

CITY of ALBUQUERQUE

TWENTY SECOND COUNCIL

COUNCIL BILL NO. CS O-17-50 ENACTMENT NO. _____

SPONSORED BY: Diane Gibson

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ORDINANCE

AMENDING THE CITY OF ALBUQUERQUE CODE OF ORDINANCES ARTICLE 6 IN CHAPTER 13 ROA 1994, THE “PAWNBROKERS ORDINANCE”; ADDING PROVISIONS FOR CERTAIN BUYERS OF PRECIOUS METALS AND GEMS

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

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

“ § 13-6-1 SHORT TITLE.

This article may be cited as the "Pawnbroker [and Precious Metal Buyer] Ordinance"

§ 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[, or which purchase or receive precious metals or gems from the public for purposes of resale or for melting, smelting or other alteration for later resale of the raw material. Through this article, the City of Albuquerque intends to promote responsible business practices within the pawnbroker and precious metal buyer industries, and further intends to assist law enforcement with its duty to abate certain public nuisances and criminal activities that adversely affect the citizens of Albuquerque when pawnbrokers or precious metal buyers engage in irresponsible business practices].”

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5 repealed or amended herein):

6 “§ 13-6-3 DEFINITIONS.

7 LAW ENFORCEMENT OFFICER: Any employee of a police or public
8 safety department administered by the state or any political subdivision of the
9 state where the employee is responsible for the prevention and detection of
10 crime and the enforcement of the penal, traffic or highway laws of this state
11 as defined in Section 30-20A-2D NMSA 1978, and specifically includes
12 Albuquerque Police Department nuisance abatement inspectors.”.

13 PAWN OR PRECIOUS METAL INVENTORY: Any and all items on the pawn
14 or precious metal buyer premises or within any storage space that are, or are
15 anticipated to be held or acquired by the permit holder through a pawn
16 transaction, or otherwise intended to be held for present or future potential
17 sale by the permit holder.

18 PAWN OR PRECIOUS METAL BUYER PREMISES: The total area occupied
19 by the permit holder, including the physical building space within which the
20 permit holder conducts any business including any storage space, together
21 with any outdoor space owned, leased, occupied or otherwise controlled by
22 the permit holder as the permit holder or in any other capacity for any
23 purpose including parking for employees, patrons or the public.

24 PRECIOUS METAL BUYER: Any person, firm or corporation that engages
25 or offers to engage in the business of purchasing items of gold, silver,
26 platinum, or other precious metals or gems for the purpose of smelting,
27 melting, or otherwise processing, combining or altering the metals or gems
28 for any purpose including sale or resale.

29 PRECIOUS METAL OR GEM: Any and all items of gold, silver, platinum,
30 palladium, rhodium or other valuable metal or gem, including but not limited
31 to jewelry or coins on the pawn or precious metal buyer premises, or within a
32 storage space that are, or are anticipated to be held or acquired by a permit

1 holder, and held for present or future potential sale or alteration prior to sale
2 by the permit holder.

3 STORAGE SPACE: Any type of container or space such as a safe, closet,
4 storage room\unit, lock box, trailer, or the like that is located on the pawn or
5 precious metal buyer premises and which is owned or controlled by the
6 permit holder as the permit holder or in any other capacity, or by the permit
7 holder's employees or agents, which could reasonably be used to store
8 Inventory or merchandise.]”

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

12 “§ 13-6-4 PERMITS REQUIRED; INSPECTION FEE; PENALTY.

13 (A) Every pawnbroker [and every precious metal buyer] shall obtain a
14 permit from the Mayor and the permit shall be conspicuously displayed in the
15 [person's pawnbroker's or precious metal buyer's] place of business. The
16 permit will expire on July 1 of each year and must be renewed by that date.

17 (B) Every pawnbroker [and every precious metal buyer] shall pay [an
18 inspection a permit] fee of [\$100 \$500] each year to cover the expense of
19 administration of this article.

20 (C) Doing business as a pawnbroker [or precious metal buyer] without a
21 permit, constitutes a misdemeanor and is subject to the penalty provisions
22 set forth § 13-6-99.

23 § 13-6-5 ADMINISTRATION; APPLICABILITY OF OTHER LAWS.

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

28 § 13-6-6 BOND REQUIRED.

29 No person shall engage in the business of pawnbroker [or precious metal
30 buyer] without having executed and delivered a bond to the city, in the sum of
31 \$5,000. The bond shall be in a form approved by the Mayor and shall be
32 conditioned upon the conduct of such pawnbroker's [or precious metal

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

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

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

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

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

16 § 13-6-8 REVOCATION OF PERMIT; NOTICE; HEARING.

17 ~~(A) [The Mayor may institute proceedings for the suspension or~~
18 ~~revocation of any permit issued pursuant to this article upon the filing of a~~
19 ~~written complaint by the Chief of Police or his designated representative~~
20 ~~charging the permit holder, or an employee thereof, of having violated any~~
21 ~~one or more provisions of this article.] Notice of Violation. If a law~~
22 ~~enforcement officer reasonably believes that the permit holder has violated~~
23 ~~any one or more provisions of this Article, such Officer shall serve written~~
24 ~~notice upon the permit holder of the alleged violation (the "notice of~~
25 ~~violation"). The notice requirement is satisfied if personal service of same is~~
26 ~~had upon the permit holder or is posted in a conspicuous place upon the~~
27 ~~permit holder's place of business.~~

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

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

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

11 (2) The law enforcement officer shall provide the appropriate City
12 agency responsible for the scheduling and conducting of administrative
13 hearings with a copy of the notice of violation within three business days of
14 the notice of violation being served upon the permit holder.

15 (B) Hearing. The permit holder, and any other interested person,
16 may appear and produce evidence at any administrative hearing relating to a
17 notice of violation. The final order of the City's administrative hearing officer
18 on such matter constitutes the final administrative adjudication of the matter
19 by the City.

20 (1) Notice of Hearing. Within three business days of its receipt of
21 the notice of violation, the City shall mail a notice of the hearing to the permit
22 holder and the law enforcement officer who delivered the notice of violation
23 via certified mail. The notice shall specify the location of the hearing, a date
24 and time for the hearing that is between fifteen and twenty days from its
25 mailing of the notice of hearing. Such notice shall briefly state the nature of
26 the hearing and that failure to attend by the permit holder will result in an
27 automatic permit suspension or permit revocation.

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

1 (3) Order; Penalty. Upon conclusion of the hearing, the hearing
2 office shall issue a final written order with findings of fact and conclusions of
3 law relating to the allegations from the notice of violation. If the hearing
4 officer determines that the permit holder is in violation of any provision of this
5 ordinance the hearing officer shall, at a minimum, order that the relevant
6 permit be suspended for fifteen (15) days for a first notice of violation, thirty
7 (30) days for a second notice of violation, and permanently revoked after a
8 third notice of violation. However, notwithstanding the foregoing the hearing
9 officer may impose any reasonable penalty beyond the minimum up to and
10 including immediate revocation after taking into account the nature and
11 number of violations found as a result of a first or second notice of violation.]

12 ~~[(D) — The permit holder, and any other interested person, [shall]~~
13 ~~have the right to appear at such administrative hearing and produce evidence.~~
14 ~~The rules of evidence shall not apply. If, after holding said hearing, the Mayor~~
15 ~~determines that the permit holder is in violation of the provisions of this~~
16 ~~article, as charged in complaint, the Mayor shall issue a written order. The~~
17 ~~order may suspend the permit for a stated period of time or permanently~~
18 ~~revoke said permit. The [Mayor] [hearing officer] shall cause such order to be~~
19 ~~served upon the permit holder and filed in the office of the City Clerk for~~
20 ~~public inspection within five [(5)] business days after the hearing. Service of~~
21 ~~the order on the permit holder shall be as specified in division (B)[(1)] above~~
22 ~~and the official serving such order shall have the authority to remove the~~
23 ~~permit from the premises and deliver same to the [Mayor] [hearing officer].~~
24 ~~[This hearing shall be the final administrative remedy.]~~

25 “§ 13-6-9 RECORDS BY [PAWNBROKERS PERMIT HOLDERS];
26 VIOLATION.

27 (A) Every [pawnbroker permit holder] shall keep a record legibly written
28 or typed of each transaction made [for an item of pawn inventory or precious
29 metal or gem] in the order in which each occurs. Each entry shall include a[n
30 original thumb print of the person from which a piece of pawn inventory or
31 precious metal or gem was obtained, together with a] description [and
32 original, discernable color photograph in print form] of the goods, article or

1 Item pawned, pledged, purchased or otherwise received, including serial
2 number and any other identifying mark, date and time of the transaction, and
3 the name and address of the person offering the same. The record shall be
4 made on a form in the format, color and size approved by the Chief of Police,
5 and the forms shall be preserved and made accessible [to any law
6 enforcement officer at any time] for a period of two years.

7 (B) ~~[Persistent or frequent e~~ Erroneous or incomplete entries in the
8 above required records shall constitute a violation of this section.

9 [(C) All permit holders shall prominently display a notice that patrons
10 pawning, selling, or offering items for exchange or satisfaction of payment
11 will be thumb-printed, and the items photographed and stored in the permit
12 holder's records.]

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

15 (A) Every [pawnbroker permit holder] shall each day accurately
16 complete a report of all [used property of pawn inventory and precious metal
17 or gem] every kind received or purchased during the preceding business day
18 on a form approved by the Chief of Police. A [government issued] photo
19 identification card shall be required of each person pledging, pawning or
20 selling merchandise [or a precious metal or gem] to a [pawnbroker permit
21 holder]. Each item received shall be listed on a separate report form. The
22 report shall include the following:

- 23 (1) Name of item.
- 24 (2) Description of the item including make and model number, if
25 any.
- 26 (3) Serial number and other identifying mark(s), if any.
- 27 (4) Date, time and type of transaction.
- 28 (5) Name and address [and thumb print] of person offering the
29 item.
- 30 (6) Description of the person offering the item including sex,
31 complexion, hair color, approximate height and weight, and date of birth.

1 (7) ~~[Type of identification used by person offering item and~~
2 ~~identifying number of the identification. If the person presents a driver's~~
3 ~~license, the report shall also indicate the state of issuance. A discernible copy~~
4 ~~in print form of a government-issued photo identification card such as a~~
5 ~~driver's license or similar identifying the person offering the item for sale or~~
6 ~~pawn.]~~

7 [(8) An original, discernible, color photograph in print form of the
8 goods, article or item pawned, pledged, purchased or otherwise received.]

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

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

19 (D) ~~[Persistent or frequent~~ Any erroneous or incomplete entries in or
20 delays in the submitting of the above required reports shall constitute a
21 violation of this section.

22 (E) All businesses required to file reports as provided for in this article
23 shall maintain a copy of each report for a period of at least one year from the
24 date the reported transaction occurred.

25 § 13-6-11 INSPECTION.

26 The [pawn or precious metal buyer premises, together with any storage
27 space therein, the] reports and records of the permit holder required by this
28 article ~~[as well as, and]~~ every item received ~~[in by way of sale,]~~ pawn, pledge
29 or on consignment or through purchase or exchange ~~[shall be available for~~
30 are subject to] inspection by ~~[the Mayor, the Chief of Police or any sworn~~
31 ~~member of the Albuquerque Police Department at all reasonable times~~ any

1 law enforcement officer during business hours for purposes of carrying out
2 the provisions of this ordinance].

3 § 13-6-12 DISPOSITION OF PROPERTY[; PAYMENT FOR PROPERTY].

4 (A) No ~~[personal property pawn inventory or precious metal or gem~~
5 purchased, exchanged,] pawned or pledged shall be sold~~[, melted, smelted or~~
6 otherwise altered,] or disposed of, except by redemption, by any ~~[pawnbroker~~
7 permit holder] within 120 days from the time ~~[said personal property it]~~ was
8 ~~[pawned or pledged with the pawnbroker~~ acquired by the permit holder] or
9 within 90 days after the indebtedness becomes due, whichever is later.

10 (B) It ~~[shall be is]~~ unlawful for any permit holder to sell, allow [to be
11 sold] or otherwise dispose of [alter in any way] or remove from the permit
12 holder's place of business any item of ~~[purchased used merchandise, pawn~~
13 inventory or precious metal or gem] within 15 days from the date said item
14 was received by the permit holder. ~~[This excludes items new, items from~~
15 ~~other permit holders and/or licensed dealers, and those dealing in bullion and~~
16 ~~coinage.~~

17 (B) It is unlawful for any permit holder to provide immediate cash
18 payment for any item of pawn inventory or any precious metal or gem
19 acquired or received from a member of the public. Payment of value by a
20 permit holder relating to any such transaction must be in the form of a check
21 payable to the seller or pawnor. Such check shall be issued no sooner than
22 three days from the date that the permit holder acquired the item. Such check
23 must be delivered to the seller or pawnor only by mail at the address provided
24 pursuant to Section 13-6-10. In no instance may sellers or pawnors take
25 delivery of the check directly from the pawn or precious metal buyer
26 premises.]

27 § 13-6-13 USED MERCHANDISE TAGS.

28 Each item pledged to or purchased by the permit holder for which a report
29 is required shall have attached thereto a tag with an alphabetic and/or
30 numeric identification system matching the article with its corresponding
31 report and record.

32 § 13-6-14 LIMITATIONS AS TO PAWNOR[/SELLER].

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

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

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

6 § 13-6-15 UNLAWFUL TRANSACTIONS.

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

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

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

14 § 13-6-99 PENALTY.

15 Any permit holder who is found guilty of a violation of any provision of this
16 article shall be subject to the penalty provisions set forth in § 1-1-99 of this
17 code of ordinances. Any permit holder who violates any provision of this
18 article shall be subject to having said permit revoked or suspended [~~by the~~
19 ~~Mayer~~]. Revocation or suspension of such permit will not bar prosecution of
20 the permit holder under the penal provisions of this article. Criminal
21 prosecution will not bar proceedings to revoke or suspend the holder's
22 permit.”

23 SECTION 5. Severability Clause.

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

31 SECTION 6. Compilation.

1 **Sections 1 through 4 of this Ordinance shall amend, be incorporated in**
2 **and compiled as part of the Revised Ordinances of Albuquerque, New Mexico,**
3 **1994.**

4 **SECTION 7. Effective Date.**

5 **This ordinance takes effect five days after publication by title and general**
6 **summary.**