City of Troy

CITY COUNCIL AGENDA ITEM

Date: March 21, 2013

To: Brian Kischnick, City Manager

From: Gary G. Mayer, Chief of Police
Keith A. Frye, Police Captain- Investigative/ Administrative Services Division

Subject: Proposal to Amend Chapter 69- Precious Metal, Gems and Items

History

Under State law (MCL 445.481 eq. seq.) and City Ordinance (Chapter 69), dealers in precious metal and gems are required to register with their local community, and are also required to submit records of each transaction to local law enforcement. Currently, these records are provided in hard copy, and manually input into a data base that can be used for law enforcement purposes. One way to increase efficiency and provide immediate access to these transactions is to allow for electronic filing. The proposed ordinance amendment accomplishes this, and also includes a few minor revisions that have been made to the State law provisions. The electronic filing will be available through the Oakland County Courts and Law Enforcement System (CLEMIS), under a contract with software provider Leads Online.

Purchasing

Leads Online is an internet based application that consolidates Pawn Shop and Scrap Metal information for investigative use. Payment for this access is through CLEMIS operational funds.

Financial

There are no additional financial obligations associated with the adoption of this amendment.

Recommendation

This proposed ordinance amendment was provided to you as an informational item for the March 4, 2013 Regular Meeting, and is now proposed for action at the March 18, 2013 Regular Meeting.

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney — Date: 3-14-2013

KAF/kaf\Agenda Items\03.04.13 – Chapter 69 Amendment

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 69 OF THE CODE
OF THE CITY OF TROY

THE CITY OF TROY ORDAINS:

Section 1. Short Title: That Chapter 69 – Miscellaneous Licensed Businesses of the City of Troy Code of Ordinances is hereby amended to clarify provisions for the registration of precious metal, gems and items dealers, agents and employees; to provide for electronic record submission for transactions; to specify prohibited conduct and to provide a penalty for a violation of the Ordinance.

Section 2. Amendment.

Chapter 69 of the Troy Code of Ordinances is hereby amended to read as follows:

Chapter 69 – Miscellaneous Licensed Businesses

1. Registration of ~~Dealers in~~ Precious Metal and Gem Dealers ~~s and Items~~.

a. Registration. A dealer in precious metal, gems and items must be registered by the City prior to conducting business in the City of Troy. All employees and/or agents of the dealer must also be registered with the City prior to conducting business. Any new employees and agents must be registered within 24 hours of the time of hire.

b. All applications for a certificate of registration shall be reviewed by the City of Troy to determine compliance with Public Act 95 of 1981, MCLA 445.481, et. seq., as amended, and the Troy Code of Ordinances.

c. This section does not require registration for an internet drop-off store that is in compliance with Ordinance and State law provisions governing internet drop-off stores.

d. This section does not require registration for a person that is engaged in the sale, purchase, consignment, or trade of precious items for himself or herself.

1.1 Definitions as used in this section:

(a) "Agent or employee" means a person who, for compensation or valuable consideration is employed either directly or indirectly by a dealer.

(b) "Dealer" means any person, corporation, partnership, or association, which, in whole or in part, engages in the ordinary course of repeated and recurrent transactions of buying or receiving precious items from the public within this state.

(c) "Gold" means elemental gold having an atomic weight of 196.967 and

the chemical element symbol of Au, whether found by itself or in combination with its alloys or any other metal.

(d) "Internet drop-off store" means a person, corporation, or firm that contracts with other persons, corporations, or firms to offer its precious items for sale, purchase, consignment, or trade through means of an internet website and meets the conditions described in section 1.6.

(e) "Jewelry" means an ornamental item made of a material that includes a precious gem.

(f) "Local governmental unit" means the City of Troy.

(g) "Local police agency" means the police agency of the City of Troy.

(h) "Platinum" means elemental platinum having an atomic weight of 195.09 and the chemical element symbol of Pt, whether found by itself or in combination with its alloys or any other metal.

(i) "Precious gem" means a diamond, alexandrite, ruby, sapphire, opal, amethyst, emerald, aquamarine, morganite, garnet, jadeite, topaz, tourmaline, turquoise, or pearl.

(j) "Precious item" means jewelry, a precious gem, or an item containing gold, silver, or platinum. Precious item does not include the following:

(i) Coins, commemorative medals, and tokens struck by, or in behalf of, a government or private mint.
(ii) Bullion bars and discs of the type traded by banks and commodity exchanges.
(iii) Items at the time they are purchased directly from a dealer registered under this act, a manufacturer, or a wholesaler who purchased them directly from a manufacturer.
(iv) Industrial machinery or equipment.
(v) An item being returned to or exchanged at the dealer where the item was purchased and which is accompanied by a valid sales receipt.
(vi) An item which is received for alteration, redesign, or repair in a manner that does not substantially change its use and returned directly to the customer.
(vii) An item which does not have a jeweler's identifying mark or a serial mark and which the dealer purchases for less than $5.00.
(viii) Scrap metal which contains incidental traces of gold, silver, or platinum which are recoverable as a by-product.
(ix) Jewelry which a customer trades for other jewelry having a greater value, and which difference in value is paid by the customer.

(k) "Silver" means elemental silver having an atomic weight of 107.869 and the chemical element symbol of Ag, whether found by itself or in combination with its alloys or any other metal.

1.2 Administration of Ordinance.

The Chief of Police for the City of Troy or his or her designee shall be responsible for reviewing all applications for a certificate of registration.

1.3 Application by a Dealer

(a) A dealer who applies for a certificate of registration from the City of Troy shall submit the following information on the form provided:

(i) His or her name, home address, phone number, driver's license number or other valid state identification number, date of birth, and right thumb print (print to be affixed to the application by the police department). Applications for more than one establishment shall be made on separate application forms.

(ii) The name, address, telephone number, and hours of the dealer's business. If the dealer's business is a corporation, an updated copy of the Articles of Incorporation or a valid certified copy of the assumed name certificate from the Clerk of Oakland County must be provided.

(iii) The name, address, date of birth and right thumb print of each employee or agent of the dealer.

(b) The dealer shall also submit a signed statement indicating that he or she has read and understands the provisions of Public Act No. 95 of ~~the Public Acts~~ 1981, MCLA 445.481, et. seq., as amended, and this Ordinance and further that said dealer has informed his or her agents or employees, and will immediately inform all new agents or employees, as to the provisions of Public Act No. 95 of ~~Public Acts~~ 1981, MCLA 445.481, et. seq., as amended, and this Ordinance.

(c) The dealer shall submit a signed statement that neither he or she, nor any of his or her agents or employees has been convicted of a felony under Public Act No. 95 of ~~Public Acts~~ 1981, MCLA 445.481, et. seq. as amended, or under Section 535 of Public Act No. 328 of ~~the Public Acts~~ 1931, MCLA 750.535, as amended, within the five year period preceding the date of the application, or convicted of a misdemeanor under said laws within a one year period preceding the date of this application.

(d) The dealer shall submit proof of proper zoning or other special exception permits as required by the Zoning Board of Appeals and Planning Commission of the City of Troy.

(e) The dealer shall pay a fee for each ~~licensed~~ registered establishment in the City of Troy. ~~License~~ Registration fees shall be in accordance with Chapter 60, Fees and Bonds of the City of Troy Code of Ordinances.

(f) If dealer has satisfied the criteria as set forth in this Ordinance and State Law, then a certificate of registration shall be issued.

(g) The dealer shall post the certificate of registration in a conspicuous place in the dealer's place of business.

(h) Within ten days of any name or address change, dealer shall notify the Troy Police Department of the change.

1.4. Records of Transactions.

(a) A dealer shall maintain a record of each transaction on record forms, with the information as set forth in subsection (h). Each record shall be legibly written in ink in the English language. Each record shall be filled out In quadruplicate by the dealer or agent or employee of the dealer. One copy of the record shall be given to the customer; one copy shall be retained by the dealer pursuant to subsection (g); and one copy shall be provided to the Troy police department. Additionally, dealer shall provide an electronic record to the City of Troy Police Department, as set out in subsection (e).

(b) At the time the dealer receives or purchases a precious item, the dealer or the agent or employee of the dealer shall insure that the following information is recorded accurately on a record of transaction form:

(i) The dealer certificate of registration number.

(ii) A general description of the precious item or precious items received or purchased, including the type of metal or precious gem. In the case of watches, the description shall contain the name of the maker and the number of both the works and the case. In the case of jewelry, all letters and marks inscribed on the jewelry shall be included in the description.

(iii) The name, date of birth, driver's license number or State of Michigan personal identification card number, and street and house number of the customer, together with a legible imprint of the right thumb of the customer, or if that is not possible, of the left thumb or a finger of the customer. However, the thumbprint or fingerprint shall only be required on the record of transaction form retained by the dealer. The thumbprint or fingerprint shall be made available to the Troy Police Department employees and agents and any sheriff's department or any other police agency if there is a police investigation involving a precious item or items that are described on the record of transaction. After a period of one (1) year from the date of the transaction, if a police investigation concerning a precious item or items described on the record of transaction has not occurred, the dealer, the Troy Police Department and any other police agencies with a copy of a record of transaction shall destroy and not keep a permanent record of the transaction. A dealer who goes out of business or changes his or her business address to another jurisdiction either within or out of the State of Michigan shall transmit

the records of all transactions made by the dealer within one (1) year before his or her closing or moving to the Troy Police Department.

(iv) The price to be paid by the dealer for the precious item or precious items.

(v) The form of payment made to the customer; check, money order, bank draft, direct deposit or cash. If the payment if by check, money order, bank draft or direct deposit, the dealer shall indicate the number of the check, money order, bank draft or direct deposit.

(vi) The customer's signature.

(b) The record of each transaction shall be numbered consecutively, commencing with the number 1 and the calendar year.

(c) Within 48 hours after receiving or purchasing a precious item, the dealer shall submit an electronic record of the transaction to the Troy Police Department, as set forth in subsection (d) below. If the customer resides outside of Troy, as stated in the record of transaction form, dealer shall send a copy of the record of transaction form to the police agency of the city, village or township in which the customer resides, or if that city, village or township does not have a police agency, to the sheriff's department of the county in which the customer resides. The record of transaction forms received by the Troy Police Department or any other agency under this subsection shall not be open to inspection by the general public. The Troy Police Department shall be responsible for insuring the confidentiality of the records of transaction forms which it holds and insure that the record of transaction forms are used only for the purpose for which they were received.

(d) The dealer must also transmit an electronic record of each transaction on an electronic fill in type form that will be provided to each dealer. This record must include all information that is required on the paper record of transaction form set forth in sub-paragraph (g). This electronic transmission shall be submitted to the Troy Police Department or its designee within 48 hours after dealer receives or purchases a precious item. This transmission shall be made by means of a modem or similar device, and received in a format that allows the data to be entered into the Troy Police Department computerized system or another law enforcement records system, such as CLEMIS. All dealers shall have the equipment, programs and/or capacity for the required electronic transmissions installed and approved by Troy, and this shall happen as soon as possible, so that electronic transmissions will be received for all transactions occurring on or before May 1, 2013. The City of Troy will not accept any hard copy paper forms for transactions occurring on or after May 1, 2013 unless the Troy Police Chief or his designee requires a paper submittal, and such directive will be made in writing.

(e) The dealer's record of transaction forms and each precious item received by the dealer shall be available for inspection by the Oakland County Prosecuting Attorney, the Troy City Attorney, the Troy Police Department, the Oakland County Sheriff's Department and any other sheriff's

department or police agency of the local governmental unit in which the customer resides, and the Michigan State Police. This accessibility shall be at all times during the ordinary business hours of the dealer. As a condition of doing business, a dealer is considered to have given consent to the inspection prescribed by this subsection.

(f) A paper copy of each record of transaction form shall be retained by the dealer for not less than one (1) year after the transaction to which the record pertains.

(g) The form of the paper record of transaction shall have an 8-½ by 11 inch size and shall be as follows:

"Record of Transaction"

Dealer Certification #_____ #_____
(Printed on form) (Transaction # printed on form)

(1)Description of Property: _____
_____
_____
_____

(2)_____, 20___
(Date)

(3)_____
(Name of Dealer/Employee/Agent)

(4)_____
(Name of Customer)

_____
(Date of Birth-Customer)

_____
(Customer's Driver's License or Michigan Personal ID Number)

_____
(Customer's Street Address)

_____
(City, State and Zip Code)

_____
(County of Residency)

(5)_____
(Price Paid)

_____
(Name of police Agency of City, Village, or Township where Customer Resides)

(6) _____
(Number of Check, Bank Draft Money Order or Direct Deposit)

Thumbprint or Fingerprint

_____
(Signature of Customer)

(h) As used in this section, "customer" means the person from whom the dealer, or agent or employee of the dealer receives or purchases a precious item.

1.5 Retention Period of Precious Items.

A precious item received by a dealer shall be retained by the dealer for nine (9) calendar days after it was received, without any form of alteration other than that required to make an accurate appraisal of its value.

1.6. Internet Drop Off Store Regulations.

In order to be exempt from obtaining a certificate of registration from the City of Troy, an Internet Drop-Off Store doing business in the City must comply with the following provisions:

(a) Has a fixed place of business within this state except that he or she exclusively transacts all purchases or sales by means of the internet and the purchases and sales are not physically transacted on the premises of that fixed place of business.

(b) Has the personal property or other valuable thing available on a website for viewing by photograph, if available, by the general public at no charge, which website shall be searchable by zip code or state, or both. The website viewing shall include, as applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(c) Maintains records of the sale, purchase, consignment, or trade of the personal property or other valuable thing for at least 2 years, which records shall contain a description, including a photograph, if available, and, if applicable, serial number, make, model, and other unique identifying marks, numbers, names, or letters appearing on the personal property or other valuable thing.

(d) Provide the Troy Police Department with any name under which it conducts business on the website and provide the Troy Police Department access to the business premises at any time during normal business hours for purposes of inspection.

(e) Within 24 hours after a request from the Troy Police Department or any other police agency with an electronic copy of the seller's or consignor's name, address, telephone number, driver license number and issuing state, the buyer's name and address if applicable, and a description of the personal property or other valuable thing as described in subdivision (c). The information shall be provided in a format acceptable to the local police agency but shall at least be in a legible format and in the English language.

(f) Provide that payment for the personal property or other valuable thing is executed by means of check or other electronic payment system, so long as the payment is not made in cash. No payment shall be provided to the seller until the item is sold.

(g) Immediately remove the personal property or other valuable thing from the website if the local police agency determines that the personal property or other valuable thing is stolen.

1.7 Prohibited Conduct.

A dealer or an agent or employee of a dealer shall not:

(a) Knowingly receive or purchase a precious item from any person who is less than 18 years of age or any person known by the dealer or agent or employee of the dealer to have been convicted of theft or receipt of stolen property within the preceding 5 years, whether that person is acting in his or her own behalf or as the agent of another.

(b) Knowingly receive or purchase a precious item from a person unless that person presents a valid driver's license or a valid State of Michigan personal identification card.

1.8. Registration Revocation.

Any dealer, or agent or employee of a dealer who is convicted of any misdemeanor pursuant to this Chapter or a similar ordinance in another local unit of government or of a misdemeanor or felony under Public Act No. 95 of 181, MCLA 445.481, et. seq., as amended ("Precious Metal and Gem Dealer Act") or Section 535 of Public Act No. 328 of 1931, MCLA 750.535, as amended of the Michigan Penal Code or of a similar statute or ordinance of the State of Michigan or any other State statute or local ordinance, shall not be permitted to operate as a dealer within the City of Troy for a period of five (5) years and his or her registration shall be immediately revoked.

1.9 Penalty

A dealer or an agent or employee of a dealer who knowingly fails to make entry of any material matter in his or her record as required by this Ordinance or State law is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of $500, or both.

Section 3. Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 4. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 5. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 6. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on Monday, _____,2013.

_____
Dane Slater, Mayor

_____
Aileen Bittner, City Clerk