

Introduced by: City Manager Herron
Recommended by: Public Safety Commission
Date: January 24, 2000
Public Hearing: February 8, 2000
Action: Enacted
Vote: Unanimous

CITY OF BETHEL, ALASKA

ORDINANCE #00-04

A ORDINANCE RELATING TO THE OPERATIONS OF PAWNBROKERS AND PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED by the City Council of Bethel, Alaska, that:

SECTION 1. Classification. This ordinance is general and permanent in nature and shall become a part of the Bethel Municipal Code.

SECTION 2. Adoption of New Chapter. Bethel Municipal Code, Title 5, is amended by adding the following new chapter:

5.60.010 Pawnbrokers – License.

A. *Required.* No person may engage in the business of lending money in exchange for the security of personal property given by a customer, and no person shall engage in the business of purchasing personal property from a customer with an agreement to resell the property to the customer or the customer's assignee at an agreed upon price, without first having obtained a pawnbroker license from the finance director or his designee. The requirement that a pawnbroker obtain a pawnbroker license is in addition to the requirements of obtaining a business license under 5.04.

B. *Qualifications of pawnbrokers and employees.* A pawnbroker and every person employed by a pawnbroker shall:

1. Be 18 years of age or older; and
2. Not have been convicted of a crime involving larceny, theft, receiving and concealing stolen property, unlawful sale of alcohol, illegal manufacture or sale of a controlled substance, bootlegging, manufacture or sale of controlled substances, dealing with illegally obtained property or involving misrepresentation or fraud within five years prior to the date of application or employment.

C. *Application.* The applicant shall complete an application on a form developed by the finance director or his designee. An applicant for a pawnbroker's license shall describe in his application the terms and conditions of the lending agreement used or intended for use, including the time period allowed for redemption of articles, the rate or amount of interest or other charge made for the use of money lent, and the manner in which the pawnbroker identifies or intends to identify redemption terms to customers.

D. *Bond.* An applicant for a pawnbroker's license shall file a bond in the amount of \$25,000.00 with his/her initial application.

E. *Location of business.* A pawnbroker's license shall be issued only for a single location, to be specified on the license.

5.60.020 Pawnbrokers – Conduct of Business.

A. *Hours.* A pawnbroking establishment may be open for the transaction of business only between the hours of 8:00 a.m. and 8:00 p.m.

B. *Record of articles pawned or purchased.* A pawnbroker shall maintain a card, in a form approved or supplied by the police department, for each item pawned or purchased, to be kept at the pawnbroker's place of business. The pawnbroker or his/her employees shall record the following information in legible English at the time of each loan, purchase, or sale:

1. The date of the transaction;
2. The name of the pawnbroker or the person conducting the transaction on behalf of the pawnbroker;
3. The name, age, address and the driver's license number or social security number of each customer, as well as a physical description of the customer including height, weight, race, and color of hair and eyes;
4. A description of the property bought or received in pledge, which includes, where applicable, the name of the maker, the serial number or other number and all other marks inscribed, as well as a detailed physical description of the item, including notations of any scratches, engravings, colors of metals, and the number/colors of gems;
5. The price paid or amount loaned; and
6. The signature of the customer, and the document or license with which the pawnbroker or pawnbroker's employee compared the signature.

C. *Reports to police.* The licensee shall make a weekly report to the chief of police on a form provided by the police to the pawnbroker. If no such form is provided, the pawnbroker shall provide copies of the pawnbroker's cards described in section 5.60.020.B.

D. *Retention of records.* The records required by this section shall be retained for three years.

5.60.030 Pawnbrokers – Prohibited acts.

A. A pawnbroker may not purchase or receive an article from a person under the age of 18 years or from a person 18 years of age or older who purchased or received the article from a person under 18 years of age for the purpose of pawning it.

B. A pawnbroker may not purchase or pawn an article if the customer cannot provide proof of ownership of the article or if the pawnbroker has knowledge of facts that would cause a reasonable person to believe that the article may have been stolen, embezzled or otherwise illegally obtained.

C. A pawnbroker may not purchase or pawn property from a person who is or appears to be under the influence of drugs or intoxicating beverages.

D. Property purchased by a pawnbroker or acquired by expiration of a redemption period may not be resold, entered into stock or removed from the premises specified on the pawnbroker's license for a period of 30 days after such property has been reported to the chief of police pursuant to section 5.60.020.

5.60.040 Pawnbroker duties upon notification of property reported stolen and disposition of seized property.

A. The police department may give verbal or written notice to a pawnbroker that an item of property has been reported stolen. The police department may simultaneously place a

hold order on the property. A hold order is an order requiring the pawnbroker to keep the item of property on his or her premises while the police department determines whether it will require the item of property for purposes of prosecuting a crime.

1. If the hold order is placed verbally, the police department shall give written confirmation of the hold order within 10 days of placing the verbal hold order. If the police department does not give written confirmation of a verbal hold order within the 10 day period, the verbal hold order expires at the end of the period. A hold order, whether made in writing or verbally with confirmation, remains in effect for 60 days. The police department may extend a hold order for additional 60 day periods by giving written notice to the pawnbroker prior to the expiration of the hold order.
2. While a hold order is in effect, the pawnbroker shall make reasonable efforts to hold the property safe from alteration, loss, or damage. The pawnbroker shall not sell, transfer, or otherwise dispose of the property. The pawnbroker shall so place an identifying tag or other suitable identification upon the property, which shall contain the officer's name, date and case number.
3. Nothing in this subsection shall be interpreted to prohibit peace officers from seizing property at any time in accordance with applicable law.
4. The police department shall not place a hold on any item unless they have probably cause to believe that the item is stolen or evidence to a crime. Any hold that is placed on an item will be removed as soon as practicable after the item on hold is determined not to be stolen, or is determined to be no longer needed for evidence or for investigation of criminal activity.

B. If the police department seizes the item of property reported stolen and subsequently intends to dispose of the property, it shall give written notice of the intent to dispose of the property to the pawnbroker. The police department shall also give written notice to any other person claiming ownership or legal interest in the property, to the extent that the police department is aware of such claims. However, the police department need not give notice to a person who has been convicted of theft of the property or who has otherwise waived interest in the property.

1. In its written notice regarding intent to dispose of the property, the police department shall require that any claims to the property be submitted to the police department in writing within 30 days of the date of the notice.
2. If more than one party submits a claim for seized property within the 30 day time period, then a hearing shall be held by a hearing officer appointed by the city manager to determine legal entitlement to the property. Any such hearing shall be conducted in accordance with the rules and procedures outlined in 5.60.050, subsection D, with respect to representation, witnesses, and evidence, except that the burden of proof shall be on the person or persons asserting a legal right to the property. The hearing officer shall determine which party, if any, has proved his or her right to the property by a preponderance of the evidence, then the property shall be returned to the pawnbroker. The hearing officer's decision shall be limited to determining which party, if any, has established ownership of, or legal entitlement, to the property.
3. If only one party responds within the 30 day time period, the property may be either returned to that party without a hearing or, if the indicia of ownership in possession of the police department are inconsistent with the claim, the matter may be referred to the hearing officer for a determination of the validity of the claim prior to return.

4. For purposes of determining ownership, the hearing officer may consider indicia of ownership. Indicia of ownership include, among other things, timely filed complaints or police reports of stolen property; local, state or national police information data bases; documents in possession of the police department; license or property identification numbers; markings on the property; or other similar indicia of ownership.
 5. If no individual claims an interest in the property within the time period set forth in the notification, then the police department may dispose of the property.
- C. If the police department gives written or verbal notice to the pawnbroker that an item of property has been reported stolen but does not place a hold order on the item, the pawnbroker must still hold the item for 60 days in order to give a person claiming ownership of the property an opportunity to request return of the property. During that time, the pawnbroker must take reasonable measures to protect the item of property from alteration, loss or damage, and the pawnbroker may not sell, transfer, or otherwise dispose of the property.
1. If the person entitled to have the property requests return of the property, accompanied by evidence of ownership, the pawnbroker must either return the property to that person or deny the person's request.
 2. If the pawnbroker denies a person's request to return the property, the pawnbroker must ask the city manager to appoint an administrative hearing officer to determine entitlement to the property. The pawnbroker must make this request within 15 days of denying the person's request to return the property. Failure to either return the property or request a hearing officer within the 15 day period shall result in suspension or revocation of the pawnbroker's license.
 3. Any hearing under this subsection shall be conducted following the procedures provided for in 5.60.050 with respect to representation, witnesses, and evidence, except that the burden of proof shall be on the person or persons asserting a legal right to the property. The hearing officer shall determine which party, if any, has proved his or her right to the property by a preponderance of the evidence. If no party proves his or her right to the property by a preponderance of the evidence, then the property shall be returned to the pawnbroker. The hearing officer may request copies of police reports to assist in this determination. The hearing officer's decision shall be in writing and the hearing officer shall send a copy of the decision to the parties and to the police department. Except while the matter is pending on appeal, failure of the pawnbroker to comply with the hearing officer's order shall result in immediate revocation of the pawnbroker's license.
 4. For purposes of determining ownership, the hearing officer may consider indicia of ownership. Indicia of ownership include, among other things, timely filed complaints or police reports of stolen property; local, state or national police information data bases; documents in possession of the police department; license or property identification numbers; marking on the property; or similar indicia of ownership.
 5. If no person requests return of the property within the 60 day period, the pawnbroker may sell, transfer, or dispose of the property in accordance with this chapter.
 6. Nothing in this subsection shall be interpreted to prohibit police officers from seizing property at any time in accordance with applicable law.

D. A pawnbroker is not entitled to a finder's fee or reward for return of the property unless a hearing officer finds that it is warranted.

5.60.050 Suspension or revocation of pawnbroker's license.

A. The city manager shall suspend or revoke a pawnbroker's license upon a determination that the pawnbroker has willfully made an untruthful or misleading statement in his/her pawnbroker license application; the pawnbroker has provided a faulty bond in support of his/her application; the pawnbroker conducted his/her business in a manner violating 5.60.020; the pawnbroker has engaged in acts prohibited in 5.60.030; the pawnbroker has failed to meet his/her obligation under 5.60.040; or the pawnbroker has in any manner violated a provision of this chapter or the Bethel Municipal Code.

B. The pawnbroker may appeal the suspension or revocation to the city council. The pawnbroker must give notice of his/her appeal in writing to the city manager either in person or by mail within seven (7) calendar days of the suspension or revocation. If notice is given by mail, it must be postmarked within seven (7) calendar days of the suspension or revocation. The notice need not be in a particular form, but must evidence the desire to have the city council review the city manager's decision. The notice must also list the reasons why the pawnbroker believes the city manager's decision is incorrect and be signed by the pawnbroker.

C. Upon receipt of notice of appeal, the city manager shall cause copies of all pertinent documents relation to the appeal including any records of the city manager's decision to be distributed to the council members. The council shall consider the appeal at a regular or special meeting within sixty (60) days after it has been filed.

D. In an appeal proceeding, both the appellant/pawnbroker or the city manager/appellee may be represented by an authorized representative, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues, impeach witnesses, and rebut adverse evidence. Relevant evidence shall be admitted if it is th sort of evidence on which reasonable persons are accustomd to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but it is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded. The city manager/appellee has the burden of proof by a preponderance of the evidence.

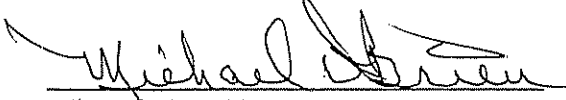
E. Piror to its closed session to consider the appeal, the council shall hear oral argument by the parties, if requested to do so by either party. Consideration of an appeal by the council is a quasi-judicial function as that term is used in the state Open Meetings Act, A.S. 44.62.30(d)(l), and the council may consider such an appeal and make its decision in closed session.

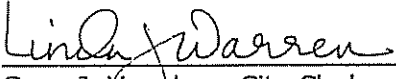
F. After due deliberation, the council may affirm, reverse or modify the city manager's decision, or remand the matter to the city manager with instructions for further proceedings. The council shall announce its decision and state the specific reasons for its decision, either orally in an open-tape recorded meeting, or in writing, and shall give written notice of its decision to the parties by personal delivery or certified mail. The council's decision is a final decision of an administrative agency that may be appealed to the superior court in accordance with court rules.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon enactment.

ENACTED THIS 8th DAY OF FEBRUARY 2000 by a vote of 7 in favor and 0 opposed.

ATTEST:


Mike O'Brien, Mayor

for 
Gaye J. Vaughan, City Clerk