received only for a period of sixty days after the date the dealer purchased or received the container. The director shall adopt rules for the format and maintenance of the records required under this division.

The records shall contain all of the following:

- (1) The name and residence of the person from whom the containers were purchased or received, a copy of that person's personal identification card, and, if required, a photograph of the person taken pursuant to division (b)(2) of this section;
- (2) A description of the containers, including the number purchased or received and, if required, a photograph of the containers taken pursuant to division (b)(1) of this section;
- (3) The date and time the dealer purchased or received the containers;
- (4) If the seller or provider of the containers arrives at the dealer's place of business in a motor vehicle, the license plate number of that motor vehicle along with the state that issued the license plate.

(b) Every dealer who is in the business of reselling bulk merchandise containers shall take a photograph, in accordance with rules adopted by the director, of both of the following:

- (1) Each container for which the dealer must make a record under division (a) of this section;
- (2) Each person who sells or otherwise gives the dealer the containers.

The dealer shall take the required photographs at the time the dealer purchases or receives the containers and shall keep the photographs as part of the record in accordance with division (a) of this section.

(c) A dealer who is in the business of purchasing, reselling, exchanging, recycling, shredding, or receiving bulk merchandise containers shall fulfill the requirements of section 739.051 of the Codified Ordinances with respect to the containers purchased or received by the dealer for which the dealer must make a record under division (a) of this section. No dealer shall purchase or receive any bulk merchandise container for which the dealer must make a record under division (a) of this section without complying with division (b), (c), or (d) of section 739.051 of the Codified Ordinances.

**739.03 If dealer is a peddler, he need not hold property thirty days.**

If the purchaser or receiver, by exchange or otherwise, as described in section 739.02 of the Codified Ordinances, is a peddler, or goes about with a wagon to purchase or obtain, by exchange or otherwise, any of such articles not excepted, and does not have a place of business in a building, he need not retain such articles for thirty days before selling them, provided, on Monday of each week, he files with the mayor of the municipal corporation in which is located the place of business of the person to whom such sale is made, a copy of the record required by such section to be kept in a separate book, of the articles purchased or received during the preceding week, including a description of such articles sold, to whom sold, and his place of business.

**739.04 Not to deal with minors - nor at certain hours.**

No person shall purchase or receive by sale, barter, exchange, or otherwise, an article mentioned in sections 739.02 to 739.04, inclusive, of the Codified Ordinances, of a minor or apprentice, knowing or having reason to believe him to be such, or from any person between the hours of nine p.m. and seven a.m.

**739.05 Scrap metal and merchandise container dealers; exertion of control over certain articles; record keeping.**

(a) As used in this section and sections 739.051, 739.052, 739.053, 739.054, 739.055, and 739.99 of the Revised Code:

(1) "Special purchase article" means all of the following:

(A) Beer kegs;

(B) Cable, wire, electrical components, and other equipment used in providing cable service or any utility service, including, but not limited to, copper or aluminum coverings, housings, or enclosures related thereto;

(C) Grave markers, sculptures, plaques, and vases made out of metal, the appearance of which suggests that the articles have been obtained from a cemetery;

(D) Guard rails for bridges, highways, and roads; highway and street signs; street light poles and fixtures; worker access hole covers, water meter covers, and other similar types of utility access covers; traffic directional and control signs and light signals, metal marked with the name of a political subdivision of the state, and other metal articles that are purchased and installed for use upon authorization of the state or any political subdivision of the state;

(E) Historical, commemorative, and memorial markers and plaques made out of metal;

(F) Four-wheel metal carts, commonly referred to as “grocery carts,” that are generally used by individuals to collect and transport consumer goods while shopping;

(G) Four-wheel metal carts, commonly referred to as “metal bossies,” that are used to transport or merchandise food products that are stored in crates, shells, or trays;

(H) Railroad material, including journal brasses, rail spikes, rails, tie plates, frogs, and communication wire;

(I) Metal trays, merchandise containers, or similar transport containers used by a product producer, distributor, retailer, or an agent of a product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, baked goods, eggs, or bottled beverage products;

(J) “Burnt wire,” which is any metal that has been smelted, burned, or melted.

(2) “Bulk merchandise container” has the same meaning as in section 739.01(a) of the Codified Ordinances.

(3) “Bulk merchandise container dealer” means a dealer who is subject to section 739.21 of the Codified Ordinances.

(4) “Common recycled matter” means bottles and other containers made out of steel, tin, or aluminum and other consumer goods that are metal that are recycled by individual consumers and not in the bulk or quantity that could be supplied or recycled by large business establishments. “Common recycled matter” does not include a metal tray used by a product producer, distributor, retailer, or agent of a product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, baked goods, eggs, or bottled beverage products.

(5) “Consumer goods” has the same meaning as in section 1309.102 of the Revised Code.

(6) “Recyclable materials” means the metal materials described in division (c)(5) of this section, on the condition that those metal materials are not special purchase articles.

(7) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

(b)(1) No person shall engage in the business of scrap metal dealing or act as a bulk merchandise container dealer without first registering with the director of public safety in accordance with section 739.055 of the Revised Code.

(2) Notwithstanding section 2913.02 of the Revised Code and section 642.02 of the Codified Ordinances, no person, with purpose to deprive the owner of a special purchase article or bulk merchandise container, shall knowingly obtain or exert control over the special purchase article or bulk merchandise container in any of the following ways:

(A) Without the consent of the owner or person authorized to give consent;

(B) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(C) By deception;

(D) By threat;

(E) By intimidation.

(3) No person shall receive, purchase, or sell a special purchase article or a bulk merchandise container except as in accordance with sections 739.012 and 739.04 to 739.045 of the Codified Ordinances.

(A) Every scrap metal dealer shall maintain a record book or electronic file, in which the dealer shall keep an accurate and complete record of all articles purchased or received by the dealer in the course of the dealer's daily business. On and after September 11, 2008, every entry in the record book or electronic file shall be numbered consecutively and, on or after the effective date of this amendment, shall be maintained for inspection in numerical order. Until the registry developed by the director pursuant to section 739.055 of the Codified Ordinances is operational, a dealer shall maintain the record for each article purchased or received for a minimum period of one year after the date the dealer purchased or received the article, except that the dealer shall maintain the photograph required under division (i) of this section only for a period of 60 days after the dealer purchased or received the article. Beginning on the date the registry is operational, a dealer shall maintain the record for each article purchased or received only for a period of 60 days after the date the dealer purchased or received the article. The director shall adopt rules for the format and maintenance of the records required under this division.

The records shall contain all of the following:

(1) The name and residence of the person from whom the articles were purchased or received, a copy of that person's personal identification card, and a photograph of the person taken pursuant to division (i) of this section;

(2) The date and time the scrap metal dealer purchased or received the articles and the weight of the articles as determined by a licensed commercial scale;

(3) If the seller or provider of the articles arrives at the dealer's place of business in a motor vehicle, the license plate number of that motor vehicle along with the state that issued the license plate;

(4) For metal articles that are not recyclable materials, a full and accurate description of each article purchased or received by the dealer that includes identifying letters or marks written, inscribed, or otherwise included on the article and the name and maker of the article if known;

(5) For recyclable materials that are not special purchase articles, the following category codes to identify the recyclable materials that the dealer receives:

(A) "Number one copper," which includes clean copper pipe, clean copper wire, or other number one copper that does not have solder, paint, or coating;

(B) "Number two copper," which includes unclean copper pipe, unclean copper wire, or other number two copper;

(C) "Sheet copper," which includes copper roofing, copper gutters, copper downspouts, and other sheet copper;

(D) "Insulated copper wire";

(E) "Aluminum or copper radiators," which includes aluminum radiators, aluminum copper radiators, and copper radiators;

(F) "Red brass," which includes red brass valves and other red brass;

(G) "Yellow brass," which includes yellow brass fixtures, yellow brass valve and fitting, ornamental brass, and other yellow brass;

(H) "Aluminum sheet";

(I) "Aluminum extrusions," which includes aluminum bleachers, aluminum benches, aluminum frames, aluminum pipe, and other aluminum extrusions;

(J) "Cast aluminum," which includes aluminum grills, lawnmower decks made of aluminum, aluminum motor vehicle parts and rims, and other cast aluminum;

(K) "Clean aluminum wire";

(L) "Unclean aluminum wire";

(M) “Aluminum exteriors,” which includes aluminum siding, aluminum gutters and downspouts, aluminum shutters, aluminum trim, and other aluminum exterior items;

(N) “Contaminated aluminum”;

(O) “Stainless steel,” which includes, sinks, appliance housing, dishes, pots, pans, pipe, and other items made out of stainless steel;

(P) “Large appliances,” which includes consumer and other appliances;

(Q) “Steel structural,” which includes all structural steel such as I-beams, trusses, channel iron, and similar steel from buildings;

(R) “Miscellaneous steel,” which includes steel grates, steel farm machinery, steel industrial machinery, steel motor vehicle frames, and other items made out of steel;

(S) “Sheet irons,” which includes bicycles, motor vehicle body parts made of iron, and other items made using sheet iron;

(T) “Motor vehicle nonbody parts,” which includes motor vehicle batteries, radiators, and other nonbody motor vehicle parts;

(U) “Catalytic converters”;

(V) “Lead”;

(W) “Electric motors.”

(6) For recyclable materials that are special purchase articles, the relevant category provided in division (a)(2) of this section.

(d) Railroad material, including journal brasses, rail spikes, rails, tie plates, frogs, and communication wire, other than purchases and sales under sections 4973.13 to 4973.16 of the Revised Code, shall be held by a scrap metal dealer for a period of 30 days after being purchased or acquired.

(e)(1) The records required under division (c) of this section or under section 739.023 of the Codified Ordinances shall be open for inspection by the representative of any law enforcement agency, railroad police officers, and the director of public safety or the director’s designated representative during all business hours. A scrap metal dealer or bulk merchandise container dealer shall do both of the following:

(A) Provide a copy of those records to any law enforcement agency or railroad police officer that requests the records or to the director or director’s representative, upon request;

(B) Prepare a daily electronic report, the content and format of which shall be established in rules adopted by the director, listing all retail transactions that occurred during the preceding day and containing the information described in division (c) of this section or division (a) of section 739.023 of the Codified Ordinances, as applicable. The dealer shall electronically transfer, by twelve noon eastern standard time, the report for inclusion in the registry created pursuant to division (e) of section 739.055 of the Codified Ordinances.

A law enforcement agency may inspect any photographic records collected and maintained by a scrap metal dealer of either yard operations or individual transactions. Records submitted to any law enforcement agency pursuant to this section are not public records for purposes of section 149.43 of the Revised Code and section 109. of the Codified Ordinances.

(2) A person who claims to own a stolen article that may be identified in those records, or an agent of that person, who provides proof of having filed a stolen property report with the appropriate law enforcement agency, may request those records. The law enforcement agency shall provide those records upon a request made by such a person or that person's agent, but the law enforcement agency shall redact information that reveals the name of the seller of any article and the price the dealer paid for any article the dealer purchased or the estimated value of any article the dealer received. The law enforcement agency shall determine which records to provide, based upon the time period that the alleged theft is reported to have taken place. A law enforcement agency may charge or collect a fee for providing records as required by this section.

(f)(1) No scrap metal dealer shall purchase or receive any metal articles, and no bulk merchandise container dealer shall purchase or receive any bulk merchandise containers, from a person who refuses to show the dealer the person's personal identification card, or who refuses to allow the dealer to take a photograph of the person as required under division (i) of this section or of the person or container as required under division (b) of section 739.023 of the Codified Ordinances.

(2) The law enforcement agency that serves the jurisdiction in which a scrap metal dealer or a bulk merchandise container dealer is located shall provide to the scrap metal dealer or bulk merchandise container dealer a searchable, electronic list prepared in accordance with rules adopted by the director, as that agency determines appropriate, of the names and descriptions of persons known to be thieves or receivers of stolen property. The law enforcement agency may request the appropriate clerk of courts to provide the list. No scrap metal dealer or bulk merchandise container dealer shall purchase or receive articles from any person identified on the list the dealer receives from the law enforcement agency. The law enforcement agency also shall provide the list to the department of public safety, in an electronic format in accordance with rules adopted by the director, for inclusion in the registry created in section 739.055 of the Codified Ordinances.

(3) No scrap metal dealer or bulk merchandise container dealer shall purchase or receive any special purchase articles or bulk merchandise containers from any person who is under 18 years of age.

(4) No scrap metal dealer shall purchase or receive any special purchase article without complying with division (c) or (i) of this section and division (b), (c), or (d) of section 739.051 of the Codified Ordinances.

(5) No scrap metal dealer shall purchase or receive more than one catalytic converter per day from the same person except from a motor vehicle dealer as defined in section 4517.01 of the Revised Code.

(6) No scrap metal dealer shall purchase or receive a beer keg that is marked with a company name or logo except from a manufacturer of beer as described in section 612.05 of the Codified Ordinances or an agent authorized by the manufacturer to dispose of damaged kegs.

(7) No scrap metal dealer shall treat a transaction as exempt from section 739.05 or 739.051 of the Codified Ordinances unless the seller provides evidence of satisfying division (d)(3) of section 739.053 of the Codified Ordinances.

(g) Every scrap metal dealer and bulk merchandise container dealer shall post a notice in a conspicuous place on the dealer's premises notifying persons who may wish to transact business with the dealer of the penalties applicable to any person who does any of the following:

(1) Provides a false personal identification card to the dealer;

(2) With purpose to defraud, provides any other false information to the dealer in connection with the dealer's duty to maintain the records required under division (c) of this section or under section 739.023 of the Codified Ordinances;

(3) Violates section 2913.02 of the Revised Code, section 642.02 of the Codified Ordinances, or division (b)(2) of this section.

(h)(1) Except as otherwise provided in division (f)(2) of this section, a clerk of courts or an employee of a clerk of courts; a chief of police, marshal, or other chief law enforcement officer; a sheriff, constable, or chief of police of a township police department or police district police force; a deputy, officer, or employee of the law enforcement agency served by the marshal or the municipal or township chief, the office of the sheriff, or the constable; and an employee of the department of public safety is immune from liability in a civil action, including an action for defamation, libel, or slander, to recover damages for injury, death, or loss to persons or property or reputation allegedly caused by an act or omission in connection with compiling and providing the list required by division (f)(2) of this section.

(2) The immunity described in division (h)(1) of this section does not apply to a person described in that division if, in relation to the act or omission in question, any of the following applies:

(A) The act or omission was manifestly outside the scope of the person's employment or official responsibilities.

(B) The act or omission was with malicious purpose, in bad faith, or in a wanton or reckless manner.

(C) Liability for the act or omission is expressly imposed by a section of the Revised Code.

(i) Every scrap metal dealer shall take a photograph, in accordance with rules adopted by the director, of each person who sells or otherwise gives the dealer an article for which the dealer must make record under division (c) of this section.

The dealer shall take the required photograph at the time the dealer purchases or receives the article and shall keep the photograph as part of the record in accordance with division (c) of this section.

### **739.051 Special purchase articles and bulk merchandise containers.**

A scrap metal dealer or a bulk merchandise container dealer as defined by section 739.01 of the Codified Ordinances shall do all of the following with respect to each special purchase article the dealer purchases or receives that is subject to division (a) of section 739.023 of the Codified Ordinances:

(a) Comply with the requirements of this section in addition to complying with the applicable requirements of section 739.023 or 739.05 of the Codified Ordinances;

(b) Take a photograph of each special purchase article or bulk merchandise container;

(c) Obtain from the seller or provider of the special purchase article or bulk merchandise container proof that the seller or provider owns the special purchase article or bulk merchandise container;

(d) If payment is rendered for the special purchase articles or bulk merchandise containers, issue a check for the purchase of the special purchase articles or bulk merchandise containers;

(e) Withhold payment for the purchase of the special purchase articles or bulk merchandise containers for a period of two days after the day the special purchase articles or bulk merchandise containers are purchased;

(f) If an asserted owner of stolen special purchase articles or bulk merchandise containers or that owner's agent provides proof of having filed a stolen property report with the appropriate law enforcement agency, make records describing special purchase articles or bulk merchandise containers the dealer purchased or received after the alleged date of theft available for inspection to the asserted owner or owner's agent for a period of six months after the alleged date of theft of the articles, except that the dealer shall withhold the name of the person from whom the special purchase articles or bulk merchandise containers were purchased or received and the amount paid for the special purchase articles or bulk merchandise containers.

### **739.052 Electronic records.**

A scrap metal dealer, a secondhand dealer, and a junk dealer as defined by section 739.01 of the Codified Ordinances, who purchases, sells, exchanges, or receives secondhand articles may use an electronic device that decodes and records information contained in the metallic strip on a personal identification card to record a person's name, address, and photograph in lieu of making a copy of a person's personal identification card to comply with the requirements of sections 739.02, 739.05, and 739.051 of the Codified Ordinances, on the condition that the dealer or person retains that recorded information and makes it available in accordance with the requirements to make copies available under those sections.

### **739.053 Exemptions from requirements.**

Sections 739.05 and 739.051 of the Codified Ordinances do not apply with respect to any of the following:

- (a) The donation of articles to nonprofit organizations or to any other person, on the condition that the person donating the articles receives no payment or any other valuable consideration in exchange for or due to donating the articles;
- (b) The sale or donation of common recycled matter;
- (c) Sales transacted between a scrap metal dealer and an organization that is exempt from federal taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 285, 26 U.S.C. 501(c)(3), as amended, and that collects, for its own fundraising purposes, scrap ferrous and nonferrous metals for recycling rather than disposal;
- (d) Sales transacted between a scrap metal dealer and a government unit or another business, including a demolition company, public utility company, or another scrap metal dealer, on the condition that the government unit or business satisfies the following criteria:

(1) In the course of providing the government unit's or business's services to others or maintaining the government unit's or business's property, whether onsite or offsite, the government unit or business generates scrap ferrous and nonferrous metals for recycling rather than disposal.

(2) If the sales transaction involves a government unit, reference to the government unit as a bona fide unit of government can be readily found by the public.

(3) If the sales transaction involves a business, the business satisfies one of the following criteria:

(A) The business is registered with the secretary of state.

(B) The business has been issued a license under section 5739.17 of the Revised Code.

(C) The business advertises its services in a newspaper of general circulation once a week for not less than six consecutive months or provides a receipt showing payment for such advertising, a telephone book, electronic media that is available to the public, or some other type of media that is owned and operated by a person other than the business and, if an individual operates the business, the individual advertising the business has a specific place of business that is not the individual's permanent home residence.

(4) The government unit provides proof of compliance with division (d)(2) of this section or the business provides proof of compliance with division (d)(3) of this section to the scrap metal dealer with whom the government unit or business transacts business.

(e) Sales transacted between a scrap metal dealer and a person whose primary business is to create products that result in bulk quantities of ferrous and nonferrous metal used for recycling rather than disposal.

(f) Sales of catalytic converters transacted between a scrap metal dealer and a motor vehicle dealer as defined in section 4517.01 of the Revised Code.

### **739.054 Conflicting municipal regulations.**

No municipal corporation or other political subdivision shall enforce any regulation that is in conflict with sections 739.02 to 739.053 of the Codified Ordinances. Consistent with the power of municipal corporations to exercise their rights under Article XVIII, Section 3 of the Ohio Constitution and recognizing the need for uniform commercial practices across this state, by analogy to *Am. Financial Servs. Assn et al. v. Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, citing *Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, syllabus, no municipal corporation or other political subdivision shall enact or enforce a regulation or ordinance applicable to a scrap metal dealer requiring a scrap metal dealer to individually identify and retain any scrap metal purchased or received, a practice otherwise known as "tag and hold."

### **739.055 Registration**

(a) To register as a scrap metal dealer, bulk merchandise container dealer, junk dealer, or secondhand dealer, as defined in section 739.01 of the Codified Ordinances, with the director of public safety as required by division (b) of section 739.05 of the Codified Ordinances, a person shall do all of the following:

- (1) Provide the name and street address of the dealer's place of business;
- (2) Provide the name of the primary owner of the business, and of the manager of the business, if the manager is not the primary owner;
- (3) Provide the electronic mail address of the business;
- (4) Provide confirmation that the dealer has the capabilities to electronically connect with the department of public safety for the purpose of sending and receiving information;
- (5) Provide any other information required by the director in rules the director adopts pursuant to sections 739.01 to 739.045 of the Revised Code;
- (6) Pay an initial registration fee of two hundred dollars (\$200).

(b) A person engaging in the business of a scrap metal dealer, bulk merchandise container dealer, junk dealer, and secondhand dealer in this state on or before the effective date of this section shall register with the director not later than \_\_\_\_\_. With respect to a person who commences engaging in the business of a scrap metal dealer, bulk merchandise container dealer, junk dealer, or secondhand dealer after the effective date of this section, the person shall register with the director pursuant to this section prior to commencing business as a scrap metal dealer or a bulk merchandise container dealer.

(c) A registration issued to a scrap metal dealer, bulk merchandise container dealer, junk dealer, or secondhand dealer pursuant to this section is valid for a period of one year. A dealer shall renew the registration in accordance with the rules adopted by the director and pay a renewal fee of one hundred fifty dollars (\$150) to cover the costs of operating and maintaining the registry created pursuant to division (e) of this section.

(d) For scrap metal dealers and bulk merchandise container dealers registered under this section, the dealers shall prominently display a copy of the annual registration certificate received from the director pursuant to division (e)(2) of this section.

(e) The director shall do all of the following:

- (1) Develop and implement, by \_\_\_\_\_, and maintain as a registry a secure database for use by law enforcement agencies that is capable of all of the following:

(A) Receiving and securely storing all of the information required by division (a) of this section and the daily transaction data that scrap metal dealers and bulk merchandise container dealers are required to send pursuant to division (e)(1) of section 739.05 of the Codified Ordinances;

(B) Providing secure search capabilities to law enforcement agencies for enforcement purposes;

(C) Creating a link and retransmission capability for receipt of routine scrap theft alerts published by the institute of scrap recycling industries for transmission to dealers and law enforcement agencies in the state;

(D) Making the electronic lists prepared pursuant to division (f)(2) of section 739.04 of the Revised Code available through an electronic searchable format for individual law enforcement agencies and for dealers in the state;

(E) Providing, without charge, interlink programming enabling the transfer of information to dealers.

(2) Issue, reissue, or deny registration to dealers;

(3) Adopt rules to enforce sections 739.02 to 739.055 of the Codified Ordinances, rules establishing procedures to renew a registration issued under this section, rules for the format and maintenance for the records required under division (a) of section 739.023 of the Codified Ordinances or division (c) of section 739.05 of the Codified Ordinances, and rules regarding the delivery of the report required by division (e)(1) of section 739.04 of the Codified Ordinances to the registry, which shall be used exclusively by law enforcement agencies.

(f) A scrap metal dealer or bulk merchandise container dealer may search, modify, or update only the dealer's own business data contained within the registry established in division (e) of this section.

(g) All fees received by the director pursuant to this section and division (f) of section 739.99 of the Codified Ordinances shall be used to develop and maintain the registry required under this section. The fees shall be deposited into the security, investigations, and policing fund created in section 143.35 of the Codified Ordinances.

### **739.06 Licensing of junk yard definitions.**

As used in sections 739.06 to 739.13 of the Codified Ordinances:

(a) "Junk" means old or scrap copper, brass, rope, rags, trash, waste, batteries, paper, rubber, iron, steel, and other old or scrap ferrous or nonferrous materials, but does not include scrap tires as defined in section 3734.01 of the Revised Code.

(b) “Fence” means a barrier at least six feet in height, constructed of non-transparent material, and maintained so as to obscure the junk from the ordinary view of persons passing upon those state, county, municipal, and township highways, roads, and streets covered by sections 739.06 to 739.99 of the Codified Ordinances.

(c) “Scrap metal processing facility” means an establishment having facilities for processing iron, steel, or nonferrous scrap and whose principal product is scrap iron and steel or nonferrous scrap for sale for remelting purposes.

(d) “Interstate system” means the system of highways as defined in the “Act of August 27, 1958,” 72 Stat. 887, 23 U.S.C.A. 103 (d), as amended.

(e) “Primary system” means that portion of the highway system designated by the director of transportation that has been approved by the secretary of transportation of the United States pursuant to the “Act of August 27, 1958,” 72 Stat. 887, 23 U.S.C.A. 103 (b), as amended.

(f) Junk yards located within areas adjacent to the interstate system and the primary system that are within 1,000 feet of the nearest edge of the right of way and that are zoned industrial, or that are not zoned under authority of state or local law, rule, or ordinance, but are used for industrial activities as determined by the director of transportation, are exempt from sections 739.06 to 739.99 of Codified Ordinances.

(g) Notwithstanding any business exempt under section 739.06(f) of the Codified Ordinances, any applicant for a license to conduct business, and any business already acting, as a junk yard, as defined by section 739.01 of the Codified Ordinances, shall conduct business within the zoning regulations of permitted buildings and uses set forth in section 1170.03. of the Codified Ordinances.

### **739.07 Prohibiting operation of junk yard without license.**

No person shall operate or maintain a junk yard, adjacent to the interstate or primary systems inside a municipality, except in zoned or unzoned industrial areas, unless he has first obtained a license issued under sections 739.05 to 739.12, inclusive, of the Codified Ordinances provided that the exception does not prohibit the regulation or prohibition of junk yards in zoned or unzoned industrial areas by municipal corporations. No licensee shall operate or maintain a junk yard in violation of the provisions of sections 739.06 to 739.12, inclusive, of the Codified Ordinances.

### **739.08 Issuance of license.**

(a) No person shall operate and maintain a junk yard, except in zoned or unzoned industrial areas adjacent to the interstate or primary systems, without first obtaining a license to do so from the County Fiscal Officer of Cuyahoga County.

(b) For rules governing people operating or maintaining a junk yard prior to January 1, 1964, see ORC §4737.07

(c) The requirement to obtain a license from the municipality under this section shall be in addition to regulations imposed and licenses required under municipal ordinances. No license shall be issued unless such yard accords with the provisions of this section.

(d) The fee for a license issued under this section is twenty-five dollars (\$25), except that the fee for municipal licenses issued under this section shall be reduced by the amount paid by the licensee for any similar licenses issued pursuant to section 185.04(c) of the Codified Ordinances. All licenses issued under this section shall expire on January 1 of the following the date of issue. A license may be renewed from year to year upon paying the Mayor or the auditor of Cuyahoga County the sum of ten dollars (\$10) for each such renewal. All fees paid under this section shall be for the use of the issuer of the license or renewal thereof. Any license or renewal thereof issued under this section may be revoked by the Mayor or the County Fiscal Officer of Cuyahoga County, after reasonable notice and opportunity to be heard, for any violation of sections 739.02 to 739.13 of the Codified Ordinances, by the licensee or by any of his officers, agents, or employees. Whenever a license has been revoked under this section, the Mayor or the County Fiscal Officer shall not issue another license to such licensee, to the husband or wife of such licensee, or to any partnership or corporation of which he is an officer or member, until such licensee complies with sections 739.06 to 739.13 of the Codified Ordinances.

#### **739.09 Application information.**

Application for a license to operate and maintain a junk yard or for a renewal thereof shall be made in writing, accompanied by the proper fee, to the Mayor or the County Fiscal Officer of Cuyahoga County, setting forth the name and address of the applicant, the location of the junk yard, if the applicant is a firm, partnership, or association, the names and addresses of each member, if the applicant is a corporation, the date and place of incorporation and the names and addresses of its officers and directors, and such other reasonable information as the chief executive officer of the municipality or the County Fiscal Officer deems necessary. The application shall be signed and sworn to by the applicant.

#### **739.10 Maintaining fence.**

Any fence constructed under sections 739.06 to 739.12, inclusive, of the Codified Ordinances, shall be neatly constructed, shall be non-transparent, shall be kept in good order and repair, and no advertisement shall be permitted thereon other than the name of the person under whose name the license has been issued and the nature of the business conducted therein.

### **739.11 Inspections.**

(a) Before a license is granted or renewed under sections 739.06 to 739.13 of the Codified Ordinances, the Cuyahoga County Sheriff, or, if the sheriff so designates, the Parma City Police Department shall inspect the junk yard within the sheriff's, police officer's, constable's, or chief's respective jurisdiction to determine if it complies with sections 739.06 to 739.13 of the Codified Ordinances. The sheriff, Parma City police officer or constable, or chief of police shall submit a written report of such examination to the County Fiscal Officer of the county or the village solicitor or city director of law of the municipal corporation wherein such junk yard is located.

(b) In addition, twice annually the Cuyahoga County Sheriff of each county, or, if the sheriff so designates, the Parma City Police Department shall inspect every junk yard that is located within the sheriff's, police officer's, constable's, or chief's jurisdiction and for which a license has been issued under sections 739.06 to 739.13 of the Codified Ordinances, to obtain information with regard to whether the licensee's activity has been and is being conducted in accordance with sections 739.02 to 739.13 of the Codified Ordinances. The sheriff, township police officer or constable, or the chief of police shall submit a written report of each such examination to the County Fiscal Officer of Cuyahoga County or to Parma Law Director. The sheriff, township police officer or constable, or the chief of police shall, for the purpose of these examinations, have free access to the grounds and buildings used or proposed for use in the conduct of the junk yard activity by the applicant or the licensee. Such inspections may be made at any time, at the option of the sheriff, township police officer or constable, or the chief of police during the regular work hours of the licensee or within the hours of eight (8) a.m. and five (5) p.m. Monday through Friday. The director of transportation may also inspect junk yards adjacent to state highways to obtain information with regard to whether the licensee's activity is being conducted in accordance with sections 739.02 to 739.13 of the Codified Ordinances. If such inspection indicates that there is a violation of any of the provisions of such sections the director shall advise the attorney general of such alleged violations and request the attorney general to take proper legal action.

(c) Whenever it is determined upon any semiannual inspection made under this section that a junk yard is not being conducted in accordance with the requirements of sections 739.02 to 739.13 of the Codified Ordinances, the Cuyahoga County Sheriff or Parma City Police Department, shall immediately notify the owner of the junk yard of such fact. The notice shall be sent to the owner by registered mail, and shall detail the areas which are not in conformity with the requirements of sections 739.02 to 739.13 of the Codified Ordinances. A copy of the notice shall also be sent to the auditor of Cuyahoga County, or the Parma Law Director.

(d) Any owner of a junk yard who receives a notice as provided in this section shall, within 60 days after the mailing of the notice, undertake and complete such changes or improvements as are necessary to conform the junk yard to the requirements of sections 739.02 to 739.13 of the Codified Ordinances. At the expiration of the 60-day

period, the sheriff, township police officer or constable, or the chief of police shall make a further inspection of the junk yard, and if the required changes or improvements have not been made, the sheriff, township police officer or constable, or the chief of the police shall send notice of that noncompliance along with an order to suspend the owner's license to the Mayor or the County Fiscal Officer of Cuyahoga County. After receiving that notice and order, the Mayor or County Fiscal Officer, as appropriate, shall suspend the owner's license for 90 days. While the owner's license is suspended, the owner shall undertake and complete such changes or improvements necessary to conform the junk yard to the requirements of sections 739.02 to 739.13 of the Codified Ordinances.

(e) An owner whose license is suspended pursuant to division (d) of this section may appeal the suspension in accordance with Chapter 2506. of the Revised Code. At any time during the 90 days in which an owner's license is suspended, the owner may apply to the sheriff, township police officer or constable, or the chief of the police to have the junk yard inspected. If, after the inspection, the sheriff, township police officer or constable, or the chief of the police determines that the junk yard conforms to the requirements of sections 739.02 to 739.13 of the Codified Ordinances, the sheriff, township police officer or constable, or the chief of the police, as appropriate, shall send notice of that compliance along with an order to remove the suspension and reinstate the owner's license to the Mayor or the County Fiscal Officer of Cuyahoga County. After receiving that notice and order, the Mayor or the County Fiscal Officer, as appropriate, shall remove the suspension and reinstate the owner's license.

(f)(1) An owner may sell junk while the owner's license is suspended.

(2) No licensee may accept junk for future resale during the time that the licensee's license is suspended under division (d) of this section.

(g) If an owner's license has not been reinstated under division (e) of this section prior to the end of a 90-day suspension, the sheriff, township police officer or constable, or the chief of police shall make a further inspection of the junk yard. If the owner has not made the required changes or improvements, the sheriff, township police officer or constable, or chief of police shall send notice of that noncompliance along with an order to revoke the owner's license to the Mayor or the County Fiscal Officer of Cuyahoga County. After receiving that notice and order, the chief executive officer or the County Fiscal Officer shall revoke the owner's license in accordance with the procedures specified in section 739.08 of the Codified Ordinances. In addition to having the licensee's license revoked, the owner of the junk yard shall be subject to a tax of one hundred dollars (\$100) for each day after revocation that the violation continues. The sheriff, township police officer or constable, or the chief of police shall certify a return of the imposition of said tax thereon to the County Fiscal Officer, who shall enter the same as a tax upon the property and against the persons upon which or whom the lien was imposed as and when other taxes are entered. The provisions of the laws relating to the collection of taxes in this state, the delinquency thereof, and sale of property for taxes shall govern in the collection of the tax prescribed in this section insofar as the same are applicable.

**739.12 Enforcement.**

Whenever the prosecuting attorney of Cuyahoga County, the Parma Law Director, or the attorney general is of the opinion that a junk yard is being operated or maintained in violation of any of the provisions of sections 739.06 to 739.13, inclusive, of the Codified Ordinances, he may apply, in the name of the state, to a court of competent jurisdiction, alleging the violation complained of and praying for an injunction or other proper relief. In such a case the court may order such junk yard abated as a nuisance or make such other order as may be proper. An action brought under this section shall not be deemed to be a bar to a prosecution under section 739.99 of the Revised Code.

**739.13 Determining unzoned industrial areas adjacent to interstate and primary systems.**

The director of transportation shall develop standards for determining and shall determine unzoned industrial areas adjacent to the interstate and primary systems pursuant to such standards. Such standards shall recognize the factors customarily considered in zoning areas as industrial, provided that they are consistent with the national policy for the control of junk yards.

**739.14 [Effective 3/22/2013] Compliance with law regarding sanctions for human trafficking.**

The director of public safety shall comply with section 4776.20 of the Revised Code.

Added by 129th General Assembly File No. 169, HB 247, § 1, eff. 3/22/2013.

**739.99 Penalty.**

(a) Except as specified in divisions (b), (c), (d), (e), and (f) of this section, whoever violates sections 739.02 to 739.12 of the Codified Ordinances, shall be fined not less than twenty-five nor more than 1,000 dollars and the costs of prosecution.

(b) Whoever violates division (f)(2) of section 739.11 of the Codified Ordinances is guilty of a misdemeanor of the fourth degree.

(c) Whoever fails to comply with or violates section 739.02, 739.023, or 739.051 , division (c), (d), (e), (f), (g), or (i) of section 739.05, or division (d) of section 739.055 of the Codified Ordinances is guilty of a misdemeanor of the first degree. If the offender one time previously has violated or failed to comply with section 739.02, 739.023, or 739.051 , division (c), (d), (e), (f), (g), or (i) of section 739.05, or division (d) of section 739.055 of the Codified Ordinances, the violation or failure is a felony of the fifth degree. If the offender two or more times previously has violated or failed to comply with section

739.02, 739.023, or 739.051 , division (c), (d), (e), (f), (g), or (i) of section 739.05, or division (d) of section 739.055 of the Codified Ordinances, the violation or failure is a felony of the fourth degree. For any second or subsequent violation of or failure to comply with section 739.02, 739.023, or 739.051, or division (c), (d), (e), (f), (g), or (i) of section 739.05, or division (d) of section 739.055 of the Codified Ordinances, a court may suspend the registration issued to the scrap metal dealer or bulk merchandise container dealer under section 739.055 of the Codified Ordinances for a period of ninety days, during which time period the person shall not engage in the business of a scrap metal dealer or a bulk merchandise container dealer, as applicable.

(d) Whoever violates division (b)(1) of section 739.05 of the Codified Ordinances is guilty of a felony of the fifth degree. The court also shall enjoin the person from engaging in the business of a scrap metal dealer or a bulk merchandise dealer.

(e) Notwithstanding section 2913.02 of the Revised Code and section 642.02 of the Codified Ordinances, whoever violates division (b)(2) or (3) of section 739.05 of the Codified Ordinances is guilty of a felony of the fifth degree for the first offense and a felony of the third degree for any subsequent offense.

(f) Any motor vehicle used in the theft or illegal transportation of metal shall be impounded for at least 30 days and not more than 60 days. If the same motor vehicle is used in connection with a second or subsequent theft or illegal transportation of metal, the motor vehicle shall be impounded for at least 60 days and not more than 180 days. Any motor vehicle used in the theft or illegal transportation of a special purchase article or bulk merchandise container shall be impounded for at least 90 days and not more than 360 days. A motor vehicle impounded pursuant to this division shall be stored at a municipal corporation impound lot, if available, or at a lot owned by a private entity or another governmental unit that the municipal corporation utilizes for the purpose of impounding a motor vehicle. An impounded motor vehicle may be recovered from the impound lot at the end of the impound term upon payment of fees, 50% of which shall be remitted to the department of public safety to offset the costs of operating the registry established pursuant to section 739.055 of the Codified Ordinances.