

Ordinance 12-12

To repeal and recreate Sections 22-891 through 22-910, of the Municipal Code of the City of Racine, Wisconsin relating to Secondhand Dealers and Pawnbrokers licenses.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Repeal and recreate Sec. 22-891 - Statutory definitions adopted, to read as follows:

“Sec. 22-891 - Adoption of WI Statute 134.71 - Pawnbrokers and secondhand article and jewelry dealers.

(1) Purpose.

(a) The City finds that a paper-based system of tracking and recording secondhand dealer sales and purchases is technologically outdated, inefficient and environmentally irresponsible. This Section implements and establishes the required use of an electronic reporting system to record transactions by secondhand dealers.

(b) The City recognizes that pawnshops are legitimate businesses authorized by state law. However, the City finds that the services offered by pawnshops provide an opportunity for individuals to potentially transfer stolen property to those businesses. The City also finds that consumer protection regulation is warranted in transactions involving these businesses. The City further finds that pawnshop transactions have outgrown the City’s current ability to effectively or efficiently identify criminal activity related to them. The purpose of the City’s regulation of pawnshops is to prevent pawnshops from being used to facilitate the commission of crimes and to assure that they comply with basic consumer protection standards, thereby protecting the public health, safety and general welfare of citizens, pursuant to authority granted by Wis. Stat. § 134.71.

(2) License Required.

(a) Except as provided in subs. (b) and (c) below, no person shall carry on or operate within the City of Racine a business as a pawnbroker or a business for the purchase or sale of secondhand articles or jewelry or precious metals without first having obtained a license therefore as hereinafter provided.

(b) A person, other than a pawnbroker, precious metal dealer or secondhand jewelry dealer, who operates as a secondhand article dealer only on premises or land owned by

a person having a secondhand article dealer mall or flea-market license under sub. (8) need not obtain a secondhand article dealer's license.

(c) A person possessing a valid secondhand article dealer license or a valid secondhand jewelry dealer license issued by a county or another municipality of the State of Wisconsin under Wis. Stat. § 134.71 or an ordinance adopted pursuant thereto may operate a business in the City of Racine as a secondhand article dealer or a secondhand jewelry dealer respectively without obtaining a license hereunder. A secondhand article dealer or a secondhand jewelry dealer so licensed shall disclose the information required to the City Clerk and shall submit to an investigation of the principal and its members, officers and employees by the Police Department and a written report filed with the City Clerk prior to conducting business in the City of Racine. This investigation shall include fingerprinting of the principal, if the principal is a natural person, and fingerprinting of all managers, assistant managers or lead works who supervise employees who are directly involved in the receipt of secondhand articles of jewelry from customers, as well as a determination by the Police Department whether the principal has been convicted within the preceding ten (10) years of a felony or within the preceding five (5) years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (4)(a)3 herein and, if so, the nature and date of the offense and the penalty assessed. Where the principal is a corporation, limited liability company or partnership, this provision shall apply to all its officers and each general partner or member respectively. This subsection is not intended to exempt such person from otherwise complying with the provision of this Section relating to secondhand dealers including, but not limited to, all electronic or other record-keeping requirements, labeling and receipt requirements and holding periods mandated by this Section.

1. A person possessing a valid secondhand article dealer or a valid secondhand jewelry dealer license issued by a county or another municipality of the State of Wisconsin under Wis. Stat. § 134.71 or an ordinance adopted thereto and operating in the City of Racine shall provide a bond of two thousand dollars (\$2,000.00) to the City Clerk, prior to conducting business in the City of Racine. Such bond shall have not less than two sureties and shall be for the observation of all municipal ordinances relating to secondhand article dealers and secondhand jewelry dealers.

(d) 1. A secondhand dealer includes a person who is engaged, from a temporary location in the City of Racine in the business of selling or purchasing articles under this Section. Such persons shall obtain a secondhand dealer's license under this Section. For the purposes of this sub. (d), a temporary location shall include, but shall not be limited to, a hotel or motel meeting room or guest room.

2. A secondhand jewelry dealer includes a person who is engaged in the business of selling or purchasing jewelry from a temporary location in the City of Racine and such person shall obtain a secondhand jewelry dealer's license under this Section. For the purposes of this sub. (d), a temporary location shall include, but shall not be limited to, a hotel or motel meeting room or guest room.

3. For the purposes of this sub. (d), it shall be prima facie evidence that a person is engaging in the activities covered by this sub. (d), if the person places advertisements, listings or notices in any media offering to sell or purchase items subject to this Section and provides a location where such purchase may be made within the City of Racine or the advertisement provides a telephone number or an internet or other electronic communication address, through which appointments are made for such transactions to be conducted within the City of Racine.

(3) Definitions.

The following definitions apply to this Section:

Article means any of the following articles except jewelry:

1. Audio-visual equipment
2. Bicycles
3. China.
4. Computers, printers, software and computer supplies.
5. Computer toys and games.
6. Crystal.
7. Electronic equipment, including portable medial players.
8. Fur coats and other fur clothing.
9. Ammunition and knives.
10. Microwave ovens.
11. Office equipment.
12. Pianos, organs, guitars and other musical instruments.
13. Silverware and flatware.
14. Small electrical appliances.
15. Telephones.
16. Audio tapes, compact discs, laser discs, records, videotapes, digital video discs or other similar audio-visual recording media.
17. Firearms.
18. Tools.

Billable Transaction means every reportable transaction conducted by a secondhand dealer except renewals, redemptions, voids, or extensions of existing pawns or purchases previously reported and continuously in the secondhand dealer's possession.

Charitable Organization means a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Firearm. The term “firearm” means a shotgun or a rifle or any weapon made from a rifle or shotgun (modification or otherwise) or any other weapon, including a pistol or revolver, from which a shot is discharged by an explosive or propellant, but not including a stud gun when used for its intended purpose.

Jewelry means any tangible personal property ordinarily wearable on the person and consisting in whole or in part of any metal, mineral or gem customarily regarded as precious or semiprecious. Jewelry does not include sterling silverware, gold or silver coins, gems, bullion or other items made in whole or in part from gold, silver, platinum or any metal, mineral or gem customarily regarded as precious or semiprecious, which are not property ordinarily wearable on the person.

Pawnbroker means any person who engages in the business of lending money on the deposit or pledge of any article, jewelry or any item of tangible personal property, or purchasing any article, jewelry or any item of tangible personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

Precious Metal Dealer means any person who engages in any transaction or purchasing, selling, receiving or exchanging secondhand jewelry, sterling silverware, gold or silver coins, gems, bullion or other items made in whole or in part from gold, silver, platinum or any metal, mineral or gem customarily regarded as precious or semiprecious. A holder of a precious metal dealer license issued by the City of Racine does not need to obtain a separate secondhand jewelry license in order to purchase, sell, receive, or exchange secondhand jewelry.

Reportable Transaction means every transaction conducted by a secondhand dealer in which an article or jewelry are received through a pawn, purchase, consignment, or trade, or in which a pawn is renewed, extended, voided, or redeemed, or for which a unique transaction number or identifier is generated by their point-of-sale software, and is reportable except:

1. The bulk purchase or consignment of new or used articles from a merchant, manufacturer, or wholesaler having an established permanent place of business, and the retail sale of said articles, provided the secondhand dealer shall maintain a record of such purchase or consignment that describes each item, and shall mark each item in a manner that relate it to that transaction record.
2. Retail and wholesale sales of articles originally received by pawn or purchase, and for which all applicable hold and/or redemption periods have expired.
3. Secondhand textbooks shall not be subject to electronic reporting, but shall be subject to recordkeeping requirements as provided in this Section.

Secondhand means owned by any person except a wholesaler, retailer, or secondhand article or jewelry dealer licensed under this Section or Wis. Stat. § 134.71 or an ordinance adopted pursuant thereto immediately prior to the transaction at hand.

Secondhand Article Dealer means any person who engages in the business of purchasing, selling or exchanging secondhand articles except when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show, a convention or an auction.
2. Any transaction entered into by a person while engaged in a business as a pawnbroker or secondhand jewelry dealer for which the person is licensed under this Section, or under Wis. Stat. § 134.71 or under an ordinance adopted pursuant thereto.
3. Any transaction entered into by a person while engaged in the business of junk collector, junk dealer, auctioneer or scrap processor as described in Wis. Stat. § 70.995(2).
4. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.
5. Any transaction between a buyer of a new article and the person who sold the article when new, which involves any of the following:
 - a. The return of the article.
 - b. The exchange of the article for a different, new article.

6. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.

7. Any transaction as a seller of a secondhand article, which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

8. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the person has no retail or purchasing operation open to the public.

9. Any transaction between a buyer of a new article and a seller of new articles who accepts an occasional secondhand article in trade.

Second Jewelry Dealer means any person who engages in the business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand jewelry except for the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show, a convention or an auction.

2. Any transaction with a licensed secondhand jewelry dealer.

3. Any transaction operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization

4. Any transaction between a buyer of a new jewelry and the person who sold the jewelry when new, which involves any of the following:

a. The return of the jewelry.

b. The exchange of the jewelry for a different, new jewelry.

5. Any transaction as a purchaser of a secondhand jewelry from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

6. Any transaction as a seller of a secondhand jewelry, which the person bought from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

7. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the

person has no retail operation open to the public and does not purchase the precious metals, gems or valuable articles from the general public.

8. Any transaction between a buyer of a new jewelry and a seller of new jewelry who accepts an occasional secondhand jewelry in trade.

(4) Application and Fees. Written applications for licenses under this Section, together with the applicable license fees, shall be filed with the City Clerk. The City Clerk shall file a copy of such application with the Police Department forthwith, and applications for licenses shall be presented to the Common Council at any regular or special meeting thereof. Licenses issued under this Section shall not be transferable.

(a) The application shall state the following:

1. The applicant's name, place and date of birth and residence address.

2. The names and addresses of the business and of the owner of the business premises.

3. A statement as to whether the applicant has been convicted within the preceding ten (10) years of a felony or within the preceding five (5) years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed.

4. Whether the applicant is a natural person, corporation, limited liability company or partnership, and:

a. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

b. If the applicant is a partnership, the names and addresses of all partners.

c. If the applicant is a limited liability company, the names and addresses of all members.

5. For all license applications, the name of the manager or proprietor of the business.

6. Whether the applicant or any other person listed in sub. 4. above has ever used or been known by a name other than the listed name, and if so, the name or names used and information concerning dates and places used.

7. Whether the applicant or any other person listed in sub. 4. above has previously been denied or had revoked or suspended a pawnbroker, secondhand article dealer, precious metal dealer or secondhand jewelry dealer license from any other governmental unit. If so, the applicant must furnish information as to the date, location, and reason for the action.

8. Any other information that the City Clerk may reasonably require for such purposes.

(b) The license fees under this Section are as follows:

1. The fee for a secondhand article dealer license shall be five hundred dollars (\$500.00) per year excepting secondhand article dealers who operate a business for buying, selling, exchanging or receiving into possession used or secondhand bicycles and used or secondhand parts of bicycles or which the license fee shall be five hundred dollars (\$500.00) per year.

(c) A separate license shall be obtained for each individual premise from which the business is operated.

(5) Investigation of License Applicant. Before any license is issued under the provisions of this Section, an investigation of the character of the applicant and its members, officers and employees shall be made by the Police Department and a written report filed with the City Clerk and made a part of the application. This investigation shall include fingerprinting of the applicant, if the applicant is a natural person, and all managers, assistant managers or lead workers who supervise employees who are directly involved in the receipt of secondhand articles or jewelry from customers as well as a determination by the Police Department whether the applicant has been convicted within the preceding ten (10) years of a felony or within the preceding five (5) years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (4)(a)3. herein and, if so, the nature and date of the offense and the penalty assessed. Where the applicant is a corporation, limited liability company or partnership, this provision shall apply to all its officers and each general partner or member respectively.

(6) License Issuance. The Common Council shall grant the license if all of the following apply:

(a) The applicant, including an individual, a partner or an officer, director or agent of any corporate applicant, has not been convicted within the preceding ten (10) years of a felony or within the preceding five (5) years of a misdemeanor, statutory violation

punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a secondhand article dealer, secondhand jewelry dealer, or pawnbroker.

(b) With respect to an applicant, all or any part of whose secondhand dealer business involves transactions as a pawnbroker, the applicant provides to the City Clerk a bond of five thousand dollars (\$5,000.00), with not less than two sureties, for the observation of all municipal ordinances relating to secondhand dealers and pawnbrokers.

(c) The appropriate license fee for each individual premise has been paid.

(d) No license issued under this Section may be transferred.

(7) Restrictions and Requirements.

(a) Identification. No secondhand article dealer, secondhand jewelry dealer, precious metal dealer, secondhand textbook dealer, or pawnbroker may engage in a transaction of purchase, receipt pawn or exchange of any secondhand article, secondhand textbook, or secondhand jewelry from a customer without first securing adequate identification from the customer. Adequate identification shall include a detailed identification of the customer by obtaining a physical description of the person and shall also include the subject's driver license number or Wisconsin Identification number. At the time of the transaction, the dealer shall require the customer to present one of the following types of identification as current and valid:

1. A county identification card.
2. A state identification card.
3. A valid Wisconsin motor vehicle operator's license.
4. A valid motor vehicle operator's license, containing a picture issued by another state.
5. A military identification card.
6. A valid passport.
7. An alien registration card.
8. A senior citizen's identification card containing a photograph.
9. Any identification document issued by a state or federal government, whether or not containing a picture, if the pawnbroker, secondhand dealer or secondhand jewelry dealer, or secondhand textbook dealer obtains a clear imprint of the customer's right index finger.
10. Any valid college, university, or technical school identification card.

11. A valid identification card or motor vehicle operator's license issued by a tribal government or foreign country.

(b) Records. It shall be the duty of every license holder to keep a record of all articles and jewelry purchased by her/him and it is required that a detailed description be obtained of all property purchased. Said description shall contain such information as to identify said property correctly; and shall include type of property, serial number, model number, color description and purchase price of said property. The description need not include the title, artist or author of audiotapes, compact discs, laser discs, records, videotapes, digital video discs or other audio or audio-visual recording media. At the time of any reportable transaction other than a renewal, extension, or redemption, every secondhand dealer shall immediately record in English the following information by using a computerized record approved by the Police Department:

1. A complete and accurate description of each item, including, but not limited to any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item, except that the title, artist or author of audio tapes, compact discs, laser discs, records, videotapes, digital video discs, or other similar audio visual recording medial need not be described.

2. The purchase price, amount of money loaned upon or pledged therefore.

3. For pawn transactions, the maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges.

4. Date, time, and place the item of property was received by the secondhand dealer, and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the secondhand dealer's records.

5. To the extent that it is not provided as part of the record of the customer's identification retained by the secondhand dealer, full name, current residential address, current telephone number, date of birth, and accurate description of the person from whom the item of property was received, including sex, color of eyes, and color of hair.

6. The identification number and the state of issue of the identification presented by the seller pursuant to this Chapter.

7. The signature of the person identified in the transaction.

8. For renewals, extensions, and redemptions the secondhand dealer must record the original transaction identifier, the date of the current transaction, and the type of transaction.

9. Data entries must be maintained for at least one (1) year from the date of transaction. During this time, the records must at all reasonable times be open to inspection by the Police Department.”

Part 2: Repeal and recreate Sec. 22-892 - License Required, to read as follows:

“Sec. 22-892 - Penalty for violation of articles.

(a) Upon conviction for a first offense under this article, a person shall forfeit not less than \$50.00 nor more than \$1,000.00. Upon conviction for a second or subsequent offense under this article, a person shall forfeit not less than \$500.00 nor more than \$2,000.00.

(b) Each violation of this article and each day a violation continues or occurs shall constitute a separate offense. The monetary penalties prescribed by this Section shall not preclude the denial or revocation of a license required under this article to do business.”

Part 3: Repeal and recreate Sec. 22-893 - Same - Application; investigation of applicant, to read as follows:

“Sec. 22-893 - License revocation.

(a) The Common Council may revoke any license issued by it under this article for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this article or of Wis. Stats. §§ 943.34, 948.62 or 948.63.

(b) Any license or permit issued pursuant to this Chapter may be suspended or revoked by a court or competent jurisdiction upon conviction of an ordinance or statutory violation.”

Part 4: Repeal and recreate Sec. 22-894 - Same - issuance; transfer; term, to read as follows:

“Sec. 22-894. - Severability.

If any Section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining Sections shall not be affected.”

Part 5: To repeal Sections 22-895 through 22-910.

Part 8: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City Common Council and publication or posting as required by law, but all existing license holders shall have no later than March 31, 2013 to comply with the computerized record regarding provisions in this ordinance.

Passed by the Common Council:

Approved:

Mayor

Attest:

City Clerk

Fiscal Note: N/A