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City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Hans F. Larsen

**SUBJECT: COPPER MATERIALS
ANTI-THEFT REGULATIONS**

DATE: September 26, 2013

Approved

Date

9/26/13

INFORMATION

At the June 5, 2013 meeting of the Rules and Open Government Committee, the Committee considered a memorandum from Councilmembers Khamis, Campos, Kalra and Rocha addressing the topic of copper-wire theft from City streetlights and other City facilities. The Committee requested that staff prepare an Information Memorandum describing current regulations related to recycling and theft of copper materials.

Current State Regulations

In 2008, the State enacted Assembly Bill 844 (Berryhill) to strengthen anti-theft regulations related to the sale of recycled nonferrous materials including copper. In summary, the regulations are documented in Section 21606 of the Business and Professions Code and include the following:

- Buyers of recycled copper are required to maintain records of the seller that includes name, address, driver's license or other state identification, thumbprint, photo or video of seller, a description of the materials, date and place of sale, license number of vehicle transporting materials, along with a signed statement of ownership. Providing false information by the seller is a misdemeanor.
- Payment to the seller is by either cash or check and is subject to a three-day waiting period.
- Buyers are required to maintain records of purchase and resale for a period of two years. Records are subject to inspection by the county sheriff or police chief upon request. It is a misdemeanor for buyers to not maintain proper records. Violations are subject to fines, imprisonment and stoppage of business operations.

- Local law enforcement agencies have the authority to have buyers place a hold for up to 90 days on the release or disposal of recycled materials if there is probable cause that the material was stolen. Upon conviction of a person for the theft of property placed on a hold, the court shall order the defendant to: (1) pay the recycler for the costs of storing the property; and (2) pay the victim for both the value of the property stolen and any reasonable collateral damage caused in the commission of a theft.

State law preempts cities and counties from adopting local ordinances related to recycling transactions for nonferrous materials, unless it can be demonstrated by clear and convincing evidence that the ordinance is both necessary and addresses a unique problem within and specific to the jurisdiction of the ordinance that cannot effectively be addressed under existing state law and the local ordinance is passed by a two-thirds vote. The intent of this provision is to have consistent statewide business and enforcement practices for the transactions of nonferrous materials.

Proposed Legislation

In an effort to better address the statewide issue of copper wire theft. The two bills described below were advanced during the recent legislative session.

- AB 841 (Torres) requires that a payment for recycled nonferrous material be by check only and that it be mailed directly to the seller as opposed to the current payment method which allows a seller to pick up cash or check payment from the recycler after the third business day. The bill was approved by the legislature and is on the Governor's desk.
- AB 909 (Gray) requires the Department of Justice (DOJ) to establish a Metal Theft Task Force Program beginning in 2015 to provide grants to applicant regional task forces for the purpose of providing local law enforcement and district attorneys with the tools necessary to successfully interdict the commission of metal theft and related metal recycling crimes. In addition, the bill would establish the Metal Theft Task Force Fund, to be administered by DOJ and, upon appropriation by the Legislature, would make moneys in the fund available for the purposes of the program. The bill was approved by the legislature and is on the Governor's desk.

This memorandum was prepared in coordination with the City Attorney's Office, the Office of Intergovernmental Relations, the Police Department, the Department of Public Works and the Environmental Services Department.

/s/
HANS F. LARSEN
Director of Transportation

For questions, please contact Kelly Doyle, DOT Legislation and Policy Manager at (408) 975-3240.