

ORDINANCE NO. 15-17

An Ordinance Amending Chapter 14 "Business"
Article V. Pawnbrokers and Secondhand Dealers

Whereas, NC GS Chapter 66, Article 45, Part 1. Permits municipalities to enact ordinances regulating the licensure and conduct of "pawnshops"; and

Whereas, it is in the Town's best interest to adopt a local ordinance that reflects the State statute regulating such businesses; and

Whereas, such an ordinance will aid the law enforcement community by providing effective procedures for monitoring the conduct of Pawnshops and Second Hand Dealers.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville, North Carolina that:

Chapter 14 "Business" be amended to Delete Section 106 and 108 Pawnbrokers and Secondhand Dealers (2-10-15), and replace and add sections 106-135 as follows:

~~Sec. 14-106. Definitions.~~

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

~~*Fixed location* means any site occupied by a secondhand dealer as the owner or lessee of the site under a lease or rental agreement providing for occupation of the site by the secondhand dealer for a total duration of not less than 364 days.~~

~~*Precious metals dealer.* See definition provided under G.S. 66-164.~~

~~*Secondary metals recycler.* See definition provided under G.S. 66-11.~~

~~*Secondhand dealer* means any person, sole proprietorship, partnership, joint venture, corporation, company, association or any other form of organization whose regular business is buying, selling, bartering, exchanging, or accepting for sale on consignment, in any manner, at retail or wholesale, or otherwise dealing for profit in, secondhand goods.~~

~~*Secondhand goods* means tangible personal property from the public previously used, rented, owned or leased (excluding property required to be registered by the NCDOT Division of Motor Vehicles, clothing, shoes, books, and animals).~~

~~{Ord. No. O 02-15, 2-10-2015}~~

ARTICLE V. PAWNBROKERS AND SECONDHAND DEALERS

Sec. 14-106 - Definitions.

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

Currency converter means a person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds him or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include pawnbrokers, persons who are purchasing directly from wholesalers for their inventories, precious metal dealers and purchasers of children's goods and sporting goods where \$50 or less was paid for the items.

Pawn or pawn transaction means a written bailment of personal property as security for a debt, redeemable on certain terms within 180 days unless renewed, and with an implied power of sale on default.

Pawnbroker means any person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

Pawnshop means the location at which or premises in which a pawnbroker regularly conducts business.

Person means any individual, corporation, joint venture, association, or an other legal entity, however organized.

Pledged goods means tangible personal property which is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

Purchase means any item purchased from an individual for the purpose of resale, whereby the seller no longer has a vested interest in the item.

Secondhand dealer means any person, sole proprietorship, partnership, joint venture, corporation, company, association, or any other form or organization whose regular business is buying, selling, bartering, exchanging, or accepting for sale on consignment, in any manner, at retail or wholesale, or otherwise dealing for profit in, secondhand goods.

(GS 66-387)

Sec. 14-107. - Exemptions.

The following businesses/persons shall be exempt from the provisions of this article unless otherwise regulated under G.S. 66-405 thru 66-415 or G.S. 66-385-439 (Pawnbrokers and Cash Converters):

- (1) A person or business whose only business transactions with secondhand goods in the town consist exclusively of the sale of donated items as a 501(c) (3) organization; or
- (2) A person or business whose only business transactions with secondhand goods in the town consist of the sale of personal property acquired for household or other personal use such as garage sales, yard sales, estate sales and/or auctions held by a licensed auctioneer; or

- (3) A person or business whose only business transactions with secondhand goods in the town consist of a display space, booth or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, flea market, swap meet or similar event that is not in a fixed location.
- (4) Fixed location antique dealers whose sole business involves the buying, selling, and trading of antiques.
- (5) Businesses whose sole business involves the buying selling, and trading of consignment clothing, shoes, books, etc.
- (6) Auction house businesses whose sole business involves the buying, selling, and trading of property by auction open to the public.
- (7) Businesses whose sole business involves the buying, selling, and trading of property registered by the state department of transportation, division of motor vehicles.

Sec. 14-108. - Authority of pawnbroker.

A pawnbroker licensee is authorized to:

- (1) Make loans on pledges of tangible personal property;
- (2) Deal in bullion stocks;
- (3) Purchase merchandise for resale from dealers, traders and wholesale suppliers; and
- (4) Use capital and funds in any lawful manner within the general scope and purpose of the license.

No pawnbroker has the authority enumerated in this section unless he has fully complied with the laws regulating the particular transactions involved.

(GS66-388)

Sec. 14-109. - Records; pawn tickets.

- (a) Every pawnbroker shall keep consecutively numbered records of each and every pawn transaction, which shall correspond in all essential particulars to a detachable pawn ticket or copy thereof attached to the record.
- (b) The pawnbroker shall, at the time of making the pawn or purchase transaction, enter upon the pawn ticket a record of the following information, which shall be typed or written in ink and in the English language:
 - (1) A clear and accurate description of the property, including model and serial number if indicated on the property;

- (2) The name, residence address, phone number and date of birth of pledgor;
 - (3) Date of the pawn transaction;
 - (4) Type of identification and the identification number accepted from pledgor;
 - (5) Description of the pledgor, including approximate height, weight, sex and race;
 - (6) Amount of money advanced;
 - (7) The date due and the amount due;
 - (8) All monthly pawn charges, including interest, annual percentage rate on interest and total recovery fee; and
 - (9) The agreed upon stated value between the pledgor and pawnbroker in case of loss or destruction of the pledged item. Unless otherwise noted, the stated value is the same as the loan value.
- (c) The following shall be printed on all pawn tickets:
- (1) The statement: "Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of 60 days past maturity date of the original contract. No further notice is necessary.
 - (2) The statement: "The pledgor of this item attests that it is not stolen, has no liens or encumbrances, and is the pledgor's to sell or pawn.";
 - (3) The statement: "The item pawned is redeemable only by the bearer of this ticket or by identification of the person making the pawn." and
 - (4) A blank line for the pledgor's signature and the pawnbroker's signature or initials.
- (d) The pledgor shall sign the pawn ticket in the designated space. The pledgor shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker. These records shall be available for inspection and pickup each regular workday by the chief of police or the chief's designee. These records shall be correct copies of the entries made of the pawn or purchase transaction and shall be carefully preserved without alteration and shall be available during regular business hours.
- (e) Except as otherwise provided in this article, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket

(GS 66-391)

Sec. 14-110. - Fees; interest rates.

- (a) No pawnbroker shall demand or receive an effective rate of interest greater than two percent (2%) per month, and no other charge of any description or for any purpose shall be made by the pawnbroker, except that the pawnbroker may charge, contract for and recover an additional monthly fee for the following services, including but not limited to:
 - (1) Title investigation;
 - (2) Handling, appraisal and storage;

- (3) Insuring a security;
 - (4) Application fee;
 - (5) Making daily reports to local law enforcement officers; and
 - (6) For other expenses, including losses of every nature, and all other services.
- (b) In no event may the total of the monthly fees on a pawn transaction listed in subsection (a) of this section exceed twenty percent (20%) of the principal up to a maximum of the following:
- First month \$100.00
- Second month 75.00
- Third month 75.00
- Fourth month and thereafter 50.00
- (c) Pawnbrokers may also charge fees for returned checks as allowed by G.S. 25-3-512.
- (GS 66-393)

Sec. 14-111. - Transactions.

In every pawn transaction:

- (1) The original pawn contract shall have a maturity date of not less than 30 days, provided that nothing in this article shall prevent the pledgor from redeeming the property before the maturity date;
- (2) Any personal property pledged to a pawnbroker is subject to sale or disposal when there has been no payment made on the account for a period of 60 days past maturity date of the original contract, unless the pledgor and the pawnbroker agree to a renewal of the contract;
- (3) Every pawn ticket or receipt for such pawn shall have printed thereon the provisions of subsection (1) of this section which shall constitute:
 - a. Notice of such sale or disposal;
 - b. Notice of intention to sell or dispose of the property without further notice; and
 - c. Consent to such sale or disposal.

The pledgor thereby forfeits all right, title and interest of, in and to such pawned property to the pawnbroker who thereby acquires absolute title to the property, whereupon the debt is satisfied and the pawnbroker may sell or dispose of the unredeemed pledges as his own property. Any sale or disposal of property under this section terminates all liability of the pawnbroker and vests in the purchaser the right, title, and interest of the borrower and the pawnbroker;

- (4) If the borrower loses his pawn ticket he shall not thereby forfeit his right to redeem, but may, before the lapse of the redemption period, make an affidavit with indemnification for such loss. The affidavit shall describe the property pawned and shall take the place of the lost pawn

ticket unless the pawned property has already been redeemed with the original pawn ticket;
and

- (5) A pledgor is not obligated to redeem pledged goods or make any payment on a pawn transaction.

(GS 66-394)

Sec. 14-112. - Prohibitions.

A pawnbroker shall not:

- (1) Accept a pledge from a person under the age of 18 years;
- (2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;
- (3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this article;
- (4) Fail to exercise reasonable care to protect pledged goods from loss or damage;
- (5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. If such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. If the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the stated value agreed upon pursuant to section 14-109
- (6) Take any article in pawn, pledge or as security from any person, which article is known to such pawnbroker to be stolen, unless there is a written agreement with local or state police;
- (7) Sell, exchange, barter or remove from the pawnshop any goods pledged, pawned or purchased before the earlier of seven (7) days after the date the pawn ticket record is electronically reported in accordance with GS 66-391(d) or thirty (30) days after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers.
- (8) Operate more than one pawnshop under one license, and each shop must be at a permanent place of business; or
- (9) Take as pledged goods any manufactured home, recreational vehicle or motor vehicle, other than a motorcycle.

(GS 66-395)

Sec. 14-113. - Penalties.

- (a) Every person, their guests or employees, who shall knowingly violate any of the provisions of this article shall, on conviction thereof, be deemed guilty of a Class 2 misdemeanor and shall be fined a sum not to exceed \$500.00 for each offense, and at the discretion of the court, may be imprisoned for a period of time not to exceed six months. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly

committed by the owner, major stockholder or managing partner of the pawnshop, the license of the pawnshop may be suspended at the discretion of the court.

- (b) Subsection (a) of this section shall not apply to violations of section 14-112, which shall be prosecuted under the state criminal statutes.
- (c) In addition to the penalties set forth in subsections (a) and (b) of this section, violation of any of the provisions of this article may also result in revocation of the license.
- (d) Any contract of pawn, the making or collecting of which violates any provision of this article, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn.

(GS 66-66-396)

Sec. 14-114 thru Sec.14-120. - Reserved.

Sec. 14-121. –License Required.

It is unlawful for any person to establish or conduct a business of pawnbroker unless such a person has procured a license to conduct business in compliance with the requirements of this article. The license required by this article is in addition to any other license that may be required in this chapter. The application fee for the license required shall be as established by the Town's Fees and Charges Manual. The applicant must also obtain a State License procured through the Department of Revenue.

Charges include:

1. \$38.00 for fingerprinting fee for all employees
2. \$25.00 administrative fee for all employees
3. \$10.00 for license for the business

(GS 66-389)

Sec. 14-122. - Qualifications of licensee.

- (a) To be eligible for a pawnbroker's license, an applicant and all employees must:
 - (1) Be of good moral character; and
 - (2) Not have been convicted of a felony within the last ten years.
- (b) In order to establish evidence of good moral character, an applicant shall, among other things, provide references from two or more local citizens. In addition, the applicant shall not have been convicted of a misdemeanor which is related to offenses against property, including but not limited to misdemeanor offenses of larceny and receiving stolen goods. In order to determine whether or not the applicant has been convicted of a felony within the last ten years, a criminal record check from the clerk of court of every county where the applicant has resided during the past ten years shall be made.

(GS 66-390)

Sec. 14-123. - Application.

Every person desiring to engage in the business of pawnbroker within the corporate limits of the Town shall make application to the Tax Collections Division of the Finance Department for a license to conduct such business. Such application shall include the following:

- (1) The name and address of the person, and, in case of a firm or corporation, the names and addresses of the persons composing such firm or of the officers, directors and stockholders of such corporation, excluding shareholders of publicly traded companies.
- (2) The name and address of the person responsible for each location's application and compliance with this ordinance.
- (2) All previous addresses for the past ten years;
- (3) The name and address of all current and prospective pawnshop employees. Addresses shall be furnished for the past ten years. The Town may then conduct a local record check to determine whether or not any such employees have been convicted of a felony within the last ten years or of a misdemeanor related to offenses against property, including but not limited to a misdemeanor conviction for larceny or a misdemeanor conviction for receiving stolen goods, within the last ten years;
- (4) The name of the business and the street and mailing address where the business is to be operated;
- (5) A statement indicating the amount of net assets or capital proposed to be used by the petitioner in operation of the business; this statement shall be accompanied by an unaudited statement from an accountant or certified public accountant verifying the information contained in the accompanying statement;
- (6) An affidavit by the applicant that he has not been convicted of a felony within the last ten years or of a misdemeanor related to offenses against property, including but not limited to a misdemeanor conviction for larceny or a misdemeanor conviction for receiving stolen goods, within the last ten years;
- (7) A certificate from the Chief of Police or Sheriff of the county or the State Bureau of Investigation that the petitioner has not been convicted of a felony in the state within the last ten years; and
- (8) A photograph, taken within the past three years.
- (9) A license permitting the applicant to engage in such a business obtained through the State Department of Revenue.

(GS 66-390)

Sec. 14-124. - Bond.

Every person licensed under this article shall, at the time of receiving the license, file with the Town a bond payable to the Town in the sum of \$5,000.00, to be executed by the licensee and by two responsible sureties or a surety company licensed to do such business in this State, to be approved by the Town, which shall be for the faithful performance of the requirements and obligations pertaining to

the business so licensed. The Town may sue for forfeiture of the bond upon a breach thereof. Any person who obtains a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied may maintain an action in his own name upon the bond to satisfy the judgment.

(GS 66-399)

Sec. 14-125. - Renewal.

Any license issued pursuant to this division shall be for a period of one year. The license may be renewed for additional periods of one year upon compliance with the requirements of sections 14-122 and 14-123.

(GS 66-398)

Sec. 14-126. - Revocation.

Any license granted under this division may be revoked by the Town, after a hearing, for substantial abuse of this article by the licensee.

Sec. 14-127 Revocation procedure- hearing.

1. In the event of substantial evidence of abuse of this article by the licensee the Tax Collector shall provide the licensee with written notice of the abuse by personally delivering a letter or mailing a registered or certified letter, return receipt requested to the address specified in the license application.
2. The licensee, within ten (10) days after the day on which the notice is served, make a written request for a conference. The request shall specify the licensee's objections to the revocation. If the licensee fails to request a conference within the time period specified, the revocation shall become final.
3. If the licensee requests a conference, the conference shall be held within ten (10) days of the date the request is received. If, after hearing the applicant's objections, the Tax Collector still finds the applicant to be substantially abusing the provisions of this article, the revocation shall become final.

Sec.14-128. – Application Appeal procedure.

1. If, after reviewing an application for a pawnbroker's license, the Tax Collector determines that the applicant is not eligible, the Tax Collector shall provide the applicant the opportunity for a hearing, set forth in Sec. 14-127

2 If ten (10) years have passed since the applicant's conviction of a felony, the applicant may submit an application under the provisions of this article.

This appeal procedure shall also apply in case of revocation of a permit

Sec. 14-129. Electronic recordkeeping required.

- (a) Secondary metals recyclers and precious metal dealers shall obtain the statutorily-required information for each purchase transaction. All other secondhand dealers shall obtain the following information when purchasing, bartering, exchanging, or accepting for sale on consignment items from a seller:
 - (1) A clear and accurate description of the property, including model and serial number, if indicated on the property;
 - (2) The name, residence address, phone number, and date of birth of the seller;
 - (3) The date and time of the sale;
 - (4) Type of identification, and the identification number, accepted from the seller;
 - (5) A description of the seller, including approximate height, weight, gender, and race; and
 - (6) Amount of consideration given for the property.
- (b) All secondhand dealers shall electronically submit the information required in subsection (a) above to the Waynesville Police Department in a manner authorized by the chief of police within 24 hours of the transaction.
- (c) In the event that a technological failure prevents a secondhand dealer from reporting electronically, the secondhand dealer shall immediately notify the Waynesville Police Department of the failure and have physical records of the information required in subsection (a) available each regular business day for inspection and pickup by the Waynesville Police Department. Physical records will be collected for no more than seven (7) days. If there is no resolution to the technological failure by that time, the license will be suspended until such time as the technological failure is remedied.
- (d) Upon resolution of the technological failure, the secondhand dealer shall submit the required information electronically to the Waynesville Police Department from each regular business day the technological failure existed.
- (e) Any secondhand dealer, with the exception of secondary metal recyclers, convicted of violating any provision of this article, shall be guilty of a Class 2 misdemeanor, and shall be fined not more than \$500.00. Secondary metal recyclers convicted of violating any provision of this article shall be subject to the provisions set forth in G.S. 66-11(f).

Sec. 14-130 Currency Converters Record Keeping requirements

- (a) Every currency converter shall keep consecutively numbered records of each cash purchase. The currency converter shall, at the time of making the purchase, enter upon each record all of the following information, which shall be typed or written in ink and in the English language:
 - (1) A clear and accurate description of the property purchased by the currency converter from the seller, including model and serial number if indicated on the property.
 - (2) The name, residence address, phone number, and date of birth of the seller.

- (3) The date of the purchase.
 - (4) The type of identification and the identification and the identification number accepted from the seller
 - (5) A description of the seller, including approximate height, weight, sex and race.
 - (6) The purchase price.
 - (7) The statement "THE SELLER OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE SELLER'S TO SELL."
- (b) The seller shall sign the record and shall receive an exact copy of the record which shall be signed or initialed b the currency converter or any employee of the currency converter. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the sheriff's designee or the chief of police or the chief's designee of the municipality in which the currency converter is located.
- (c) These records may be electronically reported to the sheriff of the county or the chief of police on the municipality in which the currency converter is located by transmission over the Internet or by facsimile transmission in a manner authorized by the applicable sheriff or chief of police. These records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours.
- (d) This section does not apply to purchases directly from a manufacturer or wholesaler for a currency converter's inventory.

~~(Ord. No. 0-02-15, 2-10-2015)~~

~~Secs. 14-109—14-125. Reserved. Secs. 14-131 thru Sec. 135. - Reserved.~~

Adopted this 8th day of August, 2017.

TOWN OF WAYNESVILLE



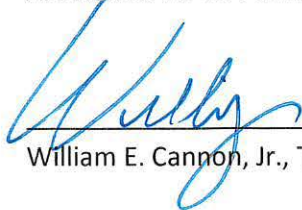
Gavin A. Brown, Mayor

ATTEST:



Eddie Ward, Town Clerk

APPROVED AS TO FORM:



William E. Cannon, Jr., Town Attorney

