

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL FOR THE CITY OF CLARKSTON TO REGULATE PAWNBROKERS AND SECONDHAND DEALERS; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR ENFORCEMENT; TO PROVIDE FOR PERMITTING; TO PROVIDE FOR APPLICATION PROCEDURES; TO PROVIDE FOR A RECORD OF TRANSACTIONS; TO PROVIDE FOR DISPOSAL OF ARTICLES; TO PROVIDE FOR AGE REQUIREMENTS; TO PROVIDE FOR DISPOSITION OF LOST OR STOLEN ITEMS; TO PROVIDE FOR APPEALS; TO PROVIDE FOR VIOLATIONS; TO PROVIDE PENALTIES; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

SECTION ONE

Chapter _____ of the Municipal Code of the City of Clarkston is amended by adding a new Article, to be numbered Article _____, which shall include the following language:

Article _____

Sec. _____. Short Title.

This Article shall be known as the “Clarkston Pawnbroker and Secondhand Dealer Ordinance.”

Sec. _____. Findings and Intent.

This ordinance is adopted to address the interest of public safety, health and the welfare of the community and to aid and assist in the recovery of stolen property, and to aid and assist local law enforcement in fulfilling their public safety functions.

Sec. _____. Definitions.

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section or shall have the same meaning as set forth in the Official Code of Georgia Annotated, Section 44-12-130, should those definitions differ.

- (a) ‘Employee’ means any person who works in a pawnshop, whether on a part-time or full-time basis, regardless of whether remuneration is received or not.

- (b) 'Month' means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date, then the last day of such following month.
- (c) 'Pawnbroker' means any person engaged in whole or in part in the business of lending money on the security of pledged goods, or in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or in the business of purchasing tangible personal property from persons or sources other than manufacturers or licensed dealers as a part of or in conjunction with the business activities described in this paragraph.
- (d) "Pawnshop" means a Pawnbroker's physical location and/or any place where Pawn transactions occur.
- (e) 'Pawn transaction' means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods may be redeemed or repurchased by the pledger or seller for a fixed price within a fixed period of time.
- (f) 'Person' means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity however organized.
- (g) 'Pledged goods' means tangible personal property, including, without limitation, all types of motor vehicles or any motor vehicle certificate of title, which property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction. However, for purposes of this Code section, possession of any motor vehicle certificate of title which has come into the possession of a pawnbroker through a pawn transaction made in accordance with law shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker shall retain physical possession of the motor vehicle certificate of title for the entire length of the pawn transaction but shall not be required in any way to retain physical possession of the motor vehicle at any time. 'Pledged goods' shall not include choses in action, securities, or printed evidences of indebtedness.

Sec. _____. Enforcement.

The Clarkston police department shall see that the provisions of this Article are observed and enforced.

Sec. _____. Employees.

No person shall be an employee of a pawnshop in any capacity until such person has been fingerprinted by the Clarkston police department and has been issued an annual permit authorizing such person to be employed by a pawnshop. It shall be the duty of the pawnbroker to assure that there is compliance with the provisions of this section.

Sec. _____. General Policies and Purposes.

- (a) Pawnbrokers may operate only after the issuance of a license for such operation by City of Clarkston and only in the manner permitted by such license. Pawn transactions may only occur through a licensee who complies with the rules and regulations of this Article and with the licensing, regulatory and revenue requirements of the State of Georgia.
- (b) All licenses are a mere grant or privilege subject to all terms and conditions imposed by this ordinance and State law and subject to being revoked by the City of Clarkston.
- (c) Each licensee of the City shall display the license issued under this Article prominently at all times at the outlet for which the license is issued. A separate license must be issued for each outlet of sale and a separate application must be made for each outlet.

Sec. _____. Location Restrictions.

- (a) No pawnshop shall be located within 1,000 feet of any other pawnshop. This distance shall be measured by the most direct route of travel on the ground.
- (b) No pawnshop shall be located within 1,000 feet of any of the following uses:
 - (1) From any structures in residential use.
 - (2) From any public or private school.
 - (3) From any public or private park or recreation facility.
 - (4) From any public library branch.
 - (5) From any church or similar place of religious worship.
 - (6) From any public or private hospital or mental health care facility.

The distance in subsection (b)(1)-(7), notwithstanding the definition of distance contained in subsection (a), shall be measured in a straight line from the closest point of the property line of the site proposed to be occupied by the pawnshop or similar place where money is advanced on goods or other effects or merchandise of any kind is taken in pawn, to the closest property line of any use identified above.

(c) Applicants for license to operate a pawnshop shall include with their application a plat of survey prepared and sealed by a surveyor registered in the state certifying that all of the locational requirements listed above in subsections (a) and (b) have been met.

Sec. _____. Qualifications for Issuance of License.

Any person who desires to obtain a license for the operation of a pawnshop must meet the minimum qualifications set forth in this section. If the applicant is a partnership, each partner must meet the qualifications of any individual license and must make sworn statements of these qualifications as part of the applications process. If the applicant is a corporation, the majority stockholder and each principle officer of the corporation must meet the qualifications as part of the applications process.

- (a) No owner, employee, pawnbroker or any person connected with a pawnshop for which a license or permit is sought shall have been convicted of a crime involving "moral turpitude" or shall have been convicted of any crime involving felony theft, burglary, robbery, or a violation of the "Family Violence Act."
- (b) No license shall be granted to an applicant who is under the age of eighteen (18) years of age.
- (c) All persons filing an application for a pawnshop license will be required to complete a waiver in order for the applicant's criminal history to be obtained.
- (d) No license shall be granted where the applicant has had any pawnshop license issued by any county, municipality, or other governmental subdivision suspended or revoked.
- (e) No license shall be granted for a location that is not in compliance with any federal, state, or local regulation including, but not limited to, a state certificate of occupancy, a City of Clarkston certificate of occupancy.
- (f) No license shall be issued where the applicant has supplied false information in the license application or where any required fee has not been paid by such applicant, including any fees or assessments owed to other departments of the City of _____.

Sec. _____. Annual Permit.

Before operating a pawnshop or becoming an employee of a pawnshop, any person must first file an application with the municipal police department for a permit to operate or be employed in the pawnshop, pursuant to the following:

- (a) The application shall be made on an annual basis;
- (b) No permit shall be issued until a fee in an amount established by action of the city council, a copy of which is on file in the office of the city clerk, is paid to the city;
- (c) The application shall state the physical address of the pawnshop;
- (d) The application shall contain the full name, street address, mailing address, phone number, facsimile number, e-mail address, Social Security number, and date of birth and of any employee, owner, or pawnbroker;
- (e) The chief of police or any other officer of the city designated by the city council, shall investigate each applicant for such license and shall report to the city council whether such applicant is a person of good character and has not been convicted of a criminal offense an indicated in this Article.

Sec. _____. Application.

- (a) All applications required in Sec. _____, Annual Permit, shall be in writing and on forms provided by the municipal police department.
- (b) All applications shall be completed by the applicant and sworn to and signed by the applicant in the presence of a notary public or other officer authorized to administer oaths.
- (c) All applicants shall furnish all data, information and records requested of them, and failure to furnish such data, information, and records within thirty (30) days from the date of such request shall automatically serve as grounds to deny the application. An applicant, by filing an application, agrees to produce for questioning any person(s) who are considered relevant to the ascertainment of facts relative to such license, as may be requested by the city council, the municipal police department, or other official designated by the city council. The failure to produce such persons within thirty (30) days after being requested to do so may result in denial of the application.
- (d) No pawnshop shall be operated at the same location or in the same premises with the sale, dealing in, exchange, or handling of other than new goods, wares, or merchandise. No license for the sale, dealing in, exchange, or handling of other than new goods, wares, or merchandise shall be issued for a location licensed as a pawnshop.

- (e) Each applicant shall certify on the application that they have read this Article and, if the license is granted, each licensee shall maintain a copy of this Article on the premises.

- (f) Once an application, accompanying documents, and the required investigative and license fees are filed with the municipal police department, the police department shall conduct a criminal investigation of the applicant and prepare a written criminal investigation report detailing all information relating to fingerprinting, criminal history, arrest data, and other matters pertinent to law enforcement. Upon completion of the criminal investigation report, the municipal police department shall assemble the tendered application forms and accompanying documents relating to investigation and processing of the application and deliver such documents to the city clerk. If the criminal investigation report shows that the applicant meets the requirements set by this ordinance and all other requirements of this ordinance are satisfied, then the city clerk shall schedule the application for hearing at the next regularly scheduled public hearing calendar before the city council and shall so inform the applicant of this fact before such meeting. If the criminal investigation report shows that the applicant fails to meet the requirements set by this Article, or if the applicant fails to meet all other requirements outlined by this Article, then the city clerk shall inform the applicant, in writing, that the application has been denied, and shall set forth in reasonable detail the reasons for the denial and shall notify the applicant of his right to appeal. Such appeal shall be before the city council in accordance with Sec. _____, Appeal Procedure, of this Article. If an applicant desires to appeal a denial, the applicant must file a written request for an appeal with the city clerk within ten (10) business days of the date of the written notice informing the applicant of the denial of the license.

- (g) Any application that the *city clerk* determines to satisfy all the requirements outlined in this Article, including character requirements as contained in the criminal investigation report of the municipal police department, shall be scheduled for review at the next regularly scheduled public meeting of the city council. At that meeting, the applicant and any person opposed to such application has the right to present to the city council any information that the city council determines is relevant to the licensing decision. In making its determination on whether to approve or deny the application, the city council shall look to the qualifications set forth in this Article and consider the public interest and welfare of the citizens of the city. The council shall have the discretion to grant or deny the application based on the information presented. A decision by the city council shall be made within thirty (30) days from the date of the public hearing, unless the decision is postponed for purposes of obtaining additional information deemed necessary for consideration of the application. Notice of the decision by the city council shall be mailed to the applicant. If the application is denied, such written notification shall set forth in reasonable detail the reasons for the denial and shall notify the applicant of his right to appeal. Such appeal shall be taken solely in accord with Sec. _____, Appeal Procedure, of this Article.

- (h) In all instances in which an application is denied, the applicant may not reapply for the same type of license for at least one year from the date of denial.
- (i) Upon the issuance of a license, the licensee must have and continuously maintain in the city a registered agent upon whom any process, notice, or demand required or permitted by law or under this ordinance may be served. This person must be an individual and must be a resident of city. The licensee shall submit the name of such agent, along with the written consent of such agent, to the *city clerk*. The identity of the agent may also be submitted contemporaneous to filing the license application.
- (j) Upon approval by the city council of the application for a license, the *city clerk* shall issue a license in accordance with the approved application. If the applicant is an individual, the license shall be issued in the name of the individual. If the application is a corporation, the license shall be issued in the name of the corporation and in the name of the majority stockholder or a principal officer of the corporation. If the application is a partnership, the license shall be issued in the name of the partnership and in the name of one of the partners. All licenses issued shall be granted for the full calendar year or for the number of months remaining in the calendar year. Any applicant granted a license before July 1 shall pay the full license fee without proration. License fees for licenses granted on or after July 1 shall be one-half the annual license fee. License fees are not refundable once the license is granted by the County.

Sec. _____. Commencement and Forfeiture.

- (a) All holders of licenses under this Article must, within six months after the issuance of the license, open for business the establishment referred to in the license, unless such period is extended by the *city clerk*. Failure to open the licensed establishment as referred to in this subsection within the six-month period shall serve as an automatic forfeiture and cancellation of the license, and no refund of license fees shall be made to the license holder.
- (b) Any holders of a license under this ordinance who shall begin the operation of the business as authorized in the license, but who shall for a period of three consecutive months thereafter cease to operate the business as authorized in the license, shall automatically forfeit his license, which license shall, by virtue of such failure to operate, be canceled without the necessity for any further action by the city.

Sec. _____. Renewals and Transfers.

- (a) Any license holder subject to this ordinance shall apply for renewal of any existing license and shall pay the annual license fee no later than February 15th of each calendar year in which it does business.
- (b) No license granted for a pawnshop shall be transferable except upon application to the municipal police department in the same form and manner, and subject to the same requirements with respect to the transferee as are applicable in an original application. Any such license may be transferred only to another applicant doing the same business at the same place as the license holder to whom the license was originally issued upon approval of a new application pursuant to Section ____.

Sec. _____. Disposal of Articles.

Any pawnbroker or employee of a pawnshop who makes a loan on pledged goods, or buys pledged goods on the condition that the seller may repurchase said goods, shall hold said goods for at least thirty (30) days before disposing of them by sale, transfer, shipment or otherwise. Nonpledged goods bought under this section shall be held for at least seven calendar days before disposing of them by sale, transfer, shipment or otherwise.

Sec. _____. Minors.

It shall be unlawful for any pawnbroker or employee of a pawnshop to receive goods in pawn, trade, purchase or sale from a person under 18 years of age.

Sec. _____. Hours of Operation.

All holders of licenses under this division shall operate only during the hours of _____ a.m. and _____ p.m., Monday through Saturday.

Sec. _____. Lost or Stolen Items.

- (a) It shall be the duty of every person operating or employed by a pawnbroker's license or permit, to report to the chief of police or his duly authorized agent any article or goods sold or pawned to him if he shall have a reason to believe that the article or goods was stolen or lost when presented by seller or customer.
- (b) With respect to any items which would normally have a serial number or other means of identification, if any pawnbroker or employee of a pawnshop becomes aware that such items have had the identification removed, defaced or destroyed, such fact shall be immediately reported to the chief of police or his duly authorized agent.

- (c) If it is determined that an item bought, sold, traded or pawned by a seller or customer to the pawnbroker or his employee is the subject of any reported theft, then the surrender of said item to the chief of police or his duly authorized agent shall be done upon demand.

Sec. _____. Suspension and Revocation of License.

Immediate suspension, revocation, or forfeiture of an issued license by the city council shall occur only after notice and opportunity for a hearing before the city council consistent with the procedures set forth in Sec. _____, Appeal Procedure, and only upon the following occurrences:

- (a) Any license issued under this Article for the operation of a pawnshop shall be immediately revoked in the case of bankruptcy, receivership or levy of legal process upon the licensed outlet or property therein.
- (b) Except as provided in the transfers Sec. _____, Renewals and Transfers, any change in the ownership of any entity owning a licensed outlet shall be grounds for the city council to revoke any license issued under this Article.
- (c) A license shall be immediately suspended or revoked by the city council upon learning that a licensee furnished fraudulent or untruthful information in the application for a license, or omits information required in the application for a license, or fails to pay all fees, taxes, or other charges imposed under the provisions of this Article.
- (d) The city council shall immediately suspend or revoke the license of any licensee who does not meet the qualifications set forth in this Article at any time such information becomes known to the city council.

Sec. _____. Record of Transactions.

Every pawnbroker shall maintain a written record of its pawn transactions in which an accurate description of all property pledged, traded or sold to the pawnshop. Such records shall be maintained by the pawnbroker for one year from the date of such transaction and may be inspected by the Clarkston police department at any time. Each record of a transaction shall contain an accurate description of all property pledged, traded or sold to the pawnshop and shall be made at the time of each transaction, provided that the following information is included:

- (1) The date and time of the purchase, pawn or sale of the property.
- (2) The full name, street address and telephone number of the customer making the pledge, trade or sale.

- (3) A description of the customer in terms of sex, race, date of birth, height and weight, as well as the driver's license number of the customer or some other identification card which contains a photograph of the customer.
- (4) A description of the pledged or purchased property by serial, model or other number, if available, and by any identifying marks (e.g., brand name, color, style, etc.)
- (5) The number of the receipt or pawn transaction issued for the property pawned or bought.
- (6) The price paid or the amount loaned.
- (7) The maturity date of the transaction, if a pawn.
- (8) A photograph of the customer and the item pawned or bought.
- (9) The signature of the customer.

Sec. _____. Violations.

- (a) It shall be unlawful for any pawnbroker or employee of a pawnshop to violate any of the provisions of this article, whether or not such person or employee is the holder of a current valid permit issued according to the terms of this article. Further, any person failing to comply with any provision of this article or other rules, ordinances and regulations as may be passed by the city council for conduct of the business of a pawnbroker, shall upon conviction, have the license to conduct business revoked.
- (b) It shall be unlawful for any pawnbroker or employee of a pawnshop to:
 - (1) Make any false statement in an application for any permit provided for in this article.
 - (2) Make any false entry in any record book, ledger or form required by the terms of this article.
 - (3) Violate any criminal law of this state while acting in the course of business as a pawnbroker or employee of a pawnbroker.
- (c) Persons who violate this Article shall be guilty of a city ordinance violation and shall be punished by up to six (6) months confinement and up to a \$1,000.00 fine.

Sec. _____. Appeal Procedure.

- (a) Upon receipt of a timely appeal of an administrative denial, or upon alleged violation of those items in Sec. _____, Suspension and Revocation of License, the city clerk shall schedule a hearing before the city council and provide written notice to the adverse party of the time, place and date of the scheduled hearing. The city clerk shall also state in the written notice the basis for the administrative denial or the violation or occurrence alleged that forms the basis for the denial or potential suspension or revocation. After notice of hearing, matters scheduled for hearing may only be continued by agreement of the city attorney and the adverse party and/or counsel for the adverse party.
- (b) The city council shall have the duty of conducting hearings concerning the denial, revocation, or suspension of a license. The standard of proof on all issues in the hearing shall be a preponderance of the evidence and a determination will be made on the basis of the evidence presented at the hearing.
- (c) At the hearing, after presentation of the case against the adverse party, the adverse party will have an opportunity to present his case, to rebut the allegations made against him, and present whatever defenses he has. The adverse party shall have the right to be represented by an attorney, at the expense of the adverse party, and to present evidence and cross-examine opposing witnesses. An opportunity for rebuttal shall be provided.
- (d) At the conclusion of the hearing, the findings and conclusions of the city council shall be reduced to writing and forwarded to the adverse party by certified mail.
- (e) The decision of the city council shall be final unless appealed to the Superior Court of DeKalb County within thirty (30) days of receipt of the written notification to the adverse party of the council's decision.

SECTION TWO

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION THREE

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION FOUR

This ordinance shall become effective immediately upon its adoption by the City Council.

SO ORDAINED, this ____ day of _____, 2016

ATTEST:

**CITY COUNCIL,
CITY OF CLARKSTON, GEORGIA**

By _____
Tracy Ashby, City Clerk

Ted Terry, Mayor

Approved as to Form:

Stephen G. Quinn, City Attorney