



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

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Dated: August 12, 2013

ORDER NO. S-313

RE: Adopt ordinance to regulate precious metal and gem dealers.

TO: Sherikia Hawkins, City Clerk
Charles Smith, Project Manager, Wade Trim
Timothy Atkins, Commander, Oakland County Sheriff Pontiac Substation

The Local Financial Stability and Choice Act (Act 436 of 2012/MCL 141.15411, et. seq.) in Section 10 empowers an Emergency Manager to issue orders to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government a Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom they are issued.

Section 12(1) of the Act provides that “[a]n emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary: (dd) [e]xercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances....”

WHEREAS, Emergency Manager Schimmel introduced the attached ordinance at a public meeting on August 1, 2013; and,

WHEREAS, the proposed ordinance was distributed to each member of the Council and the Mayor by the Clerk; and,

WHEREAS, a summary of the proposed ordinance and time and place of consideration by the Emergency Manager was published in the Oakland Press on August 9, 2013; and,

WHEREAS, the Emergency Manager at a public meeting on August 12, 2013 announced that he is adopting the proposed ordinance.

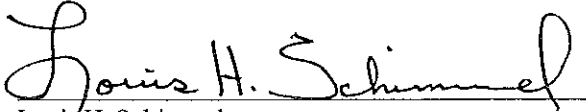
It is hereby ordered:

1. That the attached Ordinance No. 2306, an ordinance to regulate precious metal and gem dealers, is adopted.
2. That the City Clerk shall take all actions required under the law to reflect the attached ordinance changes on the City books and records, including publication of the adopted ordinance.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (Public Act 442 of 1976, MCL 15.231, et. seq.).

This order is effective as indicated and is necessary to carry out the duties and responsibilities required of the Emergency Manager as set forth in the Local Financial Stability and Choice Act (Act 436 of 2012/MCL 141.15411, et. seq.) and the contract between the Local Emergency Financial Assistance Loan Board and the Emergency Manager.



Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council

Ordinance No. 2306

An ordinance to regulate precious metal and gem dealers.

The City of Pontiac ordains:

Section 1. Amendments.

Chapter 26 of the Code of Ordinances shall be amended to add Article XXIX, Precious Metal and Gem Dealers, as follows:

Section 26-1450. DEFINITIONS.

Definitions utilized under this ordinance shall be the same definitions as provided in the Precious Metal and Gem Dealer Act MCL 445.482 as amended.

Section 26-1451. REGISTRATION AND TRANSACTION FEE.

A registration fee and renewal fee shall be assessed from each licensee in a manner and amount as set from time to time by resolution of the City Council. A transaction fee per transaction shall be payable in an amount as set from time to time by the City Council.

Section 26-1452. RECORDS OF TRANSACTIONS.

- (1) A dealer shall maintain a permanent record of each transaction, on record of transaction forms provided for in Act 95 of 1981 and shall provide the records online in accordance with the policies of the Oakland County Sheriff Substation Commander.
- (2) At the time a 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:
 - (a) The dealer certificate of registration number.
 - (b) 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.
 - (c) The date of the transaction.
 - (d) The name of the person conducting the transaction.
 - (e) 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 and photograph 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 a police agency during the course of a police investigation involving a precious item or items described on the record of transaction. After a period of 1 year from the date of the record of transaction, if a police investigation concerning a precious item or items described on the record of transaction has not occurred, the dealer and any police agency or sheriff's department holding a copy of the record of transaction shall destroy, and not keep a permanent record of, the record of transaction. A dealer who goes out of business or changes his or her business address to another local jurisdiction either within or out of this state shall transmit the records of all transactions made by the dealer within 1 year before his or her closing or moving, to the local police agency.

(f) The price paid by the dealer for the precious item or precious items.

(g) The form of payment to the customer; check, money order, bank draft, or cash. If the payment is by check, money order, or bank draft, the dealer shall indicate the number of the check, money order, or bank draft.

(h) The customer's signature.

(3) The record of each transaction shall be numbered consecutively, commencing with the number 1 and the calendar year (example, 01-2012).

(4) The record of transaction forms of a dealer and each precious item received shall be open to an inspection by the county prosecuting attorney, the local police agency, the police agency or sheriff's department of the local governmental unit in which the customer resides, and the Michigan state police, 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. The record of transaction forms of a dealer shall not be open to inspection by the general public.

(5) The items shall be photographed and any serial number or other markings provided, as well as any other information as required pursuant to the electronic transaction reporting processes utilized by the City. Additionally, the driver license, state identification, passport, or other photographic identification of a customer shall be photographed.

Section 26-1453. RETENTION OF TRANSACTION AND TRANSMITTAL TO OAKLAND COUNTY SHERIFF.

(1) Except as otherwise provided by State Law, each record of a transaction shall be retained by the dealer for not less than 1 year after the transaction to which the record pertains.

(2) Within forty eight (48) hours after receiving or purchasing a precious item, the dealer shall send a copy of the record of transaction form to the Oakland County Sheriff Substation Commander or his designee and, if the record of transaction form indicates that the customer resides outside the jurisdiction of the City, the 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 as set forth on the record of transaction, 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 as set forth on the record of transaction.

- (a) Every licensee, owner and employee, shall keep a record of all persons and/or entities with whom business has transacted and all property coming into their possession. Reports must be electronically transmitted to the Oakland County Sheriff Substation Commander or his designee. Within forty-eight (48) hours of receipt by purchase, or otherwise of a precious item, a report must be transmitted by means of electronic transmission through a modem, or similar device in a format that the data is capable of direct electronic entry into the Oakland County Sheriff's computerized system, as approved by the Oakland County Sheriff Substation Commander, or his designee for identifying property coming into the possession of a licensor. A transaction report by electronic transmission under this sub section shall not be reported on paper forms, unless the Oakland County Sheriff Substation Commander, or his designee so requires. All dealers must have the equipment installed in their place of business no later than October 1, 2013. Information must be reported electronically beginning November 1, 2013.
 - (b) A fee as adopted and subject to change periodically by the City Council shall be assessed per transaction. The vendor will assess the property registration fee for each transaction, the licensee reports either through batch file upload, or directly using the vendor's business interface or on the vendor's automated reported service that involves transactions subject to the provision of this article.
 - (c) Transaction is defined as a single buy, or which may involve one or more items and does not include contract extension, or claims. The per transaction registration fee is not a per item fee, included in the transaction. It is within the sole discretion of the secondhand dealer whether to recover the fee from their customers for registering a transaction.
 - (d) The licensee will be invoiced on a monthly basis. The City's vendor automated reporting service isolates and generates a list of the billable transactions will be used for deriving invoiced amounts. The above fees are assessed for the use of the standard vendor's automated recording service Any custom programming completed for the secondhand dealer will be negotiated on a contract basis and may result in additional licensing arrangements between the vendor and the licensor. Sales tax will be added to the above amounts where applicable. Failure to timely pay as invoiced is a violation of this Article.
- (3) The record of transaction forms received by a police agency or sheriff's department shall not be open to inspection by the general public. Each police agency or sheriff's department holding record of transaction forms shall be responsible for insuring the confidentiality of the record of transaction forms and insuring that the record of transaction forms are used only for the purpose for which they were received.

Section 26-1454. CERTIFICATE OF REGISTRATION.

No person shall carry on the business of a precious metal or gem dealer in the City without first having a business license issued from the Community Development Director or his designee authorizing such person or entity to carry on such business subject to the provisions of this article.

Section 26-1455. APPLICATION; PREREQUISITES.

A dealer shall apply to the Community Development Director or his designee for a certificate of registration, and pay a fee prescribed by the City Council to cover the cost of processing and issuing the certificate of registration, by disclosing the following information:

- (a) The name, address, photograph and thumbprint of the applicant(s).
- (b) The name and address under which the applicant does business.
- (c) The name, address, photograph and thumbprint of all agents or employees of the dealer. Within 24 hours after hiring a new employee, the dealer shall forward to the local police agency the name, address, and thumbprint of the new employee.
- (d) Such other information as the Community Development Director may require.

Section 26-1456. SHERIFF'S OFFICE REVIEW.

The Oakland County Sheriff's Substation Commander or his designee shall review the application and determine whether the application complies with the provisions of this Ordinance and the "The Precious Metal and Gem Dealer Act" (Act 95 Of 1981). The Dealer shall complete his examination and issue a determination within thirty (30) days upon receipt of the application described herein.

Section 26-1457. REVIEW BY COMMUNITY DEVELOPMENT.

The Community Development Director or his designee shall within fifteen (15) days of the submittal of an application review the premises in order to determine whether the precious metal and gem dealer activities are compliant with the zoning ordinance. Such determination shall be issued to the Oakland County Sheriff Substation Commander.

Section 26-1458. CERTIFICATE OF REGISTRATION, DURATION; RENEWAL; CHANGES.

Not less than (10) ten days before a dealer changes the name or address under which the dealer does business, the dealer shall notify the Oakland County Sheriff Substation Commander or his designee in writing of the change.

Section 26-1459. DISPLAY OF CERTIFICATE OF REGISTRATION.

Upon receipt of the certificate of registration from the local police agency, the dealer shall post it in a conspicuous place in the dealer's place of business.

Section 26-1460. PRECIOUS ITEM RETENTION; ALTERATION OR DEFACING UNLAWFUL.

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

Section 26-1461. PRECIOUS ITEMS: ACCEPTANCE PROHIBITED AND UNLAWFUL.

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 the 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.

Section 26-1462. VIOLATIONS; PENALTY.

Any violation of any provision of this act shall be a misdemeanor punishable by imprisonment of not more than ninety days and/or a fine of Five Hundred (\$500.00) Dollars, or both in addition to any other penalty provisions provided for violation of a misdemeanor as set forth in the general penalty provisions of this code of ordinances.

Section 2. Severability.

If any section, clause, or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 3. Saving Clause.

A prosecution which is pending on the effective date of this ordinance and which arose from a violation of an ordinance repealed by this ordinance, or a prosecution which is started within one (1) year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance and which was committed prior to the effective date of this ordinance, shall be tried and determined exactly as if the ordinance had not been repealed.

Section 4. Repealer

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 5. Publication

The Clerk shall publish this Ordinance in a newspaper of general circulation.

Section 6. Effective Date

This Ordinance shall be effective ten days after date of adoption.