

ADDITIONAL INFORMATION



Port St. Lucie Police Department

COUNCIL ITEM 12A
DATE 9-24-12

memorandum

TO : Gregory J. Oravec
City Manager

FROM : John A. Bolduc *JAB*
Chief of Police

DATE : September 20, 2012

SUBJECT : Pawnbroker & Secondhand Dealer Ordinance

It was brought to my attention the recently approved City Ordinance, Chapter 116, Pawnbrokers and Secondhand Dealers was unnecessarily impeding sales for secondhand dealers and consignment shops of household furniture and goods.

The original need for the ordinance was to prevent evidence from residential and auto burglaries from being disposed of without records through pawn shops and secondhand dealers. The ordinance was also constructed to restrict the trade and disposition of possibly stolen items long enough for a proper investigation to reveal their whereabouts. Additionally, the ordinance was constructed to require the documentation of secondhand dealings through a statewide database program which would give investigators the opportunity to locate stolen items before they were sold or disposed of by another means.

After the ordinance was approved and we entered the compliance mode, we began to notice there were some unnecessary and foreseen ramifications of the ordinance. Specifically, the trade and consignment of household furniture and other household items not normally the target of theft during burglaries were being unnecessarily restricted and documented. It is evident the ordinance needed to be amended to more narrowly focus the scope and avoid items that are not normally the target of larceny.

Additionally, during the last legislative session, the Florida Legislation amended F.S.S. 538, which deals with secondhand dealers and secondhand metals recyclers to better define some of the items covered by the law, and clarify which types of businesses should be regulated such as flea markets and estate sales.

I met with the Criminal Investigations Division Commander and the Pawn Compliance Officer and we have drafted language to address these concerns. I met with City Attorney Roger Orr and he has reviewed the recommended amendments and advised us to proceed with placing this matter on the agenda for City Council approval.

Attached, please find the attached Agenda Item Request, as well as a draft of the amended Chapter 116, Port St. Lucie Code of Ordinances. Should you need further information, please contact me at your convenience.

JAB/jk

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City Manager's Office

CHAPTER 116 ~~2~~ . - PAWNBROKERS AND SECONDHAND DEALERS

Sec. 116 ~~2~~ .01. - Title.

This chapter shall be known as the Pawnbroker and Secondhand Dealer Ordinance of the City of Port St. Lucie, Florida.

Sec. 116 ~~2~~ .02. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consignment shop means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

Electronic item means any computer and accessories, mobile or desktop; tablets; notebooks, E- readers; I- devices; video game systems; audio and video equipment, including television sets, compact disc players, Blu-ray players, DVD players, radios, amplifiers, receivers, turntables, tape recorders, speakers, and CB radios; radar detectors; telephones, including cellular and portable; calculators; musical instruments; home theater systems; MP3 players; electrical appliances, stove/range, refrigerator; microwave, oven, freezer, washer; dryer; headphones; cameras; electrical marine equipment; GPS navigation systems; air purifiers; dehumidifiers; and AC units.

Pawn means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in section 539.001, et seq., Florida Statutes.

Pawnbroker means any person duly licensed under Chapter 539, Florida Statutes, who is engaged in the business of making pawns; who makes a public display containing the term "pawn," "pawnbroker," or "pawnshop" or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

Pledge means either of the following transactions:

(a) *Buy-sell agreement* means an agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

(b) *Loan of money* means a written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.

Precious metals means any item containing any gold, silver, or platinum or any combination thereof, excluding the following:

- (1) Any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.
- (2) Any coin with an intrinsic value less than its numismatic value.
- (3) Any gold bullion coin.
- (4) Any gold, silver, or platinum bullion that has been assayed and that is properly marked as to its weight and fineness.
- (5) Any coin which is mounted in a jewelry setting.

Precious metals dealer means a secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

Secondhand dealer means any person who is not a secondary metals recycler and who is engaged in the business of purchasing, consigning, or trading secondhand goods or entering into title loan transactions. However, secondhand dealers are not limited to dealing only in items defined as secondhand goods this section. Except as provided in subsection ~~116.03(A)(1)~~ 116.03(a)(1), the term "secondhand dealer" means jewelers, precious metals dealers, garage sale operators, secondhand stores, and consignment shops.

Secondhand goods means personal property previously owned or used, which is not regulated metals property, regulated under Section 538.18 et seq., Florida Statutes and which is purchased, consigned, or traded as used property. Such secondhand goods do not include household furniture, lamps, glassware, everyday eating utensils, baby/children toys, baby essentials, office furniture, pianos, books, clothing, organs,

coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use and secondhand sports equipment that is ~~not permanently labeled with a~~ does not have a manufacturer's applied serial number. For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs.

Secondhand store means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer or conducts business, including pawnshops.

Title loan means a loan of money secured by bailment of a certificate of title to a motor vehicle. A title loan is not a pawn if the secondhand dealer does not maintain physical possession of the vehicle throughout the term of the transaction.

Transaction means any title loan, purchase, consignment, or pawn of secondhand goods by a secondhand dealer.

Sec. 116.03. - Exemptions.

(a) This chapter does not apply to the following:

(1)

Any secondhand goods transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler subject to Section 538.18, et seq., Florida Statutes.

(2) A law enforcement officer acting in an official capacity.

(3) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondhand dealer.

(4) Any public official acting under judicial process or authority who has presented proof of such status to the secondhand dealer.

(5) A sale on the execution or by virtue of any process issued by a court, if proof thereof has been presented to the secondhand dealer.

(6) Any garage sale operator who holds garage sales less than four (4) weekends per calendar year. This exemption comports with the provisions of ~~section 155.03(i)~~ section 155.03 (1) prohibiting more than three (3) garage sales per calendar year within the city.

- (7) Any person at antique, coin, or collectible shows or sales.
- (8) Any person who sells household personal property as an agent for the property owner or the owner's representative pursuant to a written agreement at that person's residence.
- (9) The purchase, consignment, or pawn of secondhand goods from one secondhand dealer to another secondhand dealer when the selling secondhand dealer has complied with the requirements of this article.
- (10) Any person accepting a secondhand good, with the exception of any electronic item as defined in 116.02 or any item with a manufacturer's applied serial number, as a trade-in for a similar item of greater value.
- ~~(11) Any person purchasing, consigning, or trading secondhand goods at a flea market regardless of whether at a temporary or permanent business location at the flea market, unless said vendor conducts business transactions otherwise governed by the State of Florida.~~
- ~~(12)~~ (11) Any auction business as defined in Section 468.382(1), Florida Statutes, operating as an auction business in the buying and selling of estates, business inventory, surplus merchandise, or business liquidations.
- (12) Any business that is registered with the State Department of Revenue for sales tax purposes as an antique dealer pursuant to Chapter 212, Florida Statutes, and that purchases secondhand goods from the property owner or such owner's representative at the property owner's residence pursuant to a written agreement that states the name, address, and telephone number of the property owner and the type of property purchased.
- (13) Any person purchasing, consigning, or pawning secondhand goods ordered by mail; computer-assisted shopping; media-assisted, media-facilitated, or media-solicited shopping; or shopping by other means of media communication, including but not limited to direct mail advertising; unsolicited distribution of catalogs; television, radio, or other electronic media; telephone, magazine, or newspaper advertising, so long as such person is in this state at the time of the order.
- (14) A motor vehicle dealer as defined in Section 320.27, Florida Statutes.

(b) This chapter does not apply to secondary metals recyclers regulated under Section 538.18, et seq., Florida Statutes.

Sec. 116.04. - Business tax receipt.

Secondhand dealers, precious metals dealers, pawnbrokers, and junk dealers, shall obtain a City of Port St. Lucie business tax receipt from the city before engaging in business, as required by Section 111.45, Port St. Lucie Code of Ordinances.

Sec. 116.05. - Recordkeeping requirements.

(a) The City of Port St. Lucie Police Department shall designate an electronic reporting system for all pawn and secondhand dealer transactions, and shall provide copies of the electronic reporting system software to all pawnbrokers and secondhand dealers, as necessary.

(b) A pawnbroker shall comply with the recordkeeping requirements set forth in Section 539.001(9), Florida Statutes, including but not limited to electronic transfer to the Port St. Lucie Police Department of all pawn transactions using the electronic reporting system designated by the chief of police.

(c) In addition to the recordkeeping requirements set forth in Section 538.04, Florida Statutes, secondhand dealers shall also comply with the recordkeeping requirements set forth in this section.

(d) A second hand dealer as defined in this chapter shall provide an electronic transaction of all articles of any kind purchased or received using the electronic reporting system designated by the police department pursuant to Sections 538.04 and 539.001(9), Florida Statutes. The electronic transaction record shall at all times during business hours be open to the inspection of the police department. The report shall be a full, true, and complete report of all goods, wares, merchandise, or things received on deposit or purchased the previous day. The report shall contain the following:

(1) The time, date, and place of the transaction.

(2) A complete and accurate description of the goods acquired, including digital images, any serial numbers, manufacturer's numbers, or other identifying marks or characteristics.

(3) A description of the person from whom the goods were acquired, including:

- a. Full name, address, place of employment, and home telephone number.
 - b. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.
 - c. The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired.
- (4) If any article has engraved thereon a number, word, or initial, or contains settings of any kind, the description of the article in the report shall contain the number, word, or initial and shall show the kind of settings and the number of each kind.
- (5) In the case of a purchase, the amount of money paid for the goods or the monetary value assigned to the goods in connection with the transaction.
- (6) Any other information required by the Florida Department of Law Enforcement.
- (e) A secondhand dealer shall require verification of the identification of the seller by the exhibition of a government-issued photographic identification card such as a driver's license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon.
- (f) A second hand dealer shall require a seller to sign a statement verifying that the seller is the rightful owner of the goods or is entitled to sell the goods.
- (g) Each receipt issued by a secondhand dealer shall be numbered consecutively, and if stubs are used in connection with the record of the transaction retained by the secondhand dealer, each stub shall be numbered consecutively to conform to the receipt.
- (h) The electronic reporting system will provide for an upload of a complete electronic report as described in this section. Each second hand dealer and pawnbroker shall, at the end of each business day, provide an electronic upload to the electronic reporting system of all transactions that occurred during that business day.
- (i) Secondhand dealers are exempt from this section for all transactions involving secondhand sports equipment, except secondhand sports equipment that is permanently labeled with a serial number.

Sec. 116~~0~~.06. - Inspection of records and premises.

(a) The premises and required records of each secondhand dealer and pawnbroker are subject to inspection during regular business hours by the Port St. Lucie Police Department and by any state law enforcement officer who has jurisdiction over the dealer.

(b) The inspection authorized by subsection (a) of this section shall consist of an examination on the premises of the inventory and required records to determine whether the records and inventory are being maintained on the premises as required by Section 116.05, and whether the secondhand dealer or pawnbroker has complied with the holding period requirements of Section 116.07.

Sec. 116.07. - Holding period.

(a) A pawnbroker shall comply with the holding requirements set forth in Section 539.001(9), Florida Statutes.

(b) A secondhand dealer shall comply with the following holding requirements:

(1) A secondhand dealer shall not sell, barter, exchange, alter, adulterate, or in any way dispose of any secondhand goods within thirty (30) calendar days of the date of acquisition of the goods. Such holding period is not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(2) A secondhand dealer shall maintain actual physical possession of all secondhand goods throughout a transaction. It is unlawful for a secondhand dealer to accept title or any other form of security in secondhand goods in lieu of actual physical possession.

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may extend the holding period to a maximum of ninety (90) days. The law enforcement officer must make the hold order, and the secondhand dealer must act, in compliance with the provisions of Section 538.06(3), Florida Statutes. However, the holding period may be extended beyond ninety (90) days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

(4) All dealers in secondhand property regulated by this article shall maintain transaction records for five (5) years.

(c) Subject to the requirements of Chapter 537, Florida Statutes, and the restrictions in Section 538.15, Florida Statutes, a secondhand dealer may engage in a title loan transaction, and the physical possession requirements of Subsection 116.07 (b) (2) of this section shall not apply if the following conditions are met:

(1) The secondhand dealer maintains physical possession of the motor vehicle title.

(2) The owner maintains possession of or control over the motor vehicle throughout the transaction.

(3) The owner is not required to pay rent or any other charge for the use of the motor vehicle.

(4) A secondhand dealer who engages in a motor vehicle title loan transaction has the right to repossess the motor vehicle upon failure of the owner to redeem the title. The secondhand dealer shall only repossess a motor vehicle through an agent who is licensed by the state to repossess motor vehicles. The secondhand dealer may dispose of the motor vehicle as provided in Section 538.16, Florida Statutes. Any sale or disposal of the motor vehicle shall be made through a motor vehicle dealer licensed under Section 320.27, Florida Statutes.

(5) No charges other than those charges permitted in Section 537.011, Florida Statutes, shall be allowed, and such charges shall be fully disclosed, conspicuously in writing, and initialed by the motor vehicle owner at the initiation of the transaction.

Sec. 116~~2~~.08. - Certain acts and practices prohibited.

It is unlawful for a secondhand dealer or any employee of the secondhand dealer to do or allow any of the following acts:

(a) Knowingly make a transaction with any person who is:

(1) Under the influence of drugs or alcohol when such condition is visible or apparent;

(2) Under the age of eighteen (18) years; or

- (3) Using a name other than such person's own name or the registered name of such person's business.

- (b) Have a secondhand store open or engage in or conduct business as a secondhand dealer between the hours of 10:00 p.m. and 7:00 a.m. A secondhand dealer shall not conduct any transaction at a drive-through window or similar device.

- (c) Fail to pay any sales tax owed to the Florida Department of Revenue or fail to have a sales tax registration number.

- (d) Engage in title loan transactions from at, within or adjoining a licensed pawn shop or secondhand dealer location.

- (e) Use the word "pawn" or "pawnbroker" in any transaction, documentation, advertising or promotional materials, signs, displays, banners, or other materials of any nature relating to the secondhand dealer's business.

Sec. 116~~09~~.09. - Penalties.

Any person willfully violating the provisions of this chapter, other than clerical or recordkeeping errors, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred and dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days, or both such fine and imprisonment. Each day of noncompliance with this chapter shall be deemed a separate offense.

Sec. 116~~09~~.10. - Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.