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ORDINANCE NO. 018201

AN ORDINANCE AMENDING TITLE 5 – BUSINESS LICENSE AND PERMIT REGULATIONS – CHAPTER 5.12 – DEALERS IN SECONDHAND GOODS, DEALERS IN CRAFTED PRECIOUS METALS, COIN DEALERS AND PAWNBROKERS – IN ITS ENTIRETY RELATING TO ALL PROVISIONS INCLUDING CLARIFICATIONS AND REVISIONS OF DEFINITIONS AND EXCLUSIONS; CLARIFICATION REGARDING LICENSE DENIAL, SUSPENSION, REVOCATION; CLARIFICATION REGARDING VIOLATIONS AND PENALTIES.

WHEREAS, on February 29, 2012, the City adopted its currently effective secondhand goods ordinance; and

WHEREAS, the City Council continues to recognize that the regulation of the purchase, sale, barter or exchange of secondhand goods is necessary to protect the safety, health and welfare of the citizens of the City; and

WHEREAS, the City wishes to clarify its second hand goods ordinance in order to protect the health and welfare of its citizens.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:

Section 1. Title 5 – Business License and Permit Regulations – Chapter 5.12 – Dealers in Second Hand Goods, Dealers in Crafted Precious Metals, Coin Dealers and Pawnbrokers – will be revised in its entirety to read as follows:

5.12.010 Definitions.

A. "Crafted precious metal" means jewelry, silverware, an art object, or another object made wholly or partly from precious metal, other than a coin, a bar, or commemorative medallion, or scrap or a broken item selling at five percent or more than the scrap value of the item.

B. "Engaged in or conducting business" means the purchase, sale, barter or exchange of any secondhand goods including advertising therefore and including such business conducted by a secondhand dealer in a permanent location including, flea-markets, mercados, market places and open air markets.

C. "Itinerant seller" means any individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized as a temporary or transient business conducted in a shop, room, hotel room, motel room or other premises rented for any duration less than thirty consecutive days or used on a temporary basis sells, but does not purchase barter or exchange, secondhand goods. (An itinerant seller is not a local dealer who must move his shop from his existing location to a new location within the city due to loss of lease or voluntary move prior to the expiration of the minimum thirty-day period.)

D. "Jewelry" means crafted precious metal often set with precious or semi-precious stones but excluding costume jewelry.

E. "Pawnbroker" means a person engaged in the business of lending money on the security of pledged goods or purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.

F. "Precious metal" means gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals.

G. "Secondhand dealer" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized engaged in or conducting business in the city as defined by this chapter.

H. "Secondhand goods" includes but is not limited to any of the following personal property or object of value that is not purchased or sold as new:

1. Jewelry;
2. Precious metal in whatever identifiable form except for numismatic coins or bullions;
3. Any type of gem or precious stone, including but not limited to diamonds;
4. Consumer electronics including but not limited to those intended for everyday use, entertainment, communications and office productivity to include computers, tablets, telephones, cellular phones, MP3 players, audio equipment, televisions, calculators, GPS automotive electronics, gaming devices, digital cameras and recorders using video media such as DVDs, VCRs, blue rays or camcorders;
5. Hand tools, power tools and gardening tools;
6. Sporting goods, including but not limited to bicycles, golf clubs, tennis rackets, archery bows, binoculars and camping equipment;
7. Musical instruments.

Secondhand goods do not include property purchased by one licensed, established merchant in the normal course of business from another licensed, established merchant.

Article I. Dealers in Secondhand Goods

5.12.020 Policy.

It is declared to be the policy of the city, in the exercise of its police power for the protection of the safety, health and welfare of its citizens to regulate engaging in or conducting business in secondhand goods.

5.12.030 License—Required.

It is unlawful for an individual, partnership, corporation, joint venture, trust, association or other legal entity to engage in the business of secondhand goods without first paying the established fee and obtaining a license therefore, as hereinafter provided. A separate application and license will be required for each location, place or premises used for the conduct of the business of the secondhand dealer. A separate established fee will be charged for each additional license issued.

5.12.040 License—Term.

Licenses issued pursuant to this chapter will expire one year from the date of issuance, unless otherwise suspended or revoked.

5.12.050 License—Renewal.

If, thirty days prior to the expiration of the original license, there are no outstanding violations, citations, or fees owed to the city by the license holder which are directly related to the license, the license may be renewed annually upon the filing of a new application and payment of the established renewal fee.

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5.12.060 License—Application

Applicants for a license under this article must file with the license official, a written sworn application signed by the applicant. If the applicant is an individual, the application must be signed by the individual. If the applicant is a legal entity organized under the laws of the State of Texas, the application must be signed by a duly authorized entity representative with authority to bind the entity who provides documentation that establishes said authority. All applicants must complete the approved city application that is available online or in paper form.

5.12.070 License—Investigation—Issuance.

Upon receipt of an application for a license in accordance with the provisions of Section 5.12.060, the license official in conjunction with the police chief's designee(s), will conduct an investigation to determine if there are grounds to deny the license. If there are no grounds for denial, the license official will issue a license no later than thirty calendar days following the date of the filing of the application.

5.12.080 License—Denial, Suspension, Revocation; Appeal

A. The license official will issue a notice of intent to deny, suspend or revoke a license if the investigation reveals one or more of the following:

1. Outstanding violations, citations or fees owed to the city by the applicant that are directly related to the license;

2. An individual applicant or any employee of an entity applicant has been:

   A. Convicted of any felony within five years immediately preceding the date of the filing of the application;

   B. Convicted of any crime of moral turpitude within five years immediately preceding the date of the filing of the application;

3. Fraud, misrepresentation or false statement of facts of material consequence in the application; or

4. Three or more violations of this Chapter within twelve months immediately preceding the current application.

B. The police chief or the license official may deny, suspend or revoke a secondhand dealer license for a violation of any provisions of this chapter by providing the applicant/licensee with a statement indicating the reason(s) for denial, suspension or revocation. The police chief or license official will contact the city attorney's office prior to issuing the aforementioned statement in order to coordinate the retention of a hearing officer and to schedule the hearing.

C. When the license official issues a written notice of intent to deny, suspend, or revoke a license, the license official will immediately send such notice, which will include the specific grounds under this Chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice will be directed to the most current business address or other mailing address on file with the license official for the respondent. The notice will specify a date, not less than ten calendar days nor more than twenty calendar days after the date the notice is issued, on which the hearing officer will conduct a hearing on the license official's written notice of intent to deny, suspend or revoke the license.

At the hearing, the respondent will have the opportunity to present all of the respondent's arguments and to be represented by counsel at respondent's expense, present evidence and witnesses on his or her behalf, and cross-examine any of the license official's witnesses. The license official, who may also be represented by counsel, bears the burden of proving the grounds for denying, suspending, or revoking the license by a preponderance of the evidence. The hearing will take no longer than one day, unless extended at the request of the respondent to meet the requirements of due process and proper

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administration of justice. The hearing officer will issue a written decision, including specific reasons for the decision pursuant to this Chapter, to the respondent within five City business days after the hearing.

If the decision is to deny, suspend or revoke the license, the decision will become effective on the thirtieth calendar day after it is rendered. If the hearing officer's decision finds that no grounds exist for the denial, suspension, or revocation of the license, the hearing officer will, contemporaneously with the issuance of the decision, order the license official to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the license official will contemporaneously therewith issue the license to the applicant.

5.12.090 Place of business—License restrictions.

Any license issued under the provisions of this article will designate the place that the secondhand dealer will conduct business, and the business will not be conducted in any other place.

5.12.100 Records—Required.

A. Every secondhand dealer must keep a record of all transactions.

B. The record must be maintained in the English language and in a clear, legible manner.

C. Secondhand dealers must 1) complete a secondhand dealer receipt that is sold by the city or 2) submit an electronic filing in a format acceptable to the city.

D. The records maintained by the secondhand dealer must be made at the time of the transaction, be sequentially numbered and include the following information:

1. Transaction date;
2. Secondhand dealer business name;
3. Secondhand store address to include street, city, state and zip code;
4. Confirmation of identification card with photo (driver's license, military identification card, any state or federal issued identification card) to identify the seller;
5. Seller's address including street, city, state and zip code;
6. The month, day and year that Seller was born;
7. Seller's last name, first name, and middle name/initial;
8. Seller's hair color, eye color, height and weight;
9. An accurate and full description of secondhand goods to include but not be limited to: serial numbers, model numbers, item type, make, model number engraving, inscriptions, color, size, length, unique markings, owner applied numbers, inventory number, metal, stone, karat and design must be recorded if applicable. Each individual item must be recorded fully and accurately. Stones must be described as to type, including results of electronic testing, color, shape, number, size and approximate weight. Class ring descriptions must also include school name, class year and any names or words on the ring;
10. The price or consideration paid or received at the time of transaction;
11. All record entries must identify the person making the entry.

E. The secondhand dealer must maintain a record of all transactions for one year from the transaction date even if the secondhand dealer no longer possesses or owns the property.

F. The secondhand dealer's records must be accessible during business hours, at the address that is listed on the secondhand dealer's license.

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5.12.110 Inspection of Goods and Records.

Subject to applicable federal, state and local laws, the records, goods, articles or things purchased, received or kept for sale or exchange by every secondhand dealer must be made available for inspection by any member of the city Police Department during normal business hours.

5.12.120 Purchasing from minors.

No secondhand dealer will purchase, trade or deal in secondhand goods with any individual under the age of eighteen years of age without written consent of the minor's parent or guardian. This consent will become part of the record of the transaction and must be included with all other records required under Section 5.12.100.

5.12.130 Retained Goods to be Accessible.

Every secondhand goods dealer must, for a period of twenty days after acquiring the item, during regular business hours, keep accessible on the licensed premises available for inspection by any city peace officer, all secondhand goods, purchased or received from any person, before selling, shipping or otherwise disposing of the same.

5.12.140 Melting, wrecking and remodeling.

A. If the secondhand dealer's intention is to melt, wreck and/or remodel the secondhand goods, the secondhand dealer must record all data required by section 5.12.100 and hold the secondhand goods for a minimum of twenty days.

B. Purchase of melted items. A secondhand dealer may not purchase an object that is formed as the result of melting precious metals unless:

   1. The object is purchased from a manufacturer or a dealer in precious metal; and

   2. The seller provides a purchase receipt to the secondhand dealer who is purchasing the melted items that documents what the item was prior to melting. The acquiring secondhand dealer must provide the city Police Department a copy of the purchase receipt obtained from the seller along with any other necessary documentation upon request. The acquiring dealer must keep a copy of the purchase receipt at the licensed business.

   3. A secondhand dealer selling to another secondhand dealer must provide documentation of where the melted item originated, i.e. a secondhand store ticket or other record in conformance with this Chapter.

5.12.150 Exclusions.

The provisions of this article do not apply to the following businesses or dealers:

A. Junk means discarded metal, glass, paper, cordage, rags, bones, rubber or other waste which may be treated so as to be used again in some form; vehicles or machines which are worn out and intended for scrapping; or any article or substance commonly considered to be junk. The term does not include secondhand articles or substances which are still usable for the purpose for which they were originally intended and are sold with a view to such further original use;

B. Used motor vehicles;

C. Dealers in antiques, art and collectibles are defined as any dealer who engages exclusively in the business or occupation of selling, bartering or exchanging any painting, furniture, china or other object that is valuable primarily by reasons of age, scarcity or the skill and craftsmanship

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of the artists and artisan. Antiques will not include family heirlooms made of gold and silver or other precious metals. This exclusion does not exempt such dealers from compliance with this Chapter with regard to any other secondhand goods in which they conduct business;

D. Coin collectors or coin shops that engage exclusively in the coin business or occupation except as provided in Article II of this chapter. This exclusion does not exempt such dealers or businesses from compliance with the regulations as hereinafter provided in relation to any precious metal or crafted precious metal that they may engage in or conduct business in addition to their coin and bullion operations;

E. Neighborhood garage sales;

F. Nonprofit or charitable, secondhand goods or thrift-type shops;

G. Licensed gun dealers who engage exclusively in the business or occupation of selling, buying, bartering or exchanging guns or firearms. Provided, however, this exclusion does not exempt such dealers from compliance with the regulations as herein provided in relation to any other secondhand goods that they may engage in or conduct business in addition to their gun business.

H. Itinerant sellers of secondhand goods;

I. A business that purchases cellular phones or electronic communication devices or consumer electronics in return for a non-cash credit such as a gift card from the issuing business, a credit at the issuing business or credit to an account with the issuing business if:

1. As part of the record of the commercial transaction, the business will note: date, time and place of transaction; legal name, date of birth, residence and phone number(s) of seller; the credit amount; employee's name handling the transaction. Such information will be retained by the business in accordance with applicable state and federal law standard retention obligations for commercial transactions. Any non-standard record retention obligations would require a formal request from law enforcement in accordance with applicable state and federal law.

2. On the day of the transaction to accept the used cellular phone or the electronic communication device, the business will cross-reference in a national lost and stolen database the Electronic Serial Number (ESN) or International Mobile Equipment Identifier Number (IMEI). The business will refuse to accept any cellular phones or electronic communication devices or consumer electronics that have been recorded as lost or stolen in the database.

Article II. Dealers in Crafted Precious Metals

5.12.160 State registration required to be filed with city.

Dealers in crafted precious metals must file annually with the city a copy of the dealer's certificate of registration issued pursuant to the Texas Occupations Code or other applicable state or federal law.

5.12.170 Licensing, recordkeeping and goods retention requirements.

Dealers in crafted precious metals who also purchase, trade, barter or exchange any type of secondhand goods in conjunction with the crafted precious metal dealership will be subject to the record keeping, licensing and goods retention requirements established in Article I of this chapter with regard to the secondhand items.

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Article III. Coin Dealers, Coin Collection Conventions

5.12.180 Licensing, recordkeeping and goods retention requirements.

Coin collectors and coin dealers will not be subject to the same recordkeeping and goods retention requirements as secondhand dealers so long as their dealings are limited to coins. However, if any such coin collector/dealer also conducts business in any other type of secondhand goods, the collector/dealer will be subject to the record keeping, licensing and goods retention requirements established in Article I of this chapter, regarding these other secondhand goods.

5.12.190 Registration.

Coin collectors and coin dealers that are not subject to the recordkeeping, licensing requirements and goods retention provisions of Article I of this chapter as they relate to their coin dealings, must meet the following registration conditions as they relate to their coin business:

A. All coin dealers and/or collectors who conduct a coin business and do not conduct any other secondhand goods business must register with the license official;

B. All coin conventions or other sales events must register with the license official no later than three business days before the scheduled date of the sales event. The sponsor(s) of such a sales event must submit the following information at the time of registration:

1. The type of sales event to be conducted,
2. The location of the sales event,
3. The time and date of the sales event and its expected duration.

Article IV. Pawnbrokers

5.12.200 Pawnbrokers licensed by the state.

Pawnbrokers will continue to be licensed by the state and must follow the Texas Finance Code, Chapter 371, Title 7, Texas Administrative Code, Chapter 85, and other applicable state or federal law. In addition to the required state license, pawnbrokers must comply with the city's recordkeeping requirements as set forth in this article.

5.12.210 Recordkeeping.

Every pawnbroker must keep at his place of business the following records:

A. A record of the transaction in accordance with Section 5.12.100;

B. As applicable:

1. A copy of the pawn ticket; or
2. A copy of the bill of sale.

Article V. 5.12.220 Violations; penalty.

A. Any person, firm, corporation, partner, officer or other entity representative, manager, operator or agent who violates a provision of this chapter will be guilty of a misdemeanor and punished by a fine not to exceed two-thousand dollars.

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B. The penalty provided for in this section is in addition to any other remedies that the city may have under other city ordinances and/or state law.

C. The following city officials are authorized to enforce the provisions of this chapter and have the power to issue misdemeanor citations to any person who violates the provisions of this chapter: the city Chief of Police and/or his/her designee(s).

Section 2. Except as expressly amended herein, Title 5 – Business License and Permit Regulations – will remain in full force and effect.

PASSED AND APPROVED this 1st day of July, 2014.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Linda A. Samples
Assistant City Attorney

APPROVED AS TO CONTENT:

Michelle Gardner
Assistant Police Chief

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