

CITY of ALBUQUERQUE

TWENTY SECOND COUNCIL

COUNCIL BILL NO. C/S(2) O-17-50 ENACTMENT NO. _____

SPONSORED BY: Diane G. Gibson

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ORDINANCE

AMENDING THE CITY OF ALBUQUERQUE CODE OF ORDINANCES ARTICLE 6 IN CHAPTER 13 ROA 1994, THE “PAWNBROKER ORDINANCE”

BE IT ORDAINED, BY THE COUNCIL THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Chapter 13, Article 6, Section 2 of the Revised Ordinances of Albuquerque, the “Pawnbroker Ordinance” is hereby amended as follows:

§ 13-6-2 PURPOSE.

The purpose of this article is to regulate those businesses which [primarily] purchase, or receive through a pawn transaction, used merchandise from the general public. [Through this article, the City of Albuquerque intends to promote responsible business practices within the pawnbroker industry, and further intends to assist law enforcement]”

SECTION 2. Chapter 13, Article 6, Section 3 of the Revised Ordinances of Albuquerque, “definitions” within the “Pawnbroker Ordinance” is hereby amended to add the following definitions, to be inserted alphabetically with existing definitions (all other definitions to remain unless specifically repealed or amended herein):

“§ 13-6-3 DEFINITIONS.

LAW ENFORCEMENT OFFICER: Any sworn officer within the Property Crimes unit of the Albuquerque Police Department, and any Albuquerque Police Department nuisance abatement inspectors.

PAWN INVENTORY: Any and all items on the pawn premises or within any storage space that are, or are anticipated to be held or acquired by the permit holder through a pawn or purchase transaction, or that are otherwise held

1 awaiting redemption or for the purpose of present or future sale or resale by
2 the permit holder.

3 PAWN PREMISES: The total area occupied by the permit holder, including
4 the physical building space within which the permit holder conducts any
5 business, including any associated storage spaces, buildings or containers
6 whether inside or outside of the building, together with any outdoor space
7 leased, occupied or otherwise controlled by the permit holder, other than
8 parking lots reserved exclusively for patrons or the general public.

9 STORAGE SPACE: Any type of container or space such as a safe, closet,
10 storage room, unit, lock box, trailer, outbuilding, or the like that is within,
11 attached to, or associated with the pawn premises.]”

12 SECTION 3. Chapter 13, Article 6, Sections 4 through 15 of the Revised
13 Ordinances of Albuquerque, the “Pawnbroker Ordinance” are hereby
14 amended as follows:

15 “§ 13-6-4 PERMITS REQUIRED; INSPECTION FEE; PENALTY.

16 (A) Every pawnbroker shall obtain a permit from the Mayor and the
17 permit shall be conspicuously displayed in the [person's pawnbroker's] place
18 of business. The permit will expire on July 1 of each year and must be
19 renewed by that date.

20 (B) Every pawnbroker shall pay [~~an inspection~~ a permit] fee of [\$400
21 \$500] each year to [~~help~~] cover the expense of administration of this article.

22 (C) Doing business as a pawnbroker without a permit, constitutes a
23 misdemeanor and is subject to the penalty provisions set forth § [~~13-6-99~~ 1-1-
24 99].

25 § 13-6-5 ADMINISTRATION; APPLICABILITY OF OTHER LAWS.

26 The Mayor shall adopt such rules and regulations as necessary for the
27 equitable administration of this article. The permit provided for in this article
28 does not constitute a waiver of any requirement or provision contained in any
29 ordinance of the city or state or federal law.

30 § 13-6-6 BOND REQUIRED.

31 No person shall engage in the business of pawnbroker without having
32 executed and delivered a bond to the city, in the sum of \$5,000. The bond

1 shall be in a form approved by the Mayor and shall be conditioned upon the
2 conduct of such pawnbroker's business according to the provisions of this
3 article, the laws of the state and all ordinances of the city. Such bond shall be
4 for the benefit of each and every person damaged by a breach of any
5 condition set forth in the bond. Every pawnbroker shall provide the Mayor
6 with 30 days' notice in writing of cancellation of bond.

7 § 13-6-7 APPLICATION FOR PERMIT; REQUIREMENTS.

8 (A) Each application for an original or a renewal permit shall be
9 submitted in writing to the Mayor and contain such information as is required
10 by the Mayor, and be accompanied by the applicable inspection fee amount.

11 (B) Each application shall be accompanied by the name, address and
12 date of birth of each agent, servant and employee of the applicant. Changes
13 in such list must be indicated on each renewal application.

14 (C) Every pawnbroker shall furnish with each application for an original
15 or renewal permit proof of execution and delivery of the bond to the City
16 Clerk's Office as required in § 13-6-6.

17 § 13-6-8 ~~[REVOCAION OF PERMIT~~ INSPECTION]; NOTICE [OF
18 VIOLATION]; HEARING.

19 ~~(A) [The Mayor may institute proceedings for the suspension or~~
20 ~~revocation of any permit issued pursuant to this article upon the filing of a~~
21 ~~written complaint by the Chief of Police or his designated representative~~
22 ~~charging the permit holder, or an employee thereof, of having violated any~~
23 ~~one or more provisions of this article.]~~ Inspection. Upon completion of
24 each inspection the law enforcement officer shall provide the permit holder
25 with a written inspection report that identifies the areas inspected, whether
26 any violations of this ordinance were identified, any specific items of pawn
27 inventory that are being seized or subject to seizure as a result of the
28 inspection, and any warnings about conditions or circumstances that could
29 present future problems relative to this ordinance. No items of pawn
30 inventory shall be removed from the pawn premises by a law enforcement
31 officer without completion of an inspection report.

1 (B) Notice of Violation. If a law enforcement officer reasonably believes
2 that the permit holder has violated any one or more provisions of this Article,
3 such Officer shall serve written notice upon the permit holder of the alleged
4 violation (the “notice of violation”). The notice requirement is satisfied if
5 personal service of same is had upon the permit holder or is posted in a
6 conspicuous place upon the permit holder’s place of business.

7 ~~(B) The Mayor shall serve written notice upon the permit holder of the~~
8 ~~alleged violation. The notice requirement is satisfied if personal service of~~
9 ~~same is had upon the holder of the permit or is posted in a conspicuous place~~
10 ~~upon the permit holder's place of business.~~

11 ~~(C) The Mayor shall set a date for hearing on such complaint not more~~
12 ~~than ten days, nor less than five days, after the date of notice unless waived~~
13 ~~by all parties thereto. The notice provided for in division (B) above shall~~
14 ~~specify the date and time of the hearing.~~

15 (1) The notice of violation shall specify the provisions of this
16 Article which have been allegedly violated, and shall set forth with reasonable
17 clarity the factual basis for each alleged violation, and shall state that an
18 administrative hearing will be scheduled by the City and that a notice of the
19 hearing will be mailed to the permit holder’s place of business or address of
20 record with the City by certified mail in accordance with this Article.

21 (2) The law enforcement officer shall provide the City Clerk with a
22 copy of the notice of violation for transmission to the City Independent Office
23 of Hearings within three business days of the notice of violation being served
24 upon the permit holder.

25 (B) Hearing. The permit holder, and any other interested person,
26 may appear and produce evidence at any administrative hearing relating to a
27 notice of violation. The final order of the City’s administrative hearing officer
28 on such matter constitutes the final administrative adjudication of the matter
29 by the City.

30 (1) Notice of Hearing. Within three business days of its receipt of
31 the notice of violation, the City Independent Office of Hearings shall mail a
32 notice of the hearing to the permit holder and the law enforcement officer who

1 delivered the notice of violation via certified mail. The notice shall specify the
2 location of the hearing, a date and time for the hearing that is between fifteen
3 and twenty days from its mailing of the notice of hearing. Such notice shall
4 briefly state the nature of the hearing and that failure to attend by the permit
5 holder will result in an automatic fine or permit revocation.

6 (2) Continuance. A first continuance of the hearing may be
7 ordered by the hearing officer assigned to hear the matter upon a showing of
8 good cause by any party. Any subsequent continuance request may be
9 granted only with the consent of all parties to the matter.

10 (3) Order; Penalty. Upon conclusion of the hearing, the hearing
11 office shall issue a final written order with findings of fact and conclusions of
12 law relating to the allegations from the notice of violation. If the hearing
13 officer determines that the permit holder is in violation of any provision of this
14 ordinance the hearing officer shall, at a minimum, order that the relevant
15 permit holder pay a penalty of \$500 for a first violation, \$1,000 for a second
16 violation, and that the pawn permit be permanently revoked after a third
17 notice of violation within any given calendar year. If revocation is ordered, it
18 shall be effective no sooner than 90 days from the date of the order to allow
19 for winding-down of the pawn business including redemption of pawn
20 inventory by rightful owners. However, notwithstanding the foregoing the
21 hearing officer may impose any reasonable penalty beyond the minimum after
22 taking into account the nature and number of violations found as a result of a
23 first or second notice of violation.

24 ~~(D) The permit holder, and any other interested person, [shall] have the~~
25 ~~right to appear at such administrative hearing and produce evidence. The~~
26 ~~rules of evidence shall not apply. If, after holding said hearing, the Mayor~~
27 ~~determines that the permit holder is in violation of the provisions of this~~
28 ~~article, as charged in complaint, the Mayor shall issue a written order. The~~
29 ~~order may suspend the permit for a stated period of time or permanently~~
30 ~~revoke said permit.] The [Mayor] [hearing officer] shall cause such order to~~
31 ~~be served upon the permit holder and filed in the office of the City Clerk for~~
32 ~~public inspection within five [(5)] business days after the hearing. Service of~~

1 the order on the permit holder shall be as specified in division (B)~~[(1)]~~ above
2 and the official serving such order shall have the authority to remove the
3 permit from the premises and deliver same to the ~~[Mayor]~~ [hearing officer].
4 ~~[This hearing shall be the final administrative remedy.]~~

5 “§ 13-6-9 RECORDS [AND REPORTS] BY [PAWNBROKERS PERMIT
6 HOLDERS]; VIOLATION.

7 (A) Every ~~[pawnbroker permit holder]~~ shall keep a record legibly written
8 or typed of each transaction made [for every item of pawn inventory with a
9 resale value in excess of ten dollars (\$10)] in the order in which each occurs.
10 [The record shall be made on a digital form or database in the format, color
11 and size approved by the Chief of Police, and shall be preserved and made
12 accessible to any law enforcement officer during normal business hours for a
13 period of two years. Each entry shall be uploaded or otherwise linked to the
14 Albuquerque Police Department’s electronic “leads online” system or any
15 future equivalent administered by the Department.] Each entry shall
16 include[:]

17 [(1) a transaction number, and the date, time and type of
18 transaction;]

19 [(2) a [color photograph of the person from which the piece of
20 pawn inventory was obtained that clearly depicts a full face view of the
21 person with eyes open, a neutral facial expression, and head facing the
22 camera;

23 (3) a discernible color photograph of the of item of pawn
24 inventory, together with a discernible photograph of the complete serial
25 number associated with the item when available;

26 (4) a thumbprint of the person from which the piece of pawn
27 inventory was obtained with notation as to the hand from which the print
28 came (right or left);

29 (5) the name and a] description of the [goods, article or item
30 pawned, pledged, purchased or otherwise received, item of pawn inventory]
31 including serial number and any other identifying mark[, date and time of the
32 transaction,;] and

1 [(6) a photo copy of a government issued identification card for
2 the person offering the piece of pawn inventory] and the [current] name and
3 address of the person offering the same [if not already included on the
4 identification card]. ~~[The record shall be made on a form in the format, color~~
5 ~~and size approved by the Chief of Police, and the forms shall be preserved~~
6 ~~and made accessible for a period of two years.]~~

7 (B) Persistent or frequent~~[ly]~~ erroneous records, and all untimely, or
8 incomplete entries in the above required records shall constitute a violation
9 of this section. [Minor typographical errors in records do not constitute a
10 violation unless they are persistent or have a pervasive tendency to mislead
11 or otherwise obstruct the enforcement of this ordinance.]

12 [(C) All permit holders shall prominently display a notice that patrons
13 pawning, selling, or offering items for exchange or satisfaction of payment
14 will be photographed, and the items photographed and stored in the permit
15 holder's records.

16 (D) Each item of pawn inventory with a resale value in excess of ten
17 dollars (\$10) shall have a tag attached thereto referencing the full transaction
18 number required pursuant to subsection 'A(1)' above.

19 ~~§ 13-6-10 REPORTS BY [PAWNBROKER PERMIT HOLDERS]; DELIVERY;~~
20 ~~VIOLATION.~~

21 ~~(A) Every pawnbroker shall each day accurately complete a report of all~~
22 ~~used property of every kind received or purchased during the preceding~~
23 ~~business day on a form approved by the Chief of Police. A photo~~
24 ~~identification card shall be required of each person pledging, pawning or~~
25 ~~selling merchandise to a pawnbroker. Each item received shall be listed on a~~
26 ~~separate report form. The report shall include the following:~~

- 27 ~~_____ (1) Name of item.~~
28 ~~_____ (2) Description of the item including make and model number, if~~
29 ~~any.~~
30 ~~_____ (3) Serial number and other identifying mark(s), if any.~~
31 ~~_____ (4) Date, time and type of transaction.~~
32 ~~_____ (5) Name and address of person offering the item.~~

1 ~~———— (6) Description of the person offering the item including sex,~~
2 ~~complexion, hair color, approximate height and weight, and date of birth.~~

3 ~~———— (7) Type of identification used by person offering item and~~
4 ~~identifying number of the identification. If the person presents a driver's~~
5 ~~license, the report shall also indicate the state of issuance.~~

6 **[(BE)] All reports required by this article shall be completed accurately and**
7 **be made available by 12:00 noon of the day following the day that the**
8 **property was received or purchased and said reports shall be delivered to the**
9 **Albuquerque Police Department within three days of the receipt or purchase**
10 **of the property.**

11 **[(CF)] Used personal property purchased directly from another permit**
12 **holder regulated by this article who has already reported the item pursuant to**
13 **this section is exempt from the requirements of this section [so long as**
14 **records relating to such property are transferred from the original permit**
15 **holder].**

16 ~~[(D) Persistent or frequent erroneous or incomplete entries in or delays~~
17 ~~in the submitting of the above required reports shall constitute a violation of~~
18 ~~this section.~~

19 ~~[(E) All businesses required to file reports as provided for in this article~~
20 ~~shall maintain a copy of each report for a period of at least one year from the~~
21 ~~date the reported transaction occurred.]”~~

22 **§ 13-6-[14 10] INSPECTION.**

23 **The [pawn premises, together with any storage space, the] reports and**
24 **records of the permit holder required by this article [as well as, and] every**
25 **item received [in by way of sale,] pawn, pledge or on consignment or through**
26 **purchase or exchange [shall be available for are subject to] inspection by [the**
27 **Mayor, the Chief of Police or any sworn member of the Albuquerque Police**
28 **Department at all reasonable times any law enforcement officer during**
29 **business hours for purposes of carrying out the provisions of this ordinance].**

30 **§ 13-6-[12 11] DISPOSITION OF PROPERTY[; PAYMENT FOR**
31 **PROPERTY].**

1 (A) No ~~[personal property pawn inventory]~~ pawned or pledged shall be
2 sold or disposed of, except by redemption, by any ~~[pawnbroker permit holder]~~
3 within 120 days from the time ~~[said personal property it]~~ was pawned or
4 pledged with the ~~[pawnbroker permit holder]~~ or within 90 days after the
5 indebtedness becomes due, whichever is later.

6 (B) It ~~[shall be is]~~ unlawful for any permit holder to sell, allow ~~[to be~~
7 ~~sold]~~ or otherwise dispose of ~~[alter in any way]~~ or remove from the permit
8 holder's place of business any item of purchased ~~[used merchandise, pawn~~
9 ~~inventory]~~ within 15 days from the date said item was received by the permit
10 holder. This ~~[excludes requirement does not apply to new]~~ items ~~[new~~
11 ~~purchased directly from manufacturers or licensed distributors]~~, items from
12 other permit holders and/or licensed dealers, and those dealing in bullion and
13 coinage.

14 ~~§ 13-6-13 USED MERCHANDISE TAGS.~~

15 ~~—Each item pledged to or purchased by the permit holder for which a report~~
16 ~~is required shall have attached thereto a tag with an alphabetic and/or~~
17 ~~numeric identification system matching the article with its corresponding~~
18 ~~report and record.]~~

19 § 13-6-~~[14 12]~~ LIMITATIONS AS TO PAWNOR/SELLER.

20 It shall be unlawful for any ~~[pawnbroker permit holder]~~ to purchase or
21 otherwise receive any item from the following:

22 (A) Any person under the age of 18.

23 (B) Any person under the influence of alcohol, any narcotic drug or
24 stimulant or depressant.

25 § 13-6-~~[15 13]~~ UNLAWFUL TRANSACTIONS.

26 It shall be unlawful for any permit holder to purchase or otherwise receive
27 any item of merchandise:

28 (A) From which the manufacturer's name plate, serial number or
29 distinguishing number or identification mark has been obviously defaced,
30 altered, covered or destroyed.

31 (B) Which the permit holder knows or should have known is not lawfully
32 owned by the person offering the same.

1 **§ 13-6-99 PENALTY.**

2 Any permit holder who is ~~[found guilty of a violation of~~ determined to have
3 violated] any provision of this article ~~[shall be subject to the penalty~~
4 ~~provisions set forth in § 1-1-99 of this code of ordinances.~~ Any permit holder
5 ~~who violates any provision of this article~~ other than § 13-6-4] shall be subject
6 to ~~[fine, or to]~~ having said permit revoked or suspended ~~[by the Mayor.~~
7 ~~Revocation or suspension of such permit will not bar prosecution of the~~
8 ~~permit holder under the penal provisions of this article. Criminal prosecution~~
9 ~~will not bar proceedings to revoke or suspend the holder's permit~~ as
10 prescribed by § 13-6-8(B)(3)].”

11 **SECTION 4. Severability Clause.**

12 If any section, paragraph, sentence, clause, word or phrase of this
13 Ordinance is for any reason held to be invalid or unenforceable by any court
14 of competent jurisdiction, such decision shall not affect the validity of the
15 remaining provisions of this Ordinance. The Council hereby declares that it
16 would have passed this Ordinance and each section, paragraph, sentence,
17 clause, word or phrase thereof irrespective of any provision being declared
18 unconstitutional or otherwise invalid.

19 **SECTION 5. Compilation.**

20 Sections 1 through 3 of this Ordinance shall amend, be incorporated in
21 and compiled as part of the Revised Ordinances of Albuquerque, New Mexico,
22 1994.

23 **SECTION 6. Effective Date.**

24 This ordinance takes effect ninety days after publication by title and
25 general summary.

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