

ORDINANCE NO. 58-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE REPLACING CHAPTER 17, "MISCELLANEOUS PROVISIONS", ARTICLE II, "PAWN SHOPS", OF THE ABILENE MUNICIPAL CODE IN ITS ENTIRETY AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, the Abilene Police Department routinely investigates criminal offenses in which precious or scrap metals are targeted because of their high value; and,

WHEREAS, the current provisions of Chapter 17, "Miscellaneous Provisions", Article II, "Pawn Shops" are out of date and no longer adequate to meet the needs of the community;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

- PART 1:** That Chapter 17, "Miscellaneous Provisions", Article II, "Pawn Shops" of the Code of Ordinances, City of Abilene, Texas, is hereby replaced as set out in Exhibit A, attached and made a part of this ordinance for all purposes.
- PART 2:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.
- PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.
- PART 4:** Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING this 11th day of October, 2012.

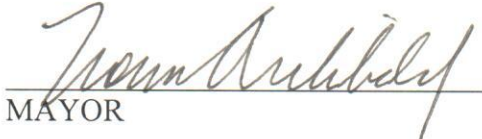
A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper

of general circulation in the City of Abilene, said publication being on the 2nd day of December, 2012, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 6th day of December, 2012, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

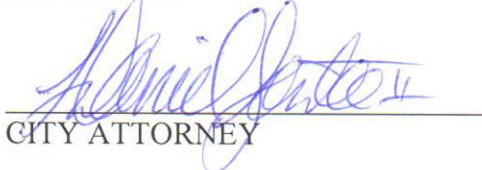
PASSED ON SECOND AND FINAL READING this 6th day of December, 2012.

ATTEST:


CITY SECRETARY


MAYOR

APPROVED:


CITY ATTORNEY

ORDINANCE NO. 58-2012

EXHIBIT A

Replace CHAPTER 17 "Miscellaneous Provisions", Article II. "Pawn Shops", in its entirety with the following:

ARTICLE II. PAWN SHOPS

Sec. 17-51. Hold period for personal property purchased by pawn shops.

- (a) Each item of personal property purchased from the general public by any local pawn shop under the regulation of the Texas Pawn Shop Act and the Consumer Credit Commissioner must be held at the licensed pawn shop location for a period from the purchase date before being modified, changed, sold, or disposed of in any manner for at least eleven (11) days.
- (b) The City of Abilene Police Department shall have the authority to extend the hold period on any particular personal property if the interest of justice so requires, from eleven (11) days, to a period not exceeding twenty (20) days, by providing written notice to the local pawn shop, (under the regulation of the Consumer Credit Commissioner,) in possession of the personal property on or before the 11th day of the hold period.

ARTICLE III. METAL RECYCLING ENTITIES AND PRECIOUS METAL BUYERS

Sec. 17-52. Definitions.

The following words or phrases, whenever used in this article, shall be construed as defined in this section:

Business Days. Every official working day of the week, including Monday through Friday. This shall exclude any day in which the City of Abilene administration offices are closed due to holidays, inclement weather days, etc.

Chief of Police. The Chief of Police of the City of Abilene, Texas, or designated representative.

City Secretary. The City Secretary of the City of Abilene, Texas, or designated representative.

Consignment Store. A retail store that sells secondhand items on behalf of others and receives a percentage of the sales price.

Fixed Location. _ A location that is owned or leased solely as a storefront location to sell or purchase precious metals or regulated metals.

Metal recycling entity. Anyone who operates or maintains a scrap metal yard or other place in which used or previously purchased metal items or scrap metal is collected or kept for shipment, sale, or transfer or engages in the business of utilizing machinery or equipment for the processing of or manufacturing of iron, steel, or nonferrous metallic scrap and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for re-melting purposes.

Precious Metal. Metals as defined by the Texas Occupations Code § 1956.051, as amended.

Precious metal buyer. Any person engaged in the business of buying gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals as defined in Texas Occupations Code § 1956.051, as amended.

Regulated Metal. Metals as defined by the Texas Occupations Code § 1956.001, as amended.

Sec. 17-53. Exceptions.

This Article shall not be applicable to:

- (a) The sale of aluminum cans.
- (b) Trade or purchase of firearms.
- (c) Entities licensed as a pawn shop with the State of Texas.
- (d) The sale or purchase of coins.
- (e) Consignment stores with the exception of transactions of precious metals.
- (f) Secondhand personal property businesses with the exception of transactions of precious metals.
- (g) Items purchased at auctions or estate sales.

Sec. 17-54. Permit required.

All persons transacting business as a metal recycling entity or a precious metal buyer shall have a current Metal and Precious Metal Permit to operate issued by the City of Abilene.

Sec. 17-55. Permit Application.

Applicants for permits under this article must file with the City Secretary an application in writing on a form obtained from the City Secretary and provide the following:

- (a) A valid Texas Driver's License or state issued photo identification.
- (b) A valid email address.
- (c) The number of the limited sales tax permit issued to the business by the state comptroller's office, if applicable.
- (d) A brief description of the activity or business to be conducted.
- (e) The appropriate fee.

Any application made pursuant to the provisions of this article may be presented to the Better Business Bureau of Abilene or the Abilene Police Department for investigation.

Sec. 17-56. Required fee.

The fees and charges for permits furnished by the city shall be determined from time to time and placed on file in the office of the City Secretary. No application for a permit will be processed until the required fees are tendered to the City Secretary. Permit fees are nonrefundable and shall not be prorated.

Sec. 17-57. Issuance.

Upon completion and presentation of the application, the City Secretary shall issue a permit to the applicant within 5 business days unless grounds for denial exist under Section 17-61 of this Article.

Sec. 17-58. Contents.

- (a) Each permit issued under this article shall show the name of the permitted individual, business address, the date of issuance, and the expiration date of such permit.
- (b) The permit shall be numbered and printed in black; except, that the following shall be printed prominently thereon in red: "The issuance of this License is not an endorsement by the City of Abilene, or any of its officers or employees, and expires _____."

Sec. 17-59. Permit Expiration

The permit will be valid through December 31 of the year the permit is issued. The permit will only be valid for the address for which it is issued and will become void if the location of the business is changed.

Sec. 17-60. Transfer.

No permit issued under the provision of this article shall be transferred or assigned to any person or business entity.

Sec. 17-61. Denial.

An application for permit may be denied to a person under this article for the following reasons.

- (a) An investigation reveals that the applicant falsified information on the application.
- (b) Permit for same business has been revoked within the past 6 months.
- (c) The applicant has been convicted within the previous five years of felony offense under Chapters 30 through 32 of the Texas Penal Code as amended and is not clear of community supervision or parole for the last five years.

Sec. 17-62. Revocation.

- (a) Permits issued under the provision of this article may be revoked for any of the following causes by any official of the City of Abilene:
 - 1. Fraud, misrepresentation or false statement contained in the application for permit.
 - 2. Fraud, misrepresentation or false statement made in the course of carrying on his business.
 - 3. Any violation of this article.
 - 4. Applicant is convicted of a felony offense under Chapters 30 through 32 of the Texas Penal Code, as amended.
- (b) Notice of revocation of a permit shall be given in writing, and specify the grounds of the revocation.
- (c) When notice is received that a permit has been revoked, the person shall immediately surrender their permit to the revoking official and the business operations governed by the permit shall cease to operate.

Sec. 17-63. Appeals

- (a) An appeal from any act of denial or revocation of any permit shall be filed with the City Manager or his designee within five (5) business days from the date of denial or revocation.
- (b) Such appeal shall be taken by filing with the City Manager or his designee a written statement setting forth fully the grounds for the appeal.
- (c) The City Manager or his designee shall issue a decision on the denial or revocation in writing within 5 business days of receipt of the appeal.
- (d) The revocation or denial is not stayed pending the City Manager's or his designee's decision.
- (e) The decision and order of the City Manager or his designee on such appeal shall be final and conclusive.

Sec. 17-64. Exhibition of Permit Required.

All persons transacting business as a metal recycling entity or precious metal buyer shall conspicuously display the current permit to operate issued by the City of Abilene.

"Conspicuously displayed" shall mean displayed so that it is visible to any customer conducting business with the metal recycling entity or precious metal buyer.

Sec. 17-65. Recordkeeping requirements.

- (a) Except as otherwise provided herein, every person licensed or transacting any business as a metal recycling entity or precious metal buyer within the city shall use the entity designated by the Chief of Police to maintain an electronic inventory-tracking system and transmit all information required by this Article via computer to the entity designated by the Chief of Police.
- (b) The information required to be transmitted by this section must include:
 - 1. The date and time of each transaction in which precious metal or regulated metal is purchased, pledged, or received monetary value for said item (s).
 - 2. An accurate and detailed description of any and all precious metal or regulated metal purchased or acquired during the regular course of business for any

monetary value, including any and all trademarks, identification numbers, serial numbers, model numbers, brand names, and other identifying marks.

3. The full name, address, date of birth, driver's license number or state-issued identification card, and physical description of the person with whom each such purchase or transaction is consummated. The person must present their driver's license or state issued identification card to vendor at the time of each transaction.
 4. A digital photograph is required of any precious metal or regulated metal purchased by a precious metal buyer or metal recycling entity acquired during the course of business. This digital photograph shall be uploaded to the entity designated by the Chief of Police which will be associated with the transaction. Photographs shall clearly depict the item(s). No more than (10) ten pieces of precious metal may be photographed together. They must be photographed in a manner in which they can easily be identified
- (c) The information required to be transmitted by subsection (b) of this section shall be transmitted within 24 hours of the transaction.
- (d) Failure to obtain such information or to falsify such information may result in a citation issued to the individual completing the transaction or the onsite manager or supervisor.
- (e) **Exception to Photograph Requirements.** Metal recycling entities with a fixed location shall not be required to photograph and upload their purchases if they have a Digital Video Recorder that captures day to day activities and transaction within the business that will be made available within three business days upon request of the Chief of Police. If the entities do not have a DVR system they will be required to photograph and upload each regulated metal transaction. Video evidence will be retained 90 days; photographs will be retained 180 days.
- (f) **Exception to Reporting Requirements.** The exceptions found in §1956.002 of the Texas Occupations Code, as amended, shall apply to this Section provided any payment made for the regulated materials excepted under this Section is paid to the utility or business and not to an individual seller. The excepted transactions include:
1. a purchase of regulated material from a public utility or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business;

2. a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel; or
3. the transport or hauling of recyclable materials to or from the metal recycling entity.

Sec. 17-66. Police Hold Binder Required.

- (a) All metal recycling entities or precious metal buyers within the City of Abilene shall maintain a police hold binder to log all property believed to be stolen or that is under investigation.
- (b) This binder shall consist of a three ring notebook containing a current copy of this ordinance, a property log on a form approved by the Abilene Police Department, and signed statements from each employee acknowledging they have been provided a copy of this ordinance and they understand the provisions.

Sec. 17-67. Stolen Property or Property Under Investigation.

- (a) Any item deemed as stolen property or under law enforcement investigation shall be placed away from public view, shall be moved separate from other purchased items and identified as "Police Hold" item(s) and shall be noted in the Police Hold binder provided by the Abilene Police Department. Pursuant to the Texas Occupations Code § 1956.037, property subject to "Police Hold" shall be held a minimum of 60 days unless directed otherwise by a peace officer.
- (b) Any law enforcement agency other than Abilene Police Department that requests items to be placed on hold due to an ongoing investigation shall be directed to Abilene Police Department Criminal Investigations Division upon placing said item on Police Hold.
- (c) Property subject to "police hold" shall be held a minimum of 60 days. Property may be released before the expiration of 60 days if directed by a peace officer.

Sec. 17-68. Acceptance of government or utility property by a metal recycling entity.

- (a) It shall be unlawful for any person licensed or transacting any business as a metal recycling entity within the city to purchase or receive any item of property on which words or markings appear indicating ownership of such item by any government entity or any public utility company, except where the person offering such item for sale or transfer provides:

1. Written authorization from the governmental entity, or utility to convey the item on behalf of the entity or utility; or
2. A valid receipt from the governmental entity or utility evidencing such entity or utility has conveyed or relinquished ownership of the item.

(b) It shall not be a defense to prosecution that an item of property contains no words or markings indicating ownership if the person who purchased or received the item knows or should reasonably be expected to know such item is owned by any government entity or any public utility company.

Sec. 17-69. Acceptance of property sealed or unopened in its original packaging by a metal recycling entity.

It shall be unlawful for any person licensed or transacting any business as a metal recycling entity within the city to purchase or receive an item of property sealed or unopened in its original packaging unless the person conveying such item presents a receipt or proof of purchase for the item. Evidence of ownership must be retained with the item.

Sec. 17-70. Acceptance of property inscribed with a company name by a metal recycling entity.

(a) It shall be unlawful for any person licensed or transacting any business as a metal recycling entity within the city limits to purchase or receive an item of property identified as the property of a business entity unless the person conveying such item provides at the time of conveyance a valid receipt indicating lawful ownership, a signed statement attesting to lawful ownership, or written authorization from the owner to convey the item on such owner's behalf.

(b) Evidence of ownership or written authorization to convey the item must be retained with the item, unless otherwise authorized by the Chief of Police.

Sec. 17-71. Hold period for personal property.

Each item of precious metal purchased from the general public by any precious metal buyer must be held at the dealer's location for a period from the purchase date before being modified, changed, sold, or disposed of in any manner for at least seven (7) days. Exceptions can be granted by the Chief of Police for unique circumstances.

Sec. 17-72. Hold period for personal property for metal recycling entities.

Section 17-71 of this Article does not apply to metal recycling entities. Those entities shall hold all personal property for the time period required by state law.

Sec. 17-73. Extension of Hold Period.

The Chief of Police shall have the authority to extend the hold period on any particular personal property if the interest of justice so requires by providing written notice to the precious metal buyer or metal recycling entity in possession of the personal property on or before the expiration of the hold period.

Sec. 17-74. Additional requirements for precious metal buyers without a fixed location.

In addition to the other requirements of this article any precious metal buyer without a fixed location operating in the city shall make all purchases available for inspection at request of the Chief of Police within three (3) business days. This request can be either by phone, email or fax.

Sec. 17-75. Enforcement; Inspections; Access to Records.

The Chief of Police shall have the authority, in accordance with applicable law, to do the following to enforce the provisions of this ordinance:

- (a) Issue any orders, directives, or warnings required to carry out the intent and purpose of this Article and its particular provisions.
- (b) Enter and inspect any premises covered by the provisions of this Article to determine compliance with the provisions of this Article and all applicable laws, rules, regulations, standards or directives of the State.
- (c) Request and receive any records necessary to establish the premises are covered by a valid permit.

Sec. 17-76. Penalty.

- (a) A violation of this ordinance shall constitute a misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed five hundred dollars (\$500.00). Each transaction and each day shall be considered a separate offense.
- (b) Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation of this Article, including seizure of goods.