

AGENDA ITEM SUMMARY

April 18, 2017

City Council

STAFF

Russell Reed, Police Lieutenant

SUBJECT

Second Reading of Ordinance No. 029, 2017, Amending Chapter 15, Article XI of the Code of the City of Fort Collins Related to the Regulation and Licensure of Dealers in Secondhand Property.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on February 21, 2017, updates and revises Article XI of Chapter 15 of the Fort Collins City Code. Article XI addresses the regulation and licensure of dealers in secondhand property within the City of Fort Collins. The proposed changes will update the outdated provisions to comply with current state law, local practice and procedure, and fill in any gaps in the existing provisions. Such changes include modifying the definition of a secondhand dealer to include a person who buys secondhand property and eliminating the restriction on issuance or renewal of a license because of any felony by the licensee, to be consistent with state law.

Changes to this Ordinance were made between First and Second Reading to: (1) clarify the definition of secondhand property to exclude donated property, exclude cellular telephones passed between cellphone carriers and their customers, and to further clarify that secondhand property is property "previously owned and used by another person"; (2) place a limit of ten years on convictions in an applicant's criminal history for which they may be denied a Secondhand Dealer's License; and (3) clarify that dealers must have a separate license for each location at which they deal in secondhand property.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, February 21, 2017 (PDF)

AGENDA ITEM SUMMARY

City Council

February 21, 2017

STAFF

Russell Reed, Police Lieutenant

SUBJECT

First Reading of Ordinance No. 029, 2017, Amending Chapter 15, Article XI of the Code of the City of Fort Collins Related to the Regulation and Licensure of Dealers in Secondhand Property.

EXECUTIVE SUMMARY

The purpose of this item is to update and revise Article XI of Chapter 15 of the Fort Collins City Code. Article XI addresses the regulation and licensure of dealers in secondhand property within the City of Fort Collins. The proposed changes will update the outdated provisions to comply with current state law, local practice and procedure, and fill in any gaps in the existing provisions. Such changes include modifying the definition of a secondhand dealer to include a person who buys secondhand property and eliminating the restriction on issuance or renewal of a license because of any felony by the licensee, to be consistent with state law.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

A loophole in the current ordinance has allowed various entities to visit Fort Collins for short periods of time such as a weekend, to purchase coins, valuable metals or other secondhand property, and to leave town, all without adhering to the regulations and standards that apply to permanent secondhand property businesses. The proposed addition of buyers to the definition of secondhand dealer will close this loophole.

The changes to definitions and restrictions on applicants bring the City Code into line with recent changes in Colorado law.

The change requiring electronic record keeping eliminates the currently required antiquated system in which police employees have to pick up paper slips from secondhand dealers and enter them by hand into the system. All pawn stores currently use electronic reporting, and the majority of secondhand dealers do so voluntarily. The service is free to businesses and provides real time entry of sold property which can be matched to property reported stolen to detect potential criminal transactions.

CITY FINANCIAL IMPACTS

These proposed changes will reduce cost to the City by eliminating the need for employees to drive to locations and pick up pawn slips for entry by hand into the tracking software.

PUBLIC OUTREACH

Detective Dave Grant personally contacted all of the permanent second hand dealers in the City and explained the proposed changes and how electronic reporting works. He explained the current loophole that benefits out of town "gold buyers" and how FCPS is trying to level the playing field for local businesses as well as update the ordinance regarding law and technology. He also contacted every hotel that hosts out-of-town property

“buyers” to explain the proposed changes and what will need to be done for compliance to those changes. Leadsonline is a current service that provides real-time entry of sold property which can be matched to property reported stolen and only takes an internet connection to use and is free to businesses. Thus, the impact on businesses is negligible while the benefits for local business and law enforcement alike are significant.

COPY

ORDINANCE NO. 029, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 15, ARTICLE XI OF THE CITY CODE RELATED TO THE
REGULATION AND LICENSURE OF DEALERS IN SECONDHAND PROPERTY

WHEREAS, Chapter 15, Article XI of the City Code addresses the regulation and licensure of dealers in secondhand property within the City; and

WHEREAS, Fort Collins Police Services (“FCPS”) noticed a loophole in the current Code provisions that excludes ~~from the definition of “secondhand dealer” those~~ businesses that only ~~bought~~ buy secondhand property ~~within the City~~ but ~~did~~ do not sell it ~~within the City~~ ~~from the definition of “secondhand dealer,”~~ and therefore ~~currently~~ allows ~~that activity without a license or compliance with the City’s regulations~~ persons who just come into the City to buy secondhand property and then sell that property at a location outside the City, to do so without a secondhand dealers license and compliance with the City’s regulations applicable to secondhand dealers; and

WHEREAS, FCPS ~~therefore~~ recommends modifying the definition of secondhand dealer in Section 15-316 of the City Code to include any person who operates any portion of his or her business ~~within the City~~ to buy secondhand property; and

WHEREAS, FCPS further recommends modifying the definition of secondhand dealer to exempt out businesses that sell ~~donated tangible personal property and telecommunication providers selling cell phones;~~ and

WHEREAS, in order to be consistent with state law, FCPS also recommends ~~eliminating the prohibition in~~ ~~modifying~~ Section 15-318 of the City Code ~~on issuing or renewing a license to a person who has been convicted of any felony~~ to add crimes, including felony property related crimes and burglary, that bear a direct relationship between the crime and the licensee’s position and responsibilities as a licensed secondhand dealer; and

WHEREAS, further FCPS recommends narrowing the scope of criminal histories to only include ten years prior to submission of an application for a secondhand dealer license to allow for persons that have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society; and

WHEREAS, in order to eliminate the use of outdated reporting methods, FCPS also recommends amending Section 15-321 of the City Code to require secondhand dealers to electronically transmit to FCPS reports of ~~sold~~ purchased property that can be matched to records of stolen property to detect criminal transactions; and

WHEREAS, FCPS also recommends amending the definition of “secondhand property” to clarify that it is property “previously owned and used by another person” and to state in Article XI that every secondhand dealer shall obtain a separate license for each business location; and

WHEREAS, the City Council believes that such amendments are in the best interest of the citizens of Fort Collins **and necessary for the public's health, safety and welfare.**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 15-316 of the Code of the City of Fort Collins is hereby amended to read as follow:

Sec. 15-316. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Barter shall mean to trade goods or services without the exchange of money.

Barterer shall mean a trader who exchanges goods and not money.

...

Flea market shall mean a temporary or permanent market place, indoors or outdoors, wherein a booth or other space is provided by an owner or operator for a fee or compensation, to a vendor to exhibit and offer secondhand goods for sale or barter to the general public.

...

Secondhand dealer shall mean any person who operates any portion of his or her business to buy, accepts on consignment, sell or barter secondhand property; and any owner or operator of a flea market, provided, however, that this definition and the terms of this Article shall not apply to the following:

- (1) A person or organization selling or bartering secondhand property at an exhibition or show which is intended to display and advertise a particular commodity or class of product, including, but not limited to, antique exhibitions, firearm exhibitions, home and garden shows and recreational vehicle shows;
- (2) A person or organization that is charitable, nonprofit, recreational, fraternal or political in nature or that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986;
- (3) A person buying, selling or bartering firewood, Christmas trees, plants, food products, agricultural products, fungible goods, pets, or livestock;

(4) A person buying, selling or bartering arts and crafts, but only if the arts and crafts are jewelry or items crafted of gold, silver, or other precious metals, and are sold or bartered by the artist or craftsman who created them, ~~or~~ his or her immediate family, or his or her regular employees;

(5) A person accepting on consignment, selling or bartering secondhand property that was not originally purchased by such person for resale, so long as such person does not accept on consignment, sell or barter secondhand property more than five (5) weekend periods in one (1) calendar year as verified by a declaration to be prepared by the seller. For purposes of this Subsection, weekend period means during the period beginning Friday through the immediately following Monday;

(6) An individual vendor renting a booth or space in a flea market, except that each individual vendor shall be subject to the requirements in § 15-327.

(7) A person, organization or business that sells donated secondhand property.

Secondhand property shall mean the following items of tangible personal property previously owned, ~~tangible personal property~~ and used by another person;

(1) Camera equipment, including, but not limited to: cameras, camera lenses, slide or movie projectors, projector screens, flashguns, light meters, enlargers, tripods, binoculars, telescopes, microscopes and video recording cameras and their components;

(2) Entertainment equipment, including, but not limited to: televisions, phonographs, tape recorders, video recorders/players, radios, tuners, speakers, turntables, amplifiers, musical instruments, record changers, citizens' band broadcasting units and receivers, video game systems, video games, and compact disc players;

(3) Sporting goods and jewelry, including, but not limited to: skis, ski poles, ski boots, ski bindings, in-line skates, snowboards, skateboards, golf clubs, guns, jewelry, precious or semi-precious metals or stones, coins, luggage, boots and furs;

(4) Home/office equipment, including, but not limited to: typewriters, adding machines, calculators, computers and any other computer components, portable air conditioners, cash registers, copying machines, dictating machines, automatic telephone answering machines, sewing machines, fax machines, cellular or mobile telephones and pagers, but shall not include cellular or mobile telephones bartered, purchased or sold in connection with a cell phone service contract provided by a telecommunications provider;

...

Section 3. That Section 15-318(b) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-318. Application for secondhand dealer license; renewal; limitation on use; appeals.

...

(b) No license shall be renewed or issued to the following persons under the provisions of this Article:

(1) ~~Subject to the provisions contained in Section 24-5-101, C.R.S., a person who has been convicted of: any crime of which fraud or intent to defraud was an element, whether in this State or elsewhere; any crime of embezzlement or larceny against an employer or business; or any criminal conviction or civil violation related to any law or ordinance pertaining to the secondhand dealer or pawn industry;~~ Subject to any applicable provisions of C.R.S. § 24-5-101, any person that has been released within the ten (10) years immediately preceding the application from any form of incarceration or court-ordered supervision, including a deferred sentence, resulting from a conviction of: any property-related crime that is a felony under federal law or the law of any state; any crime of which fraud or intent to defraud was an element, whether in this State or elsewhere; any crime of embezzlement, larceny or burglary against an employer or business; or any criminal conviction or civil violation related to any law or ordinance pertaining to the secondhand dealer or pawn industry;

...

(d) ~~Each L~~ licenses shall be limited to use at a single business location as the premises specified in the application and, therefore, a secondhand dealer with more than one (1) business location must have a license for each location. ~~No such L~~ licenses shall be ~~are~~ not transferrable.

...

Section 4. That Section 15-320 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-320. Keeping of records required.

Every dealer licensed under this Article shall keep at his or her place of business an accurate, detailed record of every article of secondhand property acquired by purchase, consignment or barter. Such record shall include, and the seller, consignor or barterer transacting with the dealer must provide at the time of the sale, consignment or barter, the following:

(1) The name and date of birth of the consignor, seller or barterer;

(2) The current street address of the consignor's, seller's or barterer's residence;

(3) The date, time and place of the consignment, sale or barter, and the purchase price or other monetary amount of the transaction;

(4) An accurate and detailed account and description of the item consigned, sold or bartered, including, but not limited to, any and all trademarks, identification numbers, serial numbers, owner-applied numbers, model numbers, brand names or other identifying marks on such item;

(5) The identification number from any of the following forms of identification of the consignor, seller or barterer:

a. An identification card issued in accordance with Section 42-2-302, C.R.S.;

b. A valid state driver's license;

c. A valid driver's license containing a picture issued by another state;

d. A military identification card;

e. A valid passport;

f. An alien registration card; or

g. A non-picture identification document issued by a state or federal government entity, if in addition to the document, the secondhand dealer also obtains a clear imprint of the consignor's, seller's or barterer's right index finger (or in the event the right index finger is missing, then the customer's left index finger).

(6) A written declaration of ownership obtained from and signed by the seller, consignor or barterer in the presence of the secondhand dealer stating:

a. Whether the property that is the subject of the transaction is solely owned by the consignor, seller or barterer and if not solely owned, attaching a power of attorney from all co-owners of the property authorizing the seller, consignor or barterer to sell or otherwise dispose of such property;

b. How long the seller, consignor or barterer has owned the property;

c. Whether the consignor, seller or barterer or someone else found the property; and

d. If the property was found, a detailed description of the circumstances under which the property was found.

(7) A declaration by the secondhand dealer that the secondhand dealer is the rightful owner of the secondhand property and a description of how the secondhand dealer obtained the property, including the serial number of such property, if available, or a copy of the bill of sale of such property; and

(8) A declaration by the secondhand dealer that the secondhand dealer has knowledge of the requirement that a record of the sale or barter be transmitted electronically to the local law enforcement agency in a manner as determined by the Chief of Police, as required by § 15-321 and by Section 18-13-114(1), C.R.S.

Section 5. That Section 15-321(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-321. Records to be sent to police and open to inspection.

(a) Every secondhand dealer shall make such record as required by § 15-320 upon forms to be delivered to such dealer by Police Services or upon a reasonable facsimile thereof, having been approved by the Chief of Police. A secondhand dealer shall transmit electronically in a manner established by the Chief of Police the record of the consignment, sale or barter to Police Services within three (3) days of the date of such consignment, sale or barter and shall keep a paper copy of such record for at least three (3) years after the date of the consignment, sale or barter.

...

Section 6. That Section 15-322 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-322. Records for sales tax collection for flea market sales.

(a) Every secondhand dealer or any person who is a dealer of new goods who is a retailer and sells such goods at a flea market or similar facility or any nonpermanent location shall keep and preserve suitable records of consignments, barterings or sales made and such other books or accounts as may be necessary to determine the amount of tax for the collection of which the dealer is liable under Title 39, Article 26, Part 1, C.R.S.

(b) It is the duty of every such person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale. All such books, invoices and other records shall be open for examination at any time by the Executive Director of the State Department of Revenue, said Director's duly authorized agents or any peace officer.

(c) In the case of flea markets and similar facilities in which secondhand property is offered for sale, on consignment or barter, the operator thereof shall inform each secondhand dealer of the requirements of this Article and shall provide the form for recording the information required by § 15-320.

(d) In the case of flea markets and similar facilities in which secondhand property is offered for sale, consignment or barter, the operator thereof shall record the name and address of each secondhand dealer offering secondhand property for sale, consignment or barter at the flea market or similar facility, and the identification number of such dealer as obtained from any of the forms of identification enumerated in Paragraph 15-320(5). Such record shall be mailed or delivered by the operator to Police Services within three (3) days of the date the secondhand dealer offered secondhand property for sale, consignment or barter at the flea market or similar facility. A copy of such record shall be retained by each secondhand dealer offering secondhand property for sale, consignment or barter at the flea market or similar facility.

Section 7. That Section 15-323 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-323. Notice; penalties.

Except in the case of flea markets and similar facilities as provided in this Article, every secondhand dealer shall conspicuously post a notice to be provided by Police Services in a place clearly visible to all buyers and barterers which sets forth the provisions of this Article and of Sections 18-13-114 through 18-13-116, C.R.S., and which sets forth the penalties for violating such sections and for violating Section 18-4-410, C.R.S., concerning theft by receiving. Such notification shall include information to the effect that stolen property may be confiscated by any peace officer and returned to the rightful owner without compensation to the buyer. Said notice may also include information regarding any reimbursement policy of the dealer. In the case of flea markets and similar facilities, the operator shall post the notice required by this Section in such a manner as to be obvious to all persons who enter the flea market or similar facility.

Section 8. That Section 15-324(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-324. Certain property to be held and inspection of premises.

(a) Every secondhand dealer shall keep all secondhand property acquired by purchase or barter for a period of thirty (30) days before it is sold and, during such period of time, such property shall not be changed in form or packaging or altered in any other way; provided, however, that serialized property, and stamped and assayed gold and silver bullion and gold coins, may be sold or transferred after ten (10) days, so long as the secondhand dealer records:

(1) The identity and residential address of any person to whom the secondhand dealer sells or transfers such property by any means provided for in Paragraph 15-320(6), and

(2) The date, time and place of such sale or transfer.

...

Section 9. That Section 15-325 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-325. Purchase from minors prohibited.

No secondhand dealer shall acquire by purchase or barter any secondhand personal property from any person under the age of eighteen (18) without the written consent of their parent or legal guardian.

Section 10. That Section 15-328 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-328. Violations and penalties.

In addition to the revocation, denial or suspension of any license issued, any person who shall violate any of the provisions of this Article, and any person who barter with a secondhand dealer or any secondhand dealer who knowingly gives false information with respect to the information required by § 15-320 shall be guilty of a misdemeanor, punishable in accordance with § 1-15.

Introduced, considered favorably on first reading, and ordered published this 21st day of February, A.D. 2017, and to be presented for final passage on the 18th day of April, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, A.D. 2017.

Mayor

ATTEST:

City Clerk