



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-28 ENACTMENT NO. _____

SPONSORED BY: Diane Gibson

ORDINANCE

Repealing The City Of Albuquerque Code Of Ordinances Sections 13-6-1 Through 13-6-99, The "Pawnbroker Ordinance," And Replacing It With A New Ordinance Amending Existing Regulations Applicable To Pawnbrokers And Extending Regulations To Precious Material Dealers And Secondhand Retailers (Gibson)

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

SECTION 1. Chapter 13, Article 6, Sections 1 through 99 of the Revised Ordinances of Albuquerque, the "Pawnbroker Ordinance" is hereby repealed.

SECTION 2. A new article is hereby enacted in place of the prior Pawnbroker Ordinance as follows:

"§ 13-6-1 SHORT TITLE.

This article may be cited as the Pawnbroker, Precious Material Dealer, and Secondhand Retailer Ordinance.

§ 13-6-2 PURPOSE.

The purposes of this article include to:

(1) Ensure a sound system of making loans against, or acquiring through purchase, tangible personal property by and through pawnshops, precious material dealers, and secondhand retailers; and to prevent frauds, ensure fair record keeping and reporting practices;

(2) Provide for permitting and reporting requirements for pawnbrokers, precious metal

dealers, and secondhand retailers;

(3) Promote financial responsibility to the city and its residents and compliance with city law;
and

(4) Promote the health, safety, and welfare of the City by implementing minimum
accountability standards for pawnbroker, precious materials, and secondhand retailer businesses;
help level the regulatory playing field for these related industries; and help limit vulnerability of
these businesses to becoming unwitting participants in the cycle of property crime.

§ 13-6-3 DEFINITIONS.

CONSUMER ELECTRONICS. All handheld electronic devices such as mobile phones,
tablets, and mp3 players, radios, stereos, wireless speakers, sound systems, televisions,
electronic display screens, personal computers, gaming devices, digital cameras and recorders,
video playback devices, and all similar or related consumer electronics.

COVERED SECONDHAND GOOD: Any article of following types of tangible personal
property that were previously owned by an original end user or otherwise not purchased or sold
as new:

- a. consumer electronics,
- b. firearms,
- c. jewelry,
- d. musical instruments and equipment,
- e. precious metals,
- f. precious stones,
- g. sporting goods, or
- h. tools, including power tools.

COVERED TRANSACTION: Any transaction for any pledged good, and any purchase,
trade or acquisition for value (as opposed to by donation or consignment) of any covered
secondhand good by a pawnbroker, precious material dealer, or secondhand retailer from a
member of the general public.

JEWELRY: personal ornaments, such as necklaces, rings, bracelets, broaches, pendants
and similar items that are made from or contain precious metal, precious stones, or both.

PAWNBROKER: Every person permitted by the city of Albuquerque to engage, in
whole or in part, in the business of loaning money on the security of pledged goods.

PERSON: For purposes of this ordinance, a “person” is an individual, partnership,

corporation, joint venture, trust, association, or any other legal entity however organized.

PLEDGED GOODS: Tangible personal property other than securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker as security for a loan of money, or with the express or implied agreement to sell it back at a stipulated price.

PERMITTED VENDOR: A vendor holding a valid business registration who furnishes or supplies covered secondhand goods to a pawnbroker, precious material dealer, or secondhand retailer and who does not maintain a physical commercial premise in the City for the purposes of acquiring covered secondhand goods from the general public.

PRECIOUS MATERIAL DEALER: Any person who is engaged in the business of purchasing articles of jewelry, precious metals, precious stones, or rare or valuable coins primarily from the general public for purposes of resale or smelting, melting, or otherwise processing, combining or altering these materials for any purpose.

PRECIOUS METALS: gold, silver, or platinum, palladium, iridium, rhodium, osmium, ruthenium or an alloy of these metals.

PRECIOUS STONES: Diamonds, rubies, sapphires, emeralds, garnets, pearls, turquoise and other pieces of mineral or rock of value for purposes of their use in jewelry.

PROPERTY UNIT ENFORCEMENT OFFICIAL: Any sworn officer within the Pawn Unit or Property Crimes Division of the Albuquerque Police Department, or any person specifically assigned to the enforcement or administration of this ordinance.

SECONDHAND RETAILER: For purposes this ordinance, a ‘secondhand retailer’ is any person engaging in purchasing, trading or otherwise acquiring for value (as opposed to by donation or consignment) any covered secondhand goods for purposes of reselling, trading, or otherwise retailing the good.

SPORTING GOODS: bicycles, golf clubs, tennis rackets, archery bows, binoculars, skis, snow boards, and camping equipment.

STORE PREMISES: The total area occupied by a pawnbroker, precious material dealer, or secondhand retailer at the address on the city-issued registration or permit.

§ 13-6-4 PERMITS REQUIRED; PERMIT FEE; PENALTY.

(A) No person shall act as a pawnbroker, precious material dealer, or secondhand retailer, or advertise, transact, or solicit business as a pawnbroker, precious material dealer or secondhand retailer, without first having obtained a permit from the City of Albuquerque. A

person shall obtain a separate permit for each place of business at which the person acts or transacts business. However, any business engaging in two or more of the regulated business activities need apply for, and the City may issue, only a single permit identifying which activities the business plans to engage in (i.e. pawnbroker and/or precious material dealer and/or secondhand retailer).

(B) The permit shall be conspicuously displayed in the pawnbroker's, precious material dealer's, or secondhand retailer's place of business. The permit will expire on July 1 of each year and must be renewed by that date.

(C) Every pawnbroker, precious material dealer, and secondhand retailer shall pay an annual permit fee of \$250 at the time of issuance of the initial permit and at the time of each annual renewal to help cover the expense of administration of this ordinance. The City shall adjust this fee annually to correspond with increases in the Consumer Price Index for All Urban Consumers (CPI-U). Any business applying for a permit to engage two or more regulated activities (i.e. pawnbroker and/or precious material dealer and/or secondhand retailer) need only pay a single permit fee.

(D) Any person doing business as a pawnbroker, precious material dealer, or secondhand retailer without a permit, is guilty of a misdemeanor and is subject to the penalty provisions set forth in §1-1-99.

(E) A person must apply to the City of Albuquerque for a new permit upon any change, directly or beneficially, in the ownership of any pawnshop, precious material dealer, or secondhand retail establishment. An application for a permit or an application to transfer an existing permit is not required upon any change, directly or beneficially, in the ownership of a pawnshop if one or more holders of at least 90 percent of the outstanding equity interest of the business before the change in ownership continue to hold at least 90 percent of the outstanding equity interest after the change in ownership.

(F) Any person who is declined a permit or permit renewal is entitled to a hearing as prescribed under subsection 13-6-10(C) of this ordinance.

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

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

§ 13-6-6 BOND REQUIRED.

No person shall engage in the business of pawnbroker without having executed and delivered a bond to the city in the sum of \$5,000. The bond shall be in a form approved by the Mayor and shall be conditioned upon the conduct of such pawnbroker's business according to the provisions of this article, the laws of the state and all ordinances of the city. Such bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the Mayor with 30 days' notice in writing of cancellation of bond.

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

(A) Annual Application. Each application for a pawnbroker's, precious material dealer's, or secondhand retailer's permit shall be submitted in writing to the Mayor and be accompanied by the permit fee and the name, address, date of birth and social security number of the applicant and each agent, servant and employee of the applicant. Changes in such list must be indicated on each annual renewal application. Every pawnbroker shall furnish with each application for an initial or renewal permit proof of execution and delivery of the bond to the City Clerk's Office as required in § 13-6-6.

(B) To be eligible for a pawnbroker's, precious material dealer's, or secondhand retailer's permit, at the time of each application or renewal, an applicant must conduct business within the requirements and spirit of this ordinance and all other applicable laws, and never have had a pawnbroker's, precious material dealers, or secondhand retailer's permit revoked by the City or any other jurisdiction;

(C) The City shall perform a criminal background check on each applicant for a pawnbroker's, precious material dealer's or second hand retailer's permit. In deciding whether to issue a permit the City may deny a permit to an applicant based on criminal history only as regulated and authorized by New Mexico Criminal Offender Employment Act., NMSA 1978 § 28-2-1 et. seq. However, no person who has been convicted of a felony shall be eligible for a pawnbroker's permit pursuant to NMSA 1978 § 56-12-4.

§ 13-6-8 RECORDS AND REPORTS BY PAWNBROKERS; PENALTIES.

(A) Records for Covered Transactions. Every pawnbroker, precious material dealer, and secondhand retailer shall keep a record of each covered transaction made in the order in which each occurs. This record shall be made on a digital form or database in a format approved by the Chief of Police, and shall be preserved and made accessible to any property

unit enforcement official by 12:00 noon on the business' next business day after the covered transaction occurred, and remain so available during normal business hours for a period of two years. Each entry must also be uploaded or otherwise linked to the Albuquerque Police Department's electronic "leads online" system or any future equivalent administered by the APD by 12:00 noon of the business' next business day following the day of the covered transaction. Each entry shall include:

(1) A transaction number, and the date, time and type of transaction (pledge or purchase);

(2) A brief description of the item; including make, model and serial number (if available) together with a photograph of the item, a single photograph is sufficient for any covered transaction for a collection of like items such as a coin collection;

(3) The name, address and the date of birth of the pledger or seller as indicated on a valid government-issued photo identification card, a notation as to the type of identification card, the jurisdiction that issued the same and the identification card number;

(4) A clear, discernible, color still image of the pledger or seller that clearly depicts a full face view of the person taken in any form as approved by the Chief of Police including by a still image camera, or from still frame from a video surveillance camera of reasonable quality;

(B) The information required under subsections '(A)(1), (2), and (3)' above may be collected for each transaction, or may be collected only for the initial transaction so long as each subsequent transaction with the same person is linked or otherwise includes the information already on file. The information required under subsection '(A)(4)' above must be collected for each transaction.

(C) Records for Transactions with Permitted Vendors. Every pawnbroker, precious material dealer, and secondhand retailer shall keep a record of each transaction for a covered secondhand good with a permitted vendor which record must include an invoice specifying the permitted vendor's name, address, and the date of the sale to the pawnbroker, precious material dealer, or secondhand retailer.

(1) However, any transactions for covered secondhand goods with a permitted vendor having any owners or employees in common with any pawnbroker, precious material dealer, or secondhand retailer are subject to the reporting requirements for covered transactions prescribed under subsection 'A' above.

(D) Records for Estate Purchases. Every pawnbroker, precious material dealer, and secondhand retailer shall keep a record for any covered secondhand goods acquired through an estate sale to include a sales slip or equivalent with typical with customary information for such a transaction .

(E) In addition to any other penalty authorized by this ordinance or other law, any person who knowingly and willfully violates this §13-6-8, or who knowingly and willfully makes a false entry in any record specifically required by this section commits a violation punishable as provided in § 1-1-99. However, Clerical or recordkeeping errors, such as typographical errors or scrivener's errors, regarding any document or record required by this section do not constitute a knowingly and willful violation of this section, and are not subject to criminal penalties. Such errors are, however, subject to the administrative remedies of this ordinance, and upon written notification of the error by a property unit enforcement official, such errors must be corrected by the pawnbroker by the business' next business day.

§ 13-6-9 INSPECTION; PROPERTY CRIME DATA SHARING.

(A) Inspection. Any property unit enforcement official may inspect any store premises including safes, vaults, and storage spaces therein during normal business hours and have free access to all covered secondhand goods, and the corresponding transaction records required by this ordinance. The business being inspected may escort the property unit enforcement official throughout the inspection process.

(B) Property unit enforcement officials shall develop a system that facilitates coordination and information sharing with pawnbrokers, precious material dealers, and secondhand retailers to provide updates on current known property crime offenders and articles of personal property suspected to have been the subject of theft as frequently as possible.

§ 13-6-10 NOTICE OF VIOLATION; NOTICE OF HEARING; HEARINGS; CONTINUANCE; ORDER; PENALTIES.

(A) Notice of Violation. If a property unit enforcement official reasonably believes that a pawnbroker, precious material dealer, or secondhand retailer has violated any one or more provisions of this Article, such official shall serve written notice upon the same of the alleged violation (the "notice of violation"). The notice requirement is satisfied if personal service of same is had upon the pawnbroker, precious material dealer, or secondhand retailer or is posted in a conspicuous place upon the pawnbroker, precious material dealer, or secondhand

retailer's place of business.

(1) The notice of violation shall specify the provisions of this ordinance which have been allegedly violated, and shall set forth with reasonable clarity the factual basis for each alleged violation, and shall state that an administrative hearing will be scheduled by the City and that a notice of the hearing will be mailed to the pawnbroker, precious material dealer, or secondhand retailer's place of business or address of record with the City by certified mail in accordance with this ordinance.

(2) The property unit enforcement official shall provide the City Clerk with a copy of the notice of violation for transmission to the City Independent Office of Hearings within three business days of the notice of violation being served.

(B) Hearing and Penalties Relating to a Notice of Violation.

(1) Hearing. Any person in receipt of a notice of violation, and any other interested person, may appear and produce evidence at any administrative hearing relating to a notice of violation. The final order of the City's administrative hearing officer on such matter constitutes the final administrative adjudication of the matter by the City.

(a) Notice of Hearing. Within three business days of its receipt of the notice of violation, the City Independent Office of Hearings shall mail a notice of the hearing to the pawnbroker, precious material dealer or secondhand retailer and the property unit enforcement official who delivered the notice of violation, via certified mail. The notice shall specify the location of the hearing, a date and time for the hearing that is between fifteen and twenty days from its mailing of the notice of hearing. Such notice shall briefly state the nature of the hearing and that failure to attend may result in an automatic fine.

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

(c) Order. Within five (5) days of the conclusion of the hearing, the hearing office shall issue a final written order that identifies the penalties authorized by subsection 'B (2)' below that are being imposed (if any) relating to the allegations from the notice of violation.

(2) Findings Required for Imposition of Penalty. The hearing officer may enter an order imposing one or more of the penalties set forth in paragraph (3), below, if it is found that a pawnbroker, precious material dealer, or secondhand retailer violated or is operating in

violation of any of the provisions of this ordinance;

(3) Penalties. Upon finding a violation, the hearing officer may enter an order imposing one or more of the following:

(a). Ordering a pawnbroker, precious material dealer, or secondhand retailer to show proof of compliance within a reasonable timeframe;

(b) Imposing a fine of up to \$500 for a first violation, and up to a \$1,000 for any subsequent violations depending on the severity;

(c) Ordering that the pawnbroker, precious material dealer, or secondhand retailer cease and desist specified activities; or

(d) If the violation(s) are determined to be severe and irredeemable, ordering that the pawnbroker's, precious material dealer's or secondhand retailer's permit be revoked or not renewed. If revocation is ordered for a pawnbroker, precious material dealer, or secondhand retailer, it shall be effective no sooner than 120 days from the date of the order to allow for winding-down of the business including redemption of pawn inventory by rightful owners. No new loans or purchases may be done during this time, only sales and redemption;

(C). Hearing and Penalties relating Permit Issuance or Renewal.

(1) After an initial denial of a pawnbroker, precious material dealer, or secondhand retailer license or renewal by the City, the denied applicant may request a hearing. After notice and hearing, the City may decline to issue or renew a pawnbroker, precious material dealer, or secondhand retailer permit if it is determined that:

(a). The pawnbroker, precious material dealer, or secondhand retailer, either knowingly or without the exercise of due care, has violated this section or has aided or conspired with another person to violate this section;

(b). A condition exists that, had it existed when the permit was originally issued, would have justified the refusal to issue the permit; or

(c). The pawnbroker, precious material dealer, or secondhand retailer no longer meet the eligibility requirements to hold a permit; or

(2) Any pawnbroker, precious material dealer, or secondhand retailer may surrender a permit by delivering it, by certified or registered mail, return receipt requested, to the City Clerk's Office with written notice of its surrender. The surrender of a permit does not affect the civil or criminal liability of the pawnbroker, precious material dealer, or secondhand retailer for acts committed before the surrender of the permit.

(3) The revocation or surrender of a permit does not impair or affect the obligation of any preexisting lawful contract between the pawnbroker and any pledger of pledged goods.

(D) Notwithstanding any other provision of this section, the City may terminate an investigation or action upon agreement by the pawnbroker, precious material dealer, or secondhand retailer to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized under this subsection and requested by the City.

§ 13-6-11 DISPOSITION OF PROPERTY; PAYMENT FOR PROPERTY.

(A) No pledged goods shall be sold or disposed of, except by redemption, by any pawnbroker within 120 days from the time it was pledged with the pawnbroker or within 90 days after the indebtedness becomes due, whichever is later.

(B) It is unlawful for any pawnbroker, precious metal retailer, or secondhand retailer to sell, or otherwise dispose of, alter in any way, or remove any covered secondhand goods from the store premises, except by redemption, within 15 days from the date said covered secondhand goods were received.

§ 13-6-12 UNLAWFUL TRANSACTIONS.

(A) No pawnbroker, precious material dealer, or secondhand retailer shall:

(1) Knowingly and willfully enter into a covered transaction with a person under the age of eighteen years, or under the influence of alcohol, any narcotic, drug, stimulant or depressant or any person who previously sold or pawned, or attempted to sell or pawn, stolen property with the pawnbroker, precious material dealer, or secondhand retailer;

(2) In, the case of a pawnbroker, fail to exercise reasonable care to protect pledged goods from loss or damage;

(4) Remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number on an item of personal property held in pledge or for sale.

(5) Accept any item in a covered transaction where the manufacturer's name plate, make, model, serial number, identification number or mark has been obviously defaced, altered, covered, removed, or destroyed;

(6) Purchase or otherwise receive any item of property which the pawnbroker, precious material dealer, or secondhand retailer knows is not lawfully owned by the person offering the same; or

(7) Willingly and knowingly make, cause, or allow to be made any false entry or misstatement of any corresponding transaction records required to be kept under this ordinance.

13-6-13 HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION; DISPUTED OWNERSHIP; PROCEDURES

(A) When any law enforcement officer has probable cause to believe that property in possession of a pawnbroker, precious material dealer, or secondhand retailer is misappropriated, the officer may place a hold order on the property for a reasonable period of time, not to exceed thirty (90) days.

(B) No pawnbroker, precious material dealer, or secondhand retailer shall release or dispose of property subject to a hold order except pursuant to a court order or a written release from the police department.

(C) Where the rightful ownership of seized property is disputed, any interested person may request a hearing to determine the issue of ownership before the City Independent Office of hearings by filing a request with the City Clerk's Office. Upon its receipt of such a request, the City Independent Office of Hearings shall notify the law enforcement officer involved in the matter, who shall deliver the contact information for all known interested parties within three days of being notified. Within three days of receiving this information, the City Independent Office of Hearings shall issue a notice of hearing to the officer and all known interested parties. The notice shall specify the location of the hearing, and a date and time for the hearing that is between fifteen and twenty days from its mailing of the notice of hearing. Such notice shall briefly state the nature of the hearing and that failure to attend by any party may result in a decision adverse to their interests.

§13-6-14. EXEMPTIONS. Nothing herein shall be construed as applying to charitable thrift stores, charitable organizations, consignment stores, or precious material dealers who do not resell to the general public and who are subject to the anti-money laundering requirements of the USA Patriot Act.]

SECTION 3. SEVERABILITY. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. COMPILATION. Sections 1 and 2 of this Ordinance shall amend, be incorporated in and complied

as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 5. EFFECTIVE DATE. This ordinance takes effect ninety days after publication by title and general summary.