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MEMORANDUM

Police Department - Staff Memo No. 2009-099

DATE: OCTOBER 21, 2009

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
RICH DLUGAS, ASST CITY MANAGER

FROM: SHERRY KIYLER, POLICE CHIEF

SUBJECT: INTRODUCTION OF ORDINANCE NO. 4196, AMENDING SECTION 15-1; SUBSECTION 15-2(A), SECTION 15-2; SUBSECTION 15-3(C), SECTION 3; AND SECTIONS 15-8 THROUGH SECTION 15-21, CHAPTER 15 OF THE CHANDLER CITY CODE RELATING TO AUCTIONEERS AND PAWNBROKERS

RECOMMENDATION: Staff recommends introduction of Ordinance No. 4196, amending Chapter 15 of the Code of the City of Chandler by amending Section 15-1; Subsection 15-2(A), Section 15-2; Subsection 15-3(C), Section 3; and Sections 15-8 through Section 15-21 relating to Auctioneers and Pawnbrokers.

BACKGROUND: Chapter 15 of the City of Chandler Code establishes requirements for Auctioneers and Pawnbrokers. In June 2009, under Ordinance No. 4165, the Chandler City Code was amended to add a \$3.00 transaction fee to pawnbrokers. Ordinance No. 4196 will amend the Code to add the \$3.00 transaction fee to all reporting parties, such as auctioneers, secondhand dealers, auction houses, junk dealers, etc. Ordinance No. 4196 also contains other changes to license requirements and administration that affects the Police Department and Tax and License Department.

PROPOSED MOTION: Move to Introduce Ordinance No. 4196 amending Chapter 15 of the Code of the City of Chandler by amending Section 15-1; Subsection 15-2(A), Section 15-2; Subsection 15-3(C), Section 3; and Sections 15-8 through Section 15-21 relating to Auctioneers and Pawnbrokers.

Attachment: Ordinance No. 4196

ORDINANCE NO. 4196

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTION 15-1; SUBSECTION 15-2(A), SECTION 15-2; SUBSECTION 15-3(C), SECTION 15-3; AND SECTIONS 15-8 THROUGH SECTION 15-21, CHAPTER 15 OF THE CHANDLER CITY CODE RELATING TO AUCTIONEERS AND PAWNBROKERS.

BE IT ORDAINED THAT Chapter 15 of the Code of the City of Chandler, relating to auctioneers and pawnbrokers, is amended to read as follows:

Section 1: Section 15-1, Chapter 15 of the Code of the City of Chandler is amended by revising the definition of *Secondhand dealer* to read as follows:

15-1. *Definitions.*

For the purposes of this chapter, the following words and phrases shall have meanings respectively ascribed to them by this section:

Secondhand dealer. "Secondhand dealer" is any person engaged in conducting, managing, or carrying on an ongoing business of buying, selling, trading, exchanging, consigning or otherwise dealing in secondhand goods and antiques, whether or not these transactions are the principal or sole business conducted or is a part thereof or incidental to it. "Secondhand dealer" shall include antique dealers. "Secondhand dealer" shall not include:

A. Dealers or auctioneers of property if the title to the property is required by the laws of the State to be evidenced by a written instrument that is recorded in a department or office of the State or County Government.

B. Persons selling, trading, or exchanging items entrusted to the person by the owner of the item for the purpose of repair but which are later abandoned by the owner.

C. Persons conducting no more than ~~four (4)~~ three (3) garage and/or yard sales per year, with each such sale not lasting more than three (3) consecutive days.

D. Individuals conducting isolated or casual transactions of the kinds otherwise regulated by this chapter when they are not part of any ongoing business, commercial or for-profit operation.

E. Persons conducting activities of the type otherwise regulated by this chapter when such activities are conducted by or the purchase amounts are paid solely to a nonprofit organization, duly incorporated under the laws of Arizona or any other State.

F. Persons engaged solely in recycling metal cans, paper, cardboard, glass or plastic.

G. Investment or securities brokerage houses or financial institutions as defined by A.R.S. § 44-1601, Paragraph 1, Subsections A., B., and C.

H. Persons conducting activities of a type otherwise regulated by this chapter where purchase amounts are paid solely to nonprofit organizations.

Section 2: Subsection 15-2(A), Section 15-2, Chapter 15 of the Code of the City of Chandler is amended to read as follows:

15-2. Report of transactions required; presumption; structuring, fees.

A. Every person engaged in the business of auctioneer, auction house, junk dealer, pawnbroker, antique dealer or secondhand dealer shall make out, at the time of the transaction, and deliver to the Police Department, a true, complete and legible report of all goods and articles received on deposit, in pledge, pawn, consignment, trade, exchange, or by purchase, except as otherwise authorized by this chapter. The report shall be made out on forms furnished or otherwise authorized by the Police Department and shall be delivered to the Police Department or postmarked within twenty-four (24) hours after receipt of the property being reported. Each report shall contain all of the following information for each item received. All information shall be legible and either hand printed or typewritten, except for signatures. The reporting party shall complete all the entries on the report form, except the signature of the person from whom the property is received, and shall enter "None" or "N/A" (not applicable) as appropriate:

1. A complete description of the property, including brand name, color and serial number, if any, and the quantity of identical items, if applicable.

2. The date and time the property was received.

3. The name, address, birth date and signature of the individual from whom the property was received. The reporting party shall require the person from whom he/she is purchasing or otherwise receiving the property to be identified by displaying a valid motor vehicle operators license, a valid State non-operating identification license, a valid armed forces identification card, a valid passport with photograph or any other valid government-issued identification containing a photograph. The type of identification so used and any and all identifying numbers thereon shall be recorded by the reporting party on the report.

4. The name of the business receiving the property and the signature or other identifying mark of the person receiving the property on behalf of the business.

5. The physical description of the person from whom the property was received, including the following: height, sex, weight, race, color of hair, and color of eyes, ~~and any additional physical description of the person, including but not limited to facial hair, scars, and tattoos.~~

6. The amount paid, loaned, or pledged for each item, group of identical items, or set of items.

7. A maximum of three items shall be entered on each report form.

8. A fee of three dollars (\$3.00) shall be paid for each report form in a manner, place and time set by the Police Department.

Section 3: Subsection 15-3(C), Section 15-3, Chapter 15 of the Code of the City of Chandler is amended to read as follows:

15-3. Reporting exemptions.

Notwithstanding any of the provisions of this chapter, the following transactions and or articles are exempt from the reporting requirements of this chapter:

C. Transactions involving articles purchased by an pawnbroker, antique dealer, auction house, auctioneer, junk dealer or secondhand dealer for less than fifty ~~twenty-five dollars (\$50.00)(\$25.00)~~, except for the following:

1. Serial-numbered items.
2. Firearms.
3. Telephones.
4. Typewriters.
5. Calculators.
6. Facsimile machines.
7. Copy machines.
8. Computer equipment, including both hardware and software.
9. Photographic equipment.
10. Bicycles.
11. Power tools.

12. Appliances.
13. Televisions.
14. Radio and stereo equipment.
15. Video cassette recorders.
16. Jewelry containing a precious item.
17. Timepieces.
18. Electronics equipment.
- ~~19. Video cassette tapes.~~
- ~~19,20. Motor-driven lawn and garden equipment.~~
- ~~20,21. Sporting goods items.~~
- ~~21,22. Precious items.~~
- ~~23. Compact discs.~~

Section 4: Sections 15-8 through 15-21, Chapter 15 of the Code of the City of Chandler are amended to read as follows:

15-8. Property connected with crime.

Upon verbal or written notification by representatives of any Police Department that goods and articles received by any business listed in section 15-1 are either the fruits of a crime or other items used to perpetrate a crime, no auctioneer, auction house, junk dealer, pawnbroker, antique dealer or secondhand dealer shall dispose of such property. If interest is charged upon the pawn, pledge, or item for resale, the interest shall cease to accrue as of the date of such notification. Upon receiving a receipt from a representative of a Police Department, the auctioneer, auction house, junk dealer, pawnbroker, or secondhand dealer shall turn over such item(s) to the representative of the Police Department.

15-9. Receipt of abandoned property.

Every person engaged in the business of auctioneer, auction house, junk dealer, pawnbroker, antique dealer or secondhand dealer who, in the conduct of business, comes into possession of abandoned or unclaimed property, shall turn over such property to the Police Department. Said property shall be dealt with pursuant to Chapter 10_20A of the

Chandler City Code. This section shall not apply to unredeemed pawned or pledged articles.

15-10. Employment of persons with suspended or revoked permit; list of persons convicted under this chapter; employment of convicted persons; termination.

~~A.~~ No person or business regulated by this chapter shall knowingly employ a person to receive, buy, sell, trade, exchange, accept in pawn, consign or otherwise transact the business for which the permit is held, if such person's permit is currently suspended or revoked under the provisions of this chapter. The Police Department shall maintain a list of such persons and shall provide this information to businesses regulated by this chapter upon request. Businesses regulated by this chapter shall be deemed to have constructive notice of the contents of the list for purposes of prosecution for violations of this section.

~~A.B.~~ No business regulated by this chapter shall knowingly employ a person to receive, buy, sell, trade, exchange, accept in pawn, consign or otherwise transact the business for which the permit is held, if such person has been convicted in any jurisdiction of any felony, or any misdemeanor, other than violations of this chapter or other provisions of State Statute relating to the manner in which the business is to be operated, involving fraud, theft, dishonesty, deceit or moral turpitude, if such employment is within five (5) years of the conviction date. A business regulated by this chapter that has been notified by the Police Department that such a person is employed by the business shall terminate such employment immediately.

~~B.C.~~ No business regulated by this chapter shall knowingly employ a person to receive, buy, sell, trade, exchange, accept in pawn, consign, or otherwise transact the business for which the permit is held, if such person has been convicted two (2) or more times in any three-year period of any violation of this chapter or other provision of State Statute relating to the manner in which the business of the type regulated by this chapter is to be operated. A person or business which has been notified by the Police Department that such a person is employed shall terminate such employment immediately.

15-11. Permit required; terms; fees.

~~+~~ It shall be unlawful to operate as an auctioneer, auction house, junk dealer, pawnbroker, antique dealer or secondhand dealer without a valid permit issued pursuant to this chapter. Each person carrying on a business regulated by this chapter shall, before engaging in such business, make application for same to the Management Services Director or designee. The application shall be accompanied by a nonrefundable application fee and an annual permit fee to be set forth by City Council resolution. The annual permit fee will be refunded if the permit is denied. The initial annual permit fee shall be prorated as follows:

| | |
|-------------------------|---------------------------|
| January 1 - March 31 | 100% of annual permit fee |
| April 1 - June 30 | 75% of annual permit fee |
| July 1 - September 30 | 50% of annual permit fee |
| October 1 - December 31 | 25% of annual permit fee |

The permit required by this section is in addition to any other license or permit required to engage in business by either the City, the County or the State, and shall be nontransferable. No portion or percentage of the fee shall be refunded if a permit is suspended or revoked pursuant to this chapter. Whenever a permit is suspended or revoked pursuant to this chapter, a new application and application fee shall be submitted before a permit may be reissued or reinstated.

~~2. A pawnbroker shall pay to the City of Chandler a fee in the amount of three dollars for each report required to be prepared pursuant to A.R.S. § 44-1625(A).~~

15-12. Application procedures; renewal; issuance of permit.

A. Any person desiring a permit to engage in a business for which a permit is required under the terms of this chapter shall file an application on forms provided for that purpose by the City's Management Services Director or his/her designee. The application shall provide the following information:

1. Name, residence address, date of birth and signature of the applicant.
2. Business name and address.
3. Whether or not the applicant has been convicted in any jurisdiction of a felony, or of any misdemeanor, other than violations of this chapter or other provisions of State Statute relating to the manner in which the business is to be operated, involving fraud, theft, dishonesty, deceit or moral turpitude in the last five (5) years immediately preceding the date of application. The applicant shall provide specific information describing what offense or offenses the convictions were for and where, when and in which court or courts they were entered.
4. Whether or not the applicant has been convicted two (2) or more times in the preceding three (3) years of any violation of the provisions of this chapter or other provisions of State Statutes relating to the manner in which the business is to be operated.

The information required by paragraphs 1.--4. shall be provided by each partner if the applicant is a partnership; each general and limited partner if the applicant is a limited partnership; and each shareholder owning twenty (20) percent or more of the corporate stock and each officer if the applicant is a corporation.

5. The name, residence address, and date of birth of each person who is or will be employed by the applicant in conducting the business for which the permit application is made, whether the employee is full-time, part-time, permanent or temporary.

6. Every applicant, manager and assistant manager shall submit a complete set of fingerprints to the Chandler Police Department prior to filing the application. The fingerprint cards shall be maintained by the police department and the persons submitting the fingerprints shall be responsible for the costs.

B. A permit may be renewed by filing an application for renewal on a form provided by the Management Services Director or designee. The application for renewal shall be received by the Management Services Director or designee not less than forty-five (45) days before the expiration of the permit. When the application for renewal is received less than forty-five (45) days before the expiration date the expiration of the permit shall ~~not be delayed, postponed or otherwise affected~~ be processed in as timely a manner as possible. Any person who fails to renew a permit on or before the expiration date of that permit, and who conducts any activity for which such a permit is required by this chapter after such permit has expired and not been renewed, shall be in violation of this chapter and shall, in addition to any other penalties permitted by law, pay the late renewal fee established by council resolution, in addition to the annual fee required to be paid upon renewal. Any person who fails to renew their permit within sixty (60) days of expiration shall have their license deemed non-renewable and in addition to all applicable penalties shall also be required to meet all of the requirements for a new permit.

C. An application for renewal of an existing permit need list only:

1. Name of applicant.
2. Mailing address of applicant.
3. Business name.
4. Location of business.
5. Signature of applicant.
6. Any changes in information provided pursuant to subsection A. of this section in the previous year's permit application.

D. The Management Services Director or his/her designee shall issue a permit, or renew an existing permit, when the applicant has complied with the requirements of this chapter, including the payment of any fees and costs, subject to review and approval of the Chief of Police under section 15-13, unless there exists grounds on the face of the application for denial of the application under the provisions of this chapter.

E. A change in location of a permittee's business may be approved by the Director, provided that all ordinances and regulations of the City are complied with and a fee established by Council resolution is paid to the Director.

15-13. Review of permit application by Chief of Police; ~~denial; approval~~ recommendation.

A. Every application for a permit to engage in business as regulated by this chapter shall be forwarded by the Management Services Director or his/her designee to the Chief of Police, who shall have a criminal history inquiry conducted on all persons and employees listed on the application. Such inquiry shall be made to the Arizona Department of Public Safety pursuant to A.R.S. §41-1750 and Public Law 92-544 allowing the Arizona Department of Public Safety to share fingerprint data with the Federal Bureau of Investigation. The inquiry shall be limited to determining whether any person or employee listed on the permit application has been convicted in the last five (5) years from date of permit application of any felony or of any misdemeanor, other than violations of this chapter or other provisions of State Statute relating to the manner in which the business is to be operated, involving fraud, theft, dishonesty, deceit or moral turpitude, and whether such persons or employees have been convicted two (2) or more times in the three (3) years immediately preceding the application of any violation of this chapter or State Statute relating to the manner in which the business is to be operated.

B. If it is determined that any person or employee listed on the permit application has had such a conviction or convictions within the relevant time period or has outstanding warrants for their arrest, the Chief of Police shall recommend denial of ~~deny~~ the permit application and submit the application back to the Management Services Director or his/her designee, who shall review the recommendation of the Chief of Police, make a final determination and notify the applicant of the ~~denial~~ decision.

C. If it is determined that no person or employee listed on the permit application has had a conviction or convictions within the relevant time period the Chief of Police shall recommend ~~approve~~ of the permit application and submit it back to the Management Services Director or his/her designee for final determination on whether or not to issue issuance of the permit. The Management Services Director or his/her designee shall notify the applicant of the decision.

~~15-14. Fingerprinting; criminal history inquiry.~~

Unless previously provided under this chapter, each and every person employed by a business regulated by this chapter to receive, buy, sell, trade, exchange, accept in pawn, consign or otherwise transact the business for which the permit is requested, whether full or part-time, permanent or temporary, shall likewise submit to fingerprinting at the Police Department as well as a criminal history inquiry as specified in section 15-12 A. prior to commencing such employment. Records of fingerprints obtained under this section shall be maintained at the Police Department in the normal course of business. The permit applicant shall be responsible for the cost of fingerprinting the applicant and his/her employees.

15-1415. *Denial of permit; revocation; suspension; notice.*

A. An application for a permit or for renewal of an existing permit shall be denied, or if previously granted, revoked, if there are reasonable grounds to believe that at the time the application was submitted, the applicant or any individual required to provide information for the application in accordance with this chapter, has been convicted in any jurisdiction of a felony, or of a misdemeanor, other than violations of this chapter or other provisions of State Statute relating to the manner in which the business is to be operated, involving fraud, theft, dishonesty, deceit or moral turpitude within the five-year period immediately preceding the filing of the application. No person or business whose application has been denied or revoked under the provisions of this subsection shall be eligible to apply for a permit until the expiration of five (5) years from the date of the most recent conviction.

B. An application for a permit or for renewal of an existing permit shall be denied, or if previously granted, revoked, if it is determined that any false or misleading information is contained in any permit application or was submitted in support of it. No person or business whose application has been denied or revoked under the provisions of this subsection shall be eligible to apply for a permit until the expiration of one (1) year from the date of the denial or revocation of the application or permit.

C. Any permit issued pursuant to this chapter shall be revoked upon the conviction of the permit holder in any jurisdiction of a felony, or of a misdemeanor, other than violations of this chapter or other provisions of State Statute relating to the manner in which the business is to be operated, involving fraud, theft, dishonesty, deceit or moral turpitude. No permit holder whose permit has been revoked under the provisions of this subsection shall be eligible to apply for or hold a permit until the expiration of five (5) years from the date of the most recent relevant conviction.

D. The permit of any permit holder shall be suspended for ninety (90) days if there are reasonable grounds to believe that the permit holder or an employee of the permit holder acting within the scope of employment has been convicted twice during any three-year period of any violation of the provisions of this chapter or State Statute relating to the manner in which the business is to be operated. No permit shall be issued or renewed for an applicant so situated until the passage of ninety (90) days from the entry of judgment on the most recent conviction relied upon in the application of this subsection.

E. The permit of any permit holder shall be suspended for six (6) months if there are reasonable grounds to believe the permit holder or an employee of the permit holder during the course of employment has been convicted three (3) or more times during any three-year period of any violation of the provisions of this chapter or State Statute relating to the manner in which the business is to be operated. No permit shall be issued or renewed for an applicant so situated until the passage of six (6) months from the date of entry of judgment on the most recent conviction relied upon in the application of this subsection.

F. A certified copy of the records of any court of competent jurisdiction reflecting the fact and date of any relevant conviction shall be prima facie evidence thereof for the purposes of this section.

G. The permit of any permit holder shall be suspended for ninety (90) days if the permit holder fails to terminate the employment of any employee as required under the provisions of this chapter.

H. Notice of any denial, suspension, or revocation under the provisions of this section shall be given to the applicant or permit holder, as applicable, in writing, by the Management Services Director via registered mail, return receipt requested or certified mail to the applicant's or permit holder's last known business address as listed in the current calendar year's permit application.

I. Each day that a person or business conducts business for which a permit is required by this chapter without first obtaining a permit or while a permit is under suspension or revocation shall constitute a separate violation of this chapter.

15-1546. Appeal from denial, suspension, or revocation of permit; hearing; determination.

~~A. Any person who has been denied a permit, or whose application for the renewal of an existing permit has been denied, or who has had a permit suspended or revoked for any reason provided for in this chapter, may appeal in writing the denial, suspension or revocation within ten (10) days after the effective date of notice of the decision to the City Clerk. The appeal shall set forth the specific objections to the decision which form the basis of the appeal. "Effective date of notice of the decision" shall be defined for purposes of this section as the third day after correspondence is sent by certified or registered mail, return receipt requested, to the permit holder's last known address as reflected in the current calendar year's permit application. Upon timely receipt of a written appeal, the City Clerk shall designate a Hearing Officer who shall decide the validity of the appeal. A timely appeal shall result in a stay of any decision concerning the denial, suspension or revocation of any permit issued under the provisions of this chapter. The request for an appeal shall set forth the specific objections to the decision which form the basis of the appeal. The Hearing Officer shall notify the aggrieved permit holder, the Chief of Police and Management Services Director in writing of the date, time and location of the hearing. Written notice of the hearing shall be given within thirty (30) days of the date of appeal. The hearing shall be held no less than ten (10) days nor more than twenty (20) days after written notice of the hearing. The decision of the Hearing Officer shall be a final determination of the validity of the appeal. The decision shall be based upon a preponderance of the evidence presented at the hearing and shall:~~

- ~~1. Affirm the decision to deny, revoke or suspend the permit in whole or in part;~~
~~or~~
- ~~2. Reverse the decision to deny, revoke or suspend the permit, in whole or in part.~~

~~B. Written notice of the decision of the Hearing Officer shall be mailed within ten (10) days of the date of the decision to the appealing party, the Chief of Police, and the Management Services Director. A record of the decision shall be maintained by the City Clerk.~~

A. To deny or revoke a permit, the Director shall deliver or mail by certified mail, to the mailing address as shown by the permit application, a written notice that said permit is denied or revoked and which lists the grounds therefore. A revoked permit shall be surrendered to the Director on demand.

B. The applicant or permittee may request an informal hearing on such denial or revocation by submitting a written request within ten (10) days after the notice of denial or revocation is given and shall set forth specifically the grounds for the hearing. If a hearing is not requested within ten (10) days of the date of notice, the revocation shall take effect on the eleventh day after the date of the notice. If a hearing is requested, the revocation shall not take effect until after the hearing and date of notice of the Director's final decision. Appeal of the Director's decision to the City Manager may not be made prior to the date of notice of Director's final decision.

C. Any parties aggrieved by the final decision of the Director/designee with regard to the permits required by this chapter may within ten (10) days of the date of notice of such decision give written notice to the City Clerk of intention to appeal to the City Manager/designee. A timely appeal shall result in a stay of any decision of the Director/designee. Appeals will be heard in accordance with the provisions set forth in Chapter 1. Failure to appeal in writing within the prescribed time constitutes a waiver of the right to appeal. The decision of the City Manager/designee shall be final.

15-1647. Engaging in business without a permit.

It shall be unlawful for any person to engage in a business regulated by this chapter without first obtaining the required permit.

15-1748. Engaging in business while permit is suspended or revoked.

It shall be unlawful for any person to engage in a business regulated by this chapter while his/her permit is suspended or revoked under the provisions of this chapter.

15-1819. False information.

It shall be unlawful for any person to provide false information on reports or records required by any section of this chapter or to provide false information on any permit application.

15-1920. Display of regulations.

Every person engaged in the business of auctioneer, auction house, junk dealer, pawnbroker, or secondhand dealer shall display a copy of this chapter and required permit in a conspicuous place on the premises of the business.

15-2024. *Penalty.*

Any person convicted of a violation of this chapter shall be subject to a fine in a sum not to exceed two thousand five hundred dollars (\$2,500.00) and to imprisonment not to exceed one hundred eighty (180) days.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2009.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this ____ day of _____, 2009.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4196 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2009, and that a quorum was present thereat.

CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

MM, ACA
CITY ATTORNEY