

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Police

AGENDA DATE: Introduction: December 8, 2015
Public Hearing: December 15, 2015

CONTACT PERSON/PHONE: Assistant Chief Michelle Gardner, 212-4306

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 2—Set the Standard for a Safe and Secure City

SUBJECT:

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 – relating to revisions to definitions; revisions to records requirements; revisions to accessibility of retained goods; revisions to inspection of goods and records; and revisions to exclusions.

BACKGROUND / DISCUSSION:

On July 28, 2015, an amendment was presented for City Council approval at which time a representative of Outerwall/ecoATM requested City Council to further amend the ordinance to allow for electronic sales of used cell phones via kiosks. In response to this request, city staff evaluated the request to ensure that the technology provided sufficient safeguards to prevent the sale of stolen goods, and that the transactions conformed to current ordinance requirements. City staff reviewed Outerwall/ecoATM operations in other Texas cities and deemed the business model to be secure and in the best interests of the public, the business community, and the citizens of El Paso.

SELECTION SUMMARY:

N/A

PRIOR COUNCIL ACTION:

The current ordinance was adopted by City Council on February 29, 2012. An amendment was approved by City Council on July 1, 2014. A subsequent amendment was approved by City Council on July 28, 2015.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

by A/C Michelle Gardner

ORDINANCE NO. _____

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 – RELATING TO REVISIONS TO DEFINITIONS; REVISIONS TO RECORDS REQUIREMENTS; REVISIONS TO ACCESSIBILITY OF RETAINED GOODS; REVISIONS TO INSPECTION OF GOODS AND RECORDS; AND REVISIONS TO EXCLUSIONS.

WHEREAS, on July 28, 2015, 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;

WHEREAS, the City Council recognizes that technology improvements are driving changes to traditional business transaction methods; and

WHEREAS, the City wishes to amend its secondhand goods ordinance in order to protect the health and welfare of its citizens through the regulation and enforcement of the sale and purchase of secondhand goods.

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 Secondhand Goods, Dealers in Crafted Precious Metals, Coin Dealers and Pawnbrokers – will be revised to read as follows:

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Chapter 5.12 - DEALERS IN SECONDHAND GOODS, DEALERS IN CRAFTED PRECIOUS METALS, COIN DEALERS AND PAWNBROKERS

5.12.010 - Definitions.

- A. "Crafted precious metal" means jewelry, silverware, an art object, or another object made wholly or partly from precious metal. Crafted precious metal does not include a coin, a bar, or commemorative medallion.
- B. "Electronic Serial Number" or "ESN" means a number that uniquely identifies a mobile electronic device.
- C. "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, but not limited to, storefronts, flea-markets, mercados, swap meets, market places, open air markets, and kiosks.
- D. "International Mobile Equipment Identifier" or "IMEI" means a number that uniquely identifies a mobile electronic device.
- E. "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, that sells, but does not purchase, barter or exchange, secondhand goods. (An itinerant seller is not a local dealer who must move his or her shop from its 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.)
- F. "Jewelry" means a gem, a jewel, or an object made of crafted precious metal, including those set with precious or semi-precious stones but excluding costume jewelry, and that is usually worn for adornment, including, but not limited to, a gem stone removed from a mounting.
- G. "Kiosk" means an interactive device that is permanently installed within a secure structure that performs all the requirements of this chapter and has the following technological functions:
 - 1. Capability to connect with a live customer service representative;
 - 2. Verification of the identity of a seller by official U.S. state-issued identification;
 - 3. Automated reading and recording of ESN and/or IMEI numbers;
 - 4. Automated comparison of the ESN and/or IMEI numbers against databases of stolen devices;

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5. Secure storage of devices accepted by the kiosk; and
 6. Capture of images of the transaction.
- H. "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.
- I. "Power tool" means a tool powered by electrical current, a battery, solar energy, liquid or gaseous fuel, or pneumatic device.
- J. "Precious metal" means gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals.
- K. "Regulated merchandise" includes, but is not limited to, an item that bears or, as originally manufactured, bore a manufacturer's serial number; a crafted precious metal; jewelry; an automobile accessory; a motorcycle accessory; a business machine; a power tool; a sporting good; an electronic device; a musical instrument or an accessory used with a musical instrument, including, but not limited to, sound amplification equipment; optical equipment, including binoculars, a telescope or microscope; photographic equipment; video recording; or secondhand goods.
- L. "Respondent" means an applicant or licensee of a secondhand dealer's license that appeals a decision by the chief of police or a license official to deny a secondhand dealer's license.
- M. "Secondhand dealer" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity, however organized, buying, trading, selling, accepting for sale on consignment regulated merchandise, or otherwise engaged in or conducting business in the city as defined by this chapter.
- N. "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 or mobile phones, mobile telephones with computing ability and connectivity, MP3 players, personal music players, radios, audio equipment, televisions, calculators, GPS automotive electronics, gaming devices,

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devices used in playing video or computer games, 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; or
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 – Administration.

In accordance with this policy, the chief of police, or designee(s), may establish rules and forms to administer and enforce this article.

5.12.040 - 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 non-refundable fee(s) 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 conducting of the business of the secondhand dealer. A separate established non-refundable fee will be charged for each additional license issued.

5.12.050 - License—Term.

Licenses issued pursuant to this chapter will expire one year from the date of issuance, unless otherwise provided in this chapter.

5.12.060 - License—Application

Applicants for a new or renewal 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

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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. The authorized entity representative shall verify his or her authority to bind the entity by a sworn statement reflecting said authority. All applicants must complete the approved city application that is available online or in paper form.

Applicants wanting to renew a license may begin the standard license renewal application process ninety calendar days, but no later than forty-five calendar days, before the expiration of the existing license. If the applicant begins the license renewal application process after the expiration of the forty-five calendar days, but before the expiration of the existing license, the applicant will pay an expedited application review fee.

There is no guarantee that a timely review and approval of the renewal license application will occur prior to the expiration of the existing license, if the applicant submits the license renewal application after the fifteen calendar days from the expiration of the existing license.

If the license renewal application has been duly completed and filed and all required fees have been paid before the expiration of the existing license, the existing license will continue in effect until final action by the city is taken on the renewal license application.

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 or the chief of police 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 city business days following the date of the filing of the application.

5.12.080 - License—Denial; appeal.

- A. The chief of police or the license official may deny a secondhand dealer license for the violation of any provision of this chapter by providing the applicant with a statement indicating the reason(s) for the denial.
- B. The license official will issue a written statement notifying the applicant of denial of the secondhand dealer license if the investigation reveals one or more of the following:
 - 1. The applicant's place of business is not in compliance with applicable state laws or local ordinances; or
 - 2. An individual applicant or any employee of an entity applicant, whose duties include the purchase or sale of regulated merchandise, has been convicted of a criminal offense involving theft, burglary, robbery, fraud, or tampering with or falsification of evidence or official records, unless:

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- a. the applicant or employee has been pardoned; or
 - b. one year has elapsed since the applicant or employee has been fully discharged from the sentence imposed for the offense, including any term of incarceration, parole, supervision, or probation ordered by any court; or
 - c. the criminal proceedings were deferred without a final adjudication of guilt; or
3. Fraud, misrepresentation or false statement of facts of material consequence in the application; or
4. Six or more violations of this chapter within twelve months immediately preceding the current application by the applicant, any employee of the applicant, whose duties include the purchase of regulated merchandise, or the combined violations of both the applicant and the employee.
- C. When the license official issues a written notice of denial of a license to the applicant, the license official will include, in the notice, the specific grounds under this chapter for such action. The notice will be sent to the applicant 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 applicant.
- D. The written notice of denial of a license will include a notice provision informing the applicant of his or her right to appeal the license official's decision by submitting a written notice requesting an administrative hearing before a hearing officer. The applicant, referred to as the respondent for purposes of the appeal, will submit the written statement to the license official not later than the 15th city business day after the date of the written notice of denial of the license. The respondent's written statement requesting the appeal shall clearly state why the respondent contends that there is not a valid basis for the denial of the license.

If the respondent submits a written statement appealing the denial of the license, the chief of police or license official, or their designee(s), will immediately contact the city attorney's office in order to coordinate the retention of a hearing officer and to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days after the date the applicant files the written notice requesting an administrative hearing. The hearing officer will conduct a hearing on the license official's denial of the license. The hearing may be continued to a sooner or later date by agreement of the parties, and with the hearing officer's approval, or upon the finding of good cause by the hearing officer for the granting of an earlier or later hearing date.

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

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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 the license by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the hearing officer, to meet the requirements of due process and the proper administration of justice.

The hearing officer will issue a written decision, including findings of fact and conclusions of law, to the respondent within five city business days from the completion of the hearing. The hearing officer's decision is final.

If the decision is to deny the license, the decision will become effective on the fourteenth calendar day after it is rendered. If the hearing officer's decision finds that no grounds exist for the denial of the license, the hearing officer will, contemporaneously with the issuance of the decision, order the license official to immediately withdraw the denial of the license and 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.

If the respondent's application is for the renewal of a license, the existing license will remain valid and in effect during the pendency of the appeal and until such time as the decision of the hearing officer becomes final.

If the hearing officer's final decision upholds the denial of the license, the license official may grant the respondent a provisional license for a period of six months to begin from the date of the hearing officer's final decision. The provisional license will require the applicant to pay a non-refundable enhanced fee.

If during the six month period, corrective action has been satisfactorily completed by the respondent as directed by the license official, and no other violations are committed under this chapter, or if no corrective action was required of the respondent by the license official, but no other violations are committed under this chapter, then the license official will issue the standard 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 - Change of information

- A. A secondhand dealer shall report a change in the information required to be submitted with a license application to the license official not later than the 15th city business day after the date that the change occurs.

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- B. If the change is either to the name of the business or to the physical location of the business, the secondhand dealer must obtain a new license and pay a new non-refundable license fee. The license official will issue a temporary license while the application for a new license is being processed. The applicant will reapply within thirty calendar days for the new license. The existing license will continue in effect until the city makes its final determination on the license application.

5.12.110 - Records—Required.

- A. Every secondhand dealer must keep a record of all transactions in a format prescribed by the chief of police.
- 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. A secondhand dealer may not purchase, receive, or possess an item of regulated merchandise from which the manufacturer's identification or serial number or brand has been altered, removed, or obliterated by means other than by wear caused by ordinary use of the item by a consumer.
- E. A secondhand dealer may not purchase or acquire any item that is stolen or that shows any indication of not belonging to the person offering such item for sale or purchase, unless:
 - 1. The seller of the offered item(s) produces a valid receipt or other evidence of ownership or purchase of the item(s); or
 - 2. The seller of the offered item(s) provides a signed and dated written statement including a description of how the seller came into possession of the item(s) and that the seller does not have a receipt. A copy of the receipt, document evidencing ownership or purchase, or written statement must be attached to, and retained with, records of the purchased or acquired item(s).
- F. The records maintained by the secondhand dealer must be made at the time of the transaction, be sequentially numbered and include the following information or documentation:
 - 1. Transaction date;
 - 2. Secondhand dealer business name;
 - 3. Secondhand store address to include street, city, state and zip code;
 - 4. Confirmation of the seller's identification via a U.S. state-issued driver's license or identification card with a photo for kiosk transactions; , or via a U.S. state-issued

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driver's license or card with a photo or military identification card for transactions conducted in person as defined in this chapter as "engaged in or conducting business";

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 as soon as commercially reasonable but no later than 15 business days after the transaction. 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 noted or inscribed 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.
- G. 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.
- H. The secondhand dealer's records must be accessible during business hours, at the address that is listed on the secondhand dealer's license.

5.12.120 - 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 upon demand during normal business hours.

5.12.130 - 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 5.12.110.

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5.12.140 - Retained goods to be accessible.

Every secondhand goods dealer must, for a minimum period of twenty days after acquiring the item, during regular business hours, keep accessible and available on the licensed premises, 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. The twenty-day hold period begins the day that all description information required in Section 5.12.110(F) is recorded. Due to storage capacity limitations, a secondhand dealer operating via a kiosk may ship secondhand goods to an offsite, secure location for storage during the required hold period as long as the goods are available for inspection as prescribed by this chapter. Any items found to be recorded as stolen or otherwise subject to a civil or criminal investigation must be shipped to the requesting peace officer with all shipping costs to be borne by the secondhand goods dealer.

5.12.150 - 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 5.12.110 and hold the secondhand goods for a minimum of twenty days in its original unaltered form.
- 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.

5.12.160 - Exclusions.

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

- A. Junk businesses or dealers. 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

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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. 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 of the artist(s) or artisan(s). 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. 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 document: date, time and place of transaction; legal name, date of birth, residence and phone number(s) of seller; the credit amount; and 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.

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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 ESN and/or 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.

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 _____ day of _____, 2015.

CITY OF EL PASO

Oscar Leeser
Mayor

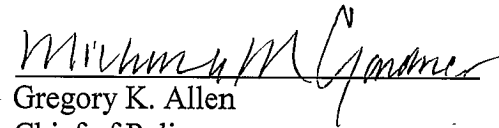
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Oscar G. Gabaldón, Jr.
Assistant City Attorney

APPROVED AS TO CONTENT:

for 

Gregory K. Allen
Chief of Police

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