

ORDINANCE 2021-20

AN ORDINANCE OF THE CITY OF SMYRNA, GEORGIA, PROVIDING FOR THE AMENDMENT OF THE CODE OF ORDINANCES OF THE CITY OF SMYRNA, ARTICLE III, PAWN BROKERS, DIVISION 1 - GENERALLY, SECTIONS 22-66 THROUGH 22-87

DIVISION 1. - GENERALLY^[3]

Footnotes:

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Editor's note— Ord. No. 2013-15 , adopted Oct. 21, 2013, effective Jan. 1, 2014, amended Div. 1 of Art. III in its entirety to read as herein set out, deleting entirely § 22-74, which pertained to inspection of records and derived from Code 1977, § 14-62; and Ord. No. 2011-03 , adopted March 21, 2011. Prior legislative history has otherwise been retained in history notes following sections.

Sec. 22-66. - 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:

Pawn or *pledge* means a bailment of personal property as security for any debt or engagement, redeemable upon certain terms and with the express or implied power of sale on default.

Pawnshop means any business wherein a well-defined part thereof is to take or receive, by way of pledge, pawn or exchange, any goods, wares, merchandise, titles for vehicles or any kind of personal property whatsoever as security for the repayment of money lent thereon.

Buy transaction means any transaction by way of purchasing any goods, wares, merchandise, or any kind of personal property whatsoever and the seller is not expecting a loan or to receive the item back in repayment for a loan. A buy transaction is considered a one-time transaction whereas the seller is receiving money for goods in the condition it presently exists at the time of the purchase with all faults, whether or not immediately apparent and transferring all ownership over to the buyer. Items which shall not be considered for buy transactions are as follows: precious metals, vehicles, vehicle titles and vehicle components.

(Code 1977, § 14-43(a), (b); Ord. No. 2013-15 , 10-21-13)

Cross reference— Definitions generally, § 1-2.

Sec. 22-67. - Purposes of article; authority.

- (a) This article is enacted in accordance with the plan designed for the purposes, among others, of promoting the health and general welfare of the community, of establishing reasonable and ascertainable standards for the regulation and control of pawnshops or similar places where money is advanced on goods or other effects or where merchandise of any kind is taken in pawn, and also similar places, better known as swap shops, that buy, sell and trade new and used merchandise from and with an individual.
- (b) This article is enacted pursuant to the authority of 1964 Ga. Laws, page 1024, of the Georgia Constitution, to 1967 Ga. Laws, page 914, of the Georgia Constitution, to 1969 Ga. Laws, page 2486, and to O.C.G.A. § 44-12-130 et seq.

(Code 1977, § 14-40; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-68. - Violation of article provisions a misdemeanor; injunctive remedy.

- (a) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, as defined by the state law and, upon conviction thereof, shall be punished as provided for misdemeanors under the laws of the state.
- (b) The violation of the provisions of this article by any person may be enjoined by instituting appropriate proceedings for injunction in the courts of competent jurisdiction of the state. Such actions may be maintained notwithstanding that other adequate remedies at law may exist. Such actions may be instituted in the name of the mayor and council.

(Code 1977, § 14-72; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-69. - Compliance requirements.

All persons, before beginning the business of operating a pawnshop, shall first file an application with the office of the city clerk or his/her designate for a permit to conduct such business.

(Code 1977, § 14-41(a); [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-70. - Territorial applicability.

The terms and provisions of this article shall apply only to the incorporated areas of the city. All proceeds generated under this article shall be used and spent only for those purposes which benefit the citizens of the incorporated portions of the city. In no event shall any of the proceeds generated under this article be used or spent in any fashion which would not benefit the citizens of the city.

(Code 1977, § 14-42; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-71. - Name of licensee and certificate number to be displayed.

Each licensee under this article's provisions shall have printed on the front window of the licensed premises the inscription "City of Smyrna Pawnshop Certificate Number _____," in uniform letters not less than three inches in height.

(Code 1977, § 14-61; Ord. No. 94-18, § 3, 12-5-94; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-72. - Duration of pawn transactions and buy transactions; lease-back of motor vehicles prohibited; taking possession of motor vehicles; restrictions on interest, fees, or charges; action to recover excessive or undisclosed charges; consequences of excessive charges.

- (a) As used in this section, the term "fee" or "charge" means a fee or charge as designated by state law.
- () All buy transactions shall not require a hold period unless the licensee or store employee is notified by the police that the transaction is under investigation for criminal activity and the licensee or store employee is specifically directed by the police department to hold the items, and any such hold time period requested by the police department may be extended or continued by the police department while the investigation continues.
- (b) All pawn transactions shall be held for 30-day periods, or longer if directed by the police department, but may be extended or continued for additional 30-day periods.
- (c) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during a pawn transaction or during any extension or continuation of the pawn transaction.
- (d) Unless otherwise agreed, a pawnbroker has, upon default, the right to take possession of the motor vehicle. In taking possession, the pawnbroker or his/her agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action.
- (e) During the first 90 days of any pawn transaction or extension or continuation of the pawn transaction, a pawnbroker may charge, for each 30-day period, interest and pawnshop charges which together equal no more than 25 percent of the principal amount advanced, with a minimum charge per 30-day period.
- (f) On any pawn transaction which is continued or extended beyond 90 days, a pawnbroker may charge, for each 30-day period, interest and pawnshop charges which together equal no more than 12.5 percent of the principal amount advanced, with a minimum charge per 30-day period.

- (g) In addition to the charges provided for in subsections (e) and (f) of this section, in a pawn transaction or in any extension or continuation of a pawn transaction involving a motor vehicle or a motor vehicle certificate of title, a pawnbroker may charge the following:
 - (1) A fee equal to no more than any fee imposed by the appropriate state to register a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a lien;
 - (2) No more than storage fees, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession and only for each day the pawnbroker must actually retain possession of the motor vehicle; and
 - (3) A repossession fee, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession.
- (h) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and mailing costs, plus a handling fee equal to not more than 50 percent of the actual shipping and mailing costs.
- (i) If the pledgor or seller has lost or destroyed the original pawn ticket, a pawnbroker may, at the time of redemption, charge a fee.
- (j) No other charge or fee of any kind by whatever name denominated, including, but not limited to, any other storage fee for a motor vehicle shall be made by a pawnbroker except as set out in subsections (e) through (i) of this section and as described in subsection 22-76(f) of this article.
- (k) No fee or charge provided for in this section may be imposed unless a disclosure regarding that fee or charge has been properly made as provided for in O.C.G.A. § 44-12-138.
- (l) Any interest, fees, or charges collected which are undisclosed, improperly disclosed, or in excess of that allowed by this section may be recovered by the pledgor or seller in an action at law in any superior court of appropriate jurisdiction.
- (m) In any such action in which the pledgor or seller prevails, the court shall also award reasonable attorneys' fees, court costs, and any expenses of litigation to the pledgor or seller.
- (n) Before filing an action under this section, the pledgor or seller shall provide the pawnbroker with a written notice by certified mail, return receipt requested, that such an action is contemplated, identifying any fees or charges which the pledgor or seller contends are undisclosed, improperly disclosed, or in excess of the fees and charges allowed by this section. If the court finds that during the 30 days following receipt of this notice the pawnbroker made a good faith offer to return any excess, undisclosed, or improperly disclosed charges, the court shall award reasonable attorneys' fees, court costs, and expenses of litigation to the pawnbroker.
- (o) No action shall be brought under this section more than two years after the pledgor or seller knew or should have known of the excess, undisclosed, or improperly disclosed charges.

- (p) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amounts permitted under subsections (a) through (n) of this section shall be uncollectible and the pawn transaction shall be void. All interest and the pawnshop charge allowed under subsections (a) through (n) of this section shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month.

([Ord. No. 2011-03](#), 3-21-11; [Ord. No. 2013-15](#), 10-21-13)

State Law reference— Similar provisions, O.C.G.A. § 44-12-31.

Sec. 22-73. - Permanent records—Required; content.

- (a) Every pawnbroker shall maintain a permanent electronic record of its transactions, in which an accurate description of all property received through buy transactions, pawned, pledged, traded or sold to the pawnshop can be transmitted to the city police department via an automated electronic reporting system. In addition to any other information required by the chief of police or his/her designee, the following shall be entered in the transaction records in legible English at the time of each loan, purchase, or sale:
- (1) The date of the transaction;
 - (2) The name of the person conducting the transaction;
 - (3) The name, age, telephone number, race, sex, date of birth and address of the customer; a description of the general appearance of the customer; and the distinctive number from the customer's driver's license or other similar identification card;
 - (4) An identification and description of the pledged or purchased goods, including, if reasonably available, the serial, model, or other number, and all identifying marks inscribed thereon;
 - (5) The number of the receipt or pawn ticket; each item received, excluding audio and video recordings, shall be tagged with the pawnshop ticket number. The tag bearing the pawnshop ticket number must remain attached to the item until the property is disposed of by sale, trade or other lawful means;
 - (6) The price paid or the amount loaned;
 - (7) If payment is made by check, the number of the check issued for the purchase price or loan;
 - (8) The maturity date of the transaction;
 - (9) The signature of the customer.

- (b) The pawnshop shall photograph, with a digital camera, at the time of each transaction, the person pawning, pledging, trading, exchanging or selling the property. The photograph shall clearly show a frontal view of the subject's face along with the pawnbroker's ticket number. The pawnbroker shall also clearly photograph the property being pledged, traded, pawned, exchanged or sold. Digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.
- (c) The pawnbroker shall store the above records, digital images and fingerprints as described in this article for a period of four years.
- (d) Every pawn shop shall enter every transaction as it occurs into the electronic automated reporting system. The administrator of the electronic automated reporting system will then transmit the records to the city police department.
- (e) Items of property that appear to be new, unused, and in their original packaging cannot be accepted by the pawnbroker unless the customer can supply a copy of the original sales receipt, or other proof of purchase from the place of purchase, to the pawnbroker who shall retain the receipt or proof of purchase on file.

(Code 1977, § 14-62; [Ord. No. 2011-03](#), 3-21-11; [Ord. No. 2011-15, 10-3-11](#); [Ord. No. 2011-19](#), 11-7-7; [Ord. No. 2011-21, 11-21-11](#); [Ord. No. 2012-01, 1-17-12](#); [Ord. No. 2012-02](#), 2-20-12; [Ord. No. 2012-12, 5-21-12](#); [Ord. No. 2012-13, 6-18-12](#); [Ord. No. 2012-19, 8-20-12](#); [Ord. No. 2013-15](#), 10-21-13)

Editor's note— [Ord. No. 2012-19](#), adopted August 20, 2012, states that: "Sections mandating use of electronic records within Article III, Chapter 22 of Pawnbrokers of the Code of Ordinances of the City of Smyrna, Georgia, be suspended until November 5, 2012."

Sec. 22-74. - Reserved.

Sec. 22-75. - Same—Refusal to permit inspection; penalty.

Any person subject to this article, or any licensee or employee thereof, who shall fail or refuse to keep electronic records as provided in this article or shall make false entries concerning the transactions named, or who shall fail or refuse to permit an inspection or examination by any duly authorized law enforcement officer of the electronic records of the property pledged or sold to licensee shall be punished as provided for in section 22-68.

(Code 1977, § 14-62; [Ord. No. 2011-03](#), 3-21-11; [Ord. No. 2011-15, 10-3-11](#); [Ord. No. 2011-19](#), 11-7-11; [Ord. No. 2011-21, 11-21-11](#); [Ord. No. 2012-01, 1-17-12](#); [Ord. No. 2012-02](#), 2-20-12; [Ord. No. 2012-12, 5-21-12](#); [Ord. No. 2012-13, 6-18-12](#); [Ord. No. 2012-19, 8-20-12](#); [Ord. No. 2013-15](#), 10-21-13)

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Sec. 22-76. - Daily report to police; fingerprints to be secured; identification; penalty.

- (a) *Contents of daily report.* Every licensee shall make a daily report in writing to the department of police in such form as may be prescribed by the chief of police, or any designated agent, of all property pledged to or bought by the licensee during the preceding 24 hours ending at 8:00 p.m. on the date of the report. Such report shall be typewritten. In addition to any other information required by the chief of police, the report shall show the name and address of the licensee, the time of the transaction, the serial numbers of the pawn tickets, the amount paid or advanced, a full description of the articles, including the kind, style, material, color, design, kind and number of stones in jewelry, and all identifying names, marks and numbers, and a description of the person pledging, selling or pawning, including name, address, color, weight and height. Daily reports shall also include copies of all titles of vehicles held as pledged property with the amount paid or advanced. Insufficient reports shall be rejected, and any licensee or employee thereof making the reports shall be deemed guilty of an offense punishable according to the provisions of section 22-68. The daily report shall be in such form and shall contain such information as may be required by the chief of police or by his/her designated agent, but shall contain sufficient information to identify each of such articles.
- (b) *Fingerprints required.* In addition to other records and information as required in subsection (a) of this section, each licensee shall obtain from each person pawning, pledging or selling any article with such licensee, the fingerprint of the right-hand index finger unless such finger is missing, in which event the print of the next finger in existence on the right hand of the person pawning the article shall be obtained with a notation as to the exact finger printed. All prints shall be made in an electronic format to be specified by the department of police, and the licensee shall obtain all other information called for by the electronic automated reporting system as designated by the chief of police or his/her designee. Fingerprints and the information as required in this section shall be obtained from all persons each time such persons pawn any article with the licensee, regardless of whether or not that person may have previously pawned an article with such licensee and have been fingerprinted.
- (c) *Evidence of identity and photograph required.* In addition to the fingerprinting requirements of subsection (b) of this section, each licensee shall require that any person pawning, pledging or selling an article shall display evidence of identification. Proper identification is defined as a government issued photo identification card such as a driver's license, military identification card, state identification card, or passport. The licensee shall record the driver's license number or other number or feature of such evidence of identification, and shall take a photograph of the person pawning, pledging, or selling the article, in a format and manner designated by the chief of police. This photograph will become part of the pawn record, and preserved or stored with the same.

- (d) *[Alternative transaction recording in event of system disability.]* In the event that the automated electronic reporting system becomes temporarily or permanently disabled, pawnshops and pawnbrokers will be notified as soon as possible by the department of police. In this event, the pawnbrokers will be required to make records of transactions in paper form, and furnish such records to the police department on a daily basis. Such records must include all the information enumerated in subsections (a) through (c) of this section. All pawnbrokers will maintain a three-day supply of such paper forms.
- (e) *Penalty for failure to comply.* The failure of any licensee or employee thereof to comply with the provisions of this section shall constitute an offense, punishable as provided in section 22-68.
- (f) *[Required system and equipment; regulatory fee.]* The chief of police or his/her designee shall designate the required automated reporting system and the required equipment needed. There will be a regulatory fee assessed to each pawnshop for each reported transaction, which will apply to all trades, pawns, and sales to the pawnbroker. Said fee shall be an amount set by the chief of police or his/her designee, and shall be equal to the amount assessed by the administrator of the automated reporting system. The fee will be invoiced to the pawnbroker and collected by the chief of police or his/her designee, which may be a third party administrator of the automated reporting system.

(Code 1977, § 14-63; [Ord. No. 2011-03](#), 3-21-11; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-77. - Regulation as to employees.

No person shall be employed by a pawnshop in any capacity who is not at least 18 years of age, a citizen of the United States or an alien admitted for permanent residence or a person who has otherwise been granted employment authorization by the United States Immigration and Naturalization Service and until such person has been fingerprinted by the identification bureau of the city department of police, and has been issued an annual personal identification card by the city department of police authorizing such person to be employed by a pawnshop, at a reasonable fee to be prescribed by the department of police. It shall be the duty of the pawnbroker to ensure that the provisions of this section are complied with.

(Code 1977, § 14-64; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-78. - Hours of operation.

The hours within which licensees may open their places of business shall be from 7:00 a.m. to 8:00 p.m., except Sundays. The department of police shall see to it that the provisions of this section are enforced.

(Code 1977, § 14-65; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-79. - Adding merchandise to stock.

A licensee selling goods other than those pledged may add new merchandise to his stock of the same type as that on which loans are made, up to a value of \$1,000.00, without having to pay an additional certificate fee as would otherwise be imposed according to the terms of this chapter.

(Code 1977, § 14-66; Ord. No. 94-18, § 3, 12-5-94; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-80. - Articles not to be disposed of for 30 days after acquisition.

Any licensee who takes goods on pawn the word "goods" being here used in the broadest sense and including all kinds of personal property, shall hold such goods so taken in pawn for at least 30 days before disposing of the goods by sale, transfer, shipment or otherwise. Goods received through buy transactions will not be subjected to a hold before disposing of goods by sale, transfer, shipment or otherwise.

Failure to comply with this section shall constitute an offense, punishable according to section 22-68.

(Code 1977, § 14-67; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-81. - Restrictions upon sale and pledge of building, glass and plumbing material.

- (a) *Generally.* It shall be unlawful for pawnbrokers to purchase, advance money on or take in pawn glass taken from buildings, such as mantel mirrors, art glass and the like, or copper wire, copper linings of bathtubs, lead pipes or any kind of plumbing materials sold as junk, where the same is offered for sale or pawned by persons other than those of known good character.
- (b) *Duties of licensee.* In all cases where such goods are purchased or money advanced, pawnbrokers shall keep a record of such purchases or advances, showing the names of the persons from whom received, their residence, the goods so taken and the amount of money paid or advanced, and this shall be at all times open for inspection to members of the department of police. It shall be unlawful for licensees or employees thereof to purchase any such goods or to advance money thereon, where their appearance indicates that they have been tampered with or there is an effort to conceal identity, or the goods are mutilated or otherwise show an effort to destroy evidence of the former location of the property. While any such goods taken in from pawn transactions, and not buy transactions, are being kept and before being disposed of, they shall be so arranged that they can be inspected by members of the department of police on demand. Failure to comply with this section shall constitute an offense punishable according to section 22-68.

(Code 1977, § 14-68; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-82. - Dealing with minors.

It shall be unlawful for any pawnbroker, his/her agents or employees to receive in pawn, pledge or sale goods of any character or description from a minor. For the purposes of this article, a minor is any individual 17 years of age or under.

(Code 1977, § 14-69; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-83. - Sale of knives; blackjacks; other weapons.

It shall be unlawful for any licensee to sell, offer for sale or expose for sale any kind of metal knucks, dirks, sword canes, spears, switchblade knives or any blackjacks or similar weapons. Any licensee or employee thereof violating this section shall be deemed guilty of an offense and punished as provided for in section 22-68.

(Code 1977, § 14-70; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-84. - Pawn of title only.

Any person who shall accept the title to any vehicle in pawn shall be governed by this article, including, but not limited to, sections 22-84 through 22-86.

(Code 1977, § 14-75; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-85. - Location.

No licensed location for a pawnshop or broker or a pawn for title establishment or any other business coming under this article shall be located closer than 1,000 feet to any similarly licensed location, or any church, school, public building, or library after October 1, 1991.

(Code 1977, § 14-76; [Ord. No. 2013-15](#), 10-21-13)

Sec. 22-86. - Parking.

No overnight parking of pledged vehicles shall be allowed on the premises of the licensee unless the parking is within an enclosed area not visible to the public. No licensee shall park or allow to be parked any vehicle on the premises of another without the written permission of the owner of the premises.

(Code 1977, § 14-77; [Ord. No. 2013-15](#), 10-21-13)

Secs. 22-87—22-100. - Reserved.

This ordinance shall take effect immediately and is passed and duly adopted this 18th day of October, 2021.

CITY SEAL:

The Honorable Derek Norton
Mayor, City of Smyrna,
Georgia

ATTEST:

Heather Peacon-Corn
City Clerk, City of Smyrna, Georgia

Approved as to form:

Scott A. Cochran, City Attorney