

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 4-6 OF THE CITY CODE REGARDING PAWNSHOPS AND DEALERS IN SECONDHAND GOODS; CREATING AN OFFENSE AND PROVIDING A PENALTY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The City Code is amended by repealing Chapter 4-6 and replacing it with a new Chapter 4-6 to read as follows:

**CHAPTER 4-6. PAWNSHOPS AND SECONDHAND DEALERS.**

**ARTICLE 1. PAWNSHOPS**

**§ 4-6-01 APPLICABILITY.**

This article applies to a pawnshop licensed under Chapter 371 (*Pawnshops*) of the Texas Finance Code.

**§ 4-6-02 HOLD PERIOD SHORTENED FOR CERTAIN PAWNSHOPS.**

The hold period for property purchased from the general public required by 7 Texas Administrative Code § 85.420 (*Purchase Transactions*) is shortened to seven days for a pawnshop that daily enters pawn and purchase ticket information in an electronic system prescribed by the chief of police.

**§ 4-6-03 ADMINISTRATION.**

The chief of police may adopt rules and forms to administer and enforce this article.

**ARTICLE 2. SECONDHAND DEALERS.**

**§ 4-6-21 DEFINITIONS.**

In this article:

- (1) **APPLICANT** means a person who applies for a license under this article. If the applicant is not a natural person, the term includes:
  - (a) in the case of a partnership, the names of individual members of the partnership; and
  - (b) in the case of a corporation or other business association, the owners, directors and officers of the corporation or business association.
- (2) **AUTOMOBILE ACCESSORY** means a hubcap, wheel cover, radar detector, recorded music player, removable automobile top, or an item that is crafted or designed for use in or on an automobile as an accessory item.
- (3) **BUSINESS DAY** means a day that a secondhand dealer transacts business with a member of the public, or is open to the public for the transaction of business.
- (4) **CRAFTED PRECIOUS METAL** means jewelry, silverware, coins, bars, or any object crafted, in whole or in part, from gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or their alloys.
- (5) **JEWELRY** means a gem, a jewel, or an object made of a precious metal that is worn for adornment, including, but not limited to, a gem stone removed from a mounting.
- (6) **MOTORCYCLE ACCESSORY** means an item that is crafted or designed for use in or on a motorcycle as an accessory item.
- (7) **POWER TOOL** means a tool powered by electrical current, a battery, solar energy, or liquid or gaseous fuel, including, but not limited to, pneumatic and welding equipment.
- (8) **REGULATED MERCHANDISE** means any of the following items of used merchandise:
  - (c) an item that bears or as originally manufactured bore a manufacturer's serial number;
  - (d) an audio or video recording, including but not limited to a motion picture or a video game;
  - (e) an automobile accessory;
  - (f) a business machine;

- (g) a crafted precious metal;
  - (h) an electronic device, including, but not limited to, a radio, a television, a telephone or mobile telephone, an audio or video recorder or player, a computer, a video camera, a mobile telephone with computing ability and connectivity, or a device that is used in playing a video or computer game;
  - (i) a household appliance;
  - (j) jewelry;
  - (k) a motorcycle accessory;
  - (l) a musical instrument or an accessory used with a musical instrument, including, but not limited to, sound amplification equipment;
  - (m) optical equipment, such as binoculars, a telescope, or a microscope;
  - (n) photographic equipment;
  - (o) a power tool;
  - (p) a sporting good, or;
  - (q) a weapon.
- (9) **SECONDHAND DEALER** means a person buying, trading, selling, or accepting for sale on consignment regulated merchandise.
- (10) **USED MERCHANDISE** means personal property that has been previously sold or transferred to a person for his own use or the use of another.

#### **§ 4-6-22 APPLICABILITY.**

- (A) This article does not apply to:
- (1) a pawnshop licensed under Chapter 371 (*Pawnshops*) of the Texas Finance Code;
  - (2) sales involving the transfer of a motor vehicle title;
  - (3) a garage sale allowed by Section 25-2-902 (*Garage Sales*);
  - (4) a non-profit business that sells only donated items;
  - (5) sales by, or on behalf of, a governmental entity;

- (6) except as provided by Subsection (B), sales by a person whose only business transactions with regulated merchandise are a display space, booth, or table maintained for displaying or selling merchandise at a trade show, convention, festival, fair, circus, market, flea market, swap meet, or similar event for no more than a total of 14 days in a calendar year;
  - (7) a person who occasionally sells a personal item to another person and does not engage in buying regulated merchandise for resale as a business; or
  - (8) a transaction that does not involve a person buying, trading, selling, or accepting for sale on consignment regulated merchandise.
- (B) The chief of police may adopt rules consistent with this article to regulate a business described by Subsection (A)(6). The rules may provide for licensing the business, reporting regulated merchandise, and holding regulated merchandise before the merchandise may be sold or disposed of, as the chief finds appropriate. The rules may provide for a reduced or prorated licensing fee.
- (C) This article is cumulative of other law.

#### **§ 4-6-23 LICENSE REQUIRED.**

- (A) A person may not do business as a secondhand dealer without a license.
- (1) A secondhand dealer who conducts business at more than one location in the City must obtain a separate license for each business location.
  - (2) A secondhand dealer that does not have a permanent business location in the City of Austin must comply with Section 4-6-27(E).
- (B) To obtain a license as a secondhand dealer a person must make a written application to the chief of police. The application must provide:
- (1) the applicant's name and the name the of the business;
  - (2) if the applicant is a partnership, corporation, or other business association, the names of individual members of the partnership, or owners, directors and officers of the corporation or business association;
  - (3) a registration certificate for the business from the Secretary of State, if registration is required by law, and a copy of the business's assumed name certificate, if any;

- (4) the physical address or location of the business and, if different, the mailing address of the business;
  - (5) the regular days and hours of operation of the business;
  - (6) a statement that the applicant, and any employee of the applicant whose duties include the purchase of regulated merchandise, has not been convicted of a violation of this chapter in the immediately proceeding two calendar years;
  - (7) a statement that the applicant, and any employee of the applicant whose duties include the purchase of regulated merchandise, has not been convicted of an offense involving theft, burglary, robbery, fraud, or tampering with or falsification of evidence or official records;
  - (8) a notarized statement that all information provided by the applicant on the applicant's application is correct.
- (C) The chief of police may require additional information or identification reasonably necessary to determine an applicant's eligibility for a license under this article. As a condition of licensing, the applicant must provide or obtain any information or authorization necessary for the chief of police to conduct a criminal background check on the applicant and on any employee of the applicant whose duties include the purchase of regulated merchandise.
- (D) Each application must be accompanied by a non-refundable fee. The amount of a fee authorized by this ordinance shall be set by ordinance.
- (E) A license issued under this article expires on the second anniversary of the date the license is issued. A license that is revoked and reissued expires on the license's original expiration date. An applicant whose application expires must apply for a new license and pay a new fee. The chief of police may issue a temporary license while the application for a new license is being processed.
- (F) The chief of police may deny a license, and may revoke a license previously issued under this article, if the chief finds that:
- (1) the applicant's place of business is not in compliance with applicable laws;
  - (2) the applicant, or an employee of the applicant whose duties include the purchase of regulated merchandise, has been convicted of a violation of this chapter in the immediately proceeding two calendar years;
  - (3) the applicant has supplied incorrect information on the applicant's application;

- (4) the applicant, or an employee of the applicant whose duties include the purchase of regulated merchandise, has been convicted of a felony offense involving theft, burglary, robbery, fraud, or tampering with or falsification of evidence or official records, unless:
  - (a) the applicant or employee has been pardoned;
  - (b) two years have elapsed since the applicant or employee has been fully discharged from the sentence imposed for the offense, including any term of incarceration, parole, supervision, or probation ordered by any court; or
  - (c) the criminal proceedings were deferred without a final adjudication of guilt.
- (G) An applicant may appeal a denial or revocation of a license. An appeal must be:
  - (1) in writing;
  - (2) submitted to the chief of police not later than the 15<sup>th</sup> working day after the date of the denial or revocation of the license; and
  - (3) must clearly state why the chief's decision to deny or revoke the license was incorrect.
- (H) On receipt of a written appeal, the chief of police shall schedule a hearing to be held no later than the 30<sup>th</sup> day after the date the chief receives the written appeal. The hearing shall be before a hearing examiner selected by the chief. The hearing examiner shall issue a written opinion not later than the 15<sup>th</sup> working day after the date the hearing concludes recommending that the denial or revocation of the license be upheld, or recommending that the chief issue or reinstate the license. The hearing examiner's opinion must include findings of fact and conclusions of law. The chief may accept or reject the hearing examiner's recommendation. Not later than the 15<sup>th</sup> working day after the date that chief receives the hearing examiner's written opinion, the chief will either reaffirm the decision to deny or revoke the applicant's license or issue or reinstate the applicant's license. The chief's decision is final.
- (I) A secondhand dealer must post the dealer's license in a place clearly visible to the public in each place of business.

**§ 4-6-24 CHANGE IN INFORMATION.**

- (A) A secondhand dealer shall report a change in the information required to be submitted with a license application to the chief of police not later than the 15<sup>th</sup> working day after the date that the change occurs.
- (B) If the change is either to the name of the business or to the physical location of the business, the secondhand dealer must obtain a new license, and pay a new license fee. The chief of police may issue a temporary license while the application for a new license is being processed.

**§ 4-6-25 IDENTIFICATION REQUIRED: SELLER MUST ATTEST TO OWNERSHIP.**

- (A) At the time a secondhand dealer purchases or receives regulated merchandise in the course of business, the secondhand dealer shall require the person selling or transferring the regulated merchandise to the secondhand dealer to provide one of the following, which must be current and include the person's photograph:
  - (1) a driver's license issued by a state, territory, commonwealth, possession, or district of the United States;
  - (2) a personal identification certificate issued by the Texas Department of Public Safety, or a similar certificate issued by another state, territory, commonwealth, possession, or district of the United States;
  - (3) a passport issued by the United States or issued by another country and recognized by the United States;
  - (4) a United States military identification;
  - (5) a matricula consular issued by the Mexican Consulate.
- (B) At the time a secondhand dealer purchases or receives regulated merchandise in the course of business, the second dealer shall require from the person selling or transferring the regulated merchandise to the secondhand dealer a written statement attesting to the person's ownership of property at the time of the transaction.
- (C) A secondhand dealer may not purchase or receive regulated merchandise except from a person who provides the identification and statement required by this section.

**§ 4-6-26 INVENTORY.**

- (A) A secondhand dealer shall make each item of regulated merchandise purchased by or received by a secondhand dealer in the course of business open to inspection by a police officer during normal business hours.
- (B) A secondhand dealer may not purchase, receive, or possess an item of regulated merchandise from which the manufacturer's identification or serial number or brand has been altered, removed, or obliterated by means other than by wear caused by ordinary use of the item by a consumer.
- (C) If a police officer finds an item of regulated merchandise described by subsection (B) in the possession of a secondhand dealer, the police officer may seize the item and hold it at the police department for 60 days. At the time of the seizure of the property, the police officer shall issue to the secondhand dealer a receipt for the property notifying the secondhand dealer that the property may be redeemed on or after the 61<sup>st</sup> day after the date on which the item was seized unless it is determined by the chief of police to be evidence in an investigation.
- (D) A police officer may order a secondhand dealer to stop the sale or removal from the secondhand dealer's place of business any item of regulated merchandise for a period of 60 days or until the property is released by the officer. After receiving the order a secondhand dealer may not sell the item or permit the item to be removed from the secondhand dealer's place of business until the 61<sup>st</sup> day after the date the order was received by the secondhand dealer or until the item is released by the officer issuing the order.
- (E) Except as provided by subsection (F), a secondhand dealer may not sell an item of regulated merchandise purchased by or received by the dealer in the course of business, or permit the item to be removed from the secondhand dealer's place of business, before the 11<sup>th</sup> day after the date that the secondhand dealer reports the item under Section 4-6-27(*Recordkeeping Required*). Until a secondhand dealer is permitted to sell an item under this section, the secondhand dealer must retain the item in its original condition.
- (F) This subsection applies only to an item of crafted precious metal that has been photographed by a secondhand dealer and the item, including the photograph, has been reported electronically by the dealer as provided by Section 4-6-27(*Recordkeeping Required*). A secondhand dealer may not sell an item of crafted precious metal to which this subsection applies, or permit the item to be removed from the secondhand dealer's place of business, before the 8<sup>th</sup> business day after the date that the secondhand dealer reports the item. Until a secondhand dealer is permitted to sell an item under this section, the secondhand dealer must retain the item in its original condition. The photograph must be of sufficient



clarity to reasonably allow a person to identify the item photographed. The photograph must conform to any specification adopted by the chief of police.

(G) A report under this section is not required if:

- (1) a secondhand dealer purchases or receives in the course of business an item from another secondhand dealer;
- (2) the secondhand dealer from whom the item is purchased or received has already reported the item as required by this section; and
- (3) the secondhand dealer from whom the item is purchased or received has held the item for the period required by this section.

#### **§ 4-6-27 RECORDKEEPING REQUIRED.**

- (A) A secondhand dealer shall maintain records required by this article in hard copy in a format prescribed by the chief of police. A secondhand dealer shall maintain each record required by this article for a period of three years from the date the record is created.
- (B) In addition to the hard copy records required by subsection (A), a secondhand dealer shall report each record required by this article by entering the record in an electronic system prescribed by the chief of police. A secondhand dealer shall enter into the electronic system a record required to be created for a transaction no later than the end of the next business day after the day of the transaction. A report must include a statement that that the secondhand dealer has had no unreported transactions since the secondhand dealer's last report.
- (C) A record kept or reported under this article is a government record. By entering a record electronically a person attests to the truth of the information stated in the record. Notwithstanding any other provision of the City Code, a record kept or reported under this article is considered to be under oath by the person required to keep and report the record regardless of the absence of verification, including a signature.
- (D) A secondhand dealer must keep the following records with respect to each transaction regarding an item of regulated merchandise:
- (1) an accurate description of each item purchased or received, including the item's serial number;
  - (2) information about the person from whom the item is purchased or received, including:

- (a) the person's name, date of birth, race, and sex;
  - (b) the person's current address;
  - (c) the kind and number of the person's identification required by Section 4-6-25(A);
  - (3) the date and time that the item is purchased or received by the secondhand dealer;
  - (4) if the item is purchased, the amount of consideration paid to the seller;
  - (5) the statement required by Section 4-6-25(B).
- (E) In addition to complying with the other requirements of this article, a secondhand dealer that does not have a permanent business location in the City of Austin must notify the Chief of Police no later than the 31<sup>st</sup> day before the first day of any period of time in which the secondhand dealer will be open for business in the City. The notice must disclose:
- (1) the physical location where the secondhand dealer will be conducting business; and
  - (2) how many days the secondhand dealer expects to be open for business.

#### **§ 4-6-28 ADMINISTRATION.**

The chief of police may adopt rules and forms to administer and enforce this article.

#### **§ 4-6-29 PENALTY.**

- (A) A person commits an offense if the person violates this article or a rule adopted under this article. An offense under this article is a Class C misdemeanor, punishable by a fine not to exceed \$500.00, as provided in Section 1-1-99 (*Offenses; General Penalty*).
- (B) A secondhand dealer licensed under this article whose employee or agent violates a provision of this article is equally guilty with the offender and subject to the same penalty.
- (C) A culpable mental state is not required, and need not be proved, for an offense under this section.
- (D) Each day that a violation occurs or continues is a separate offense.

**PART 2.** The Chief of Police may adopt rules in anticipation of the effective date of this ordinance. This Part takes effect on June 18, 2012.

**PART 3.** Except as provided by Part 2, this ordinance takes effect on October 1, 2012.

**PASSED AND APPROVED**

\_\_\_\_\_, 2012      §  
                                 §  
                                 § \_\_\_\_\_  
                                 Lee Leffingwell  
                                 Mayor

**APPROVED:** \_\_\_\_\_  
                         Karen M. Kennard  
                         City Attorney

**ATTEST:** \_\_\_\_\_  
                         Shirley A. Gentry  
                         City Clerk