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AMENDMENT TO PORTLAND CITY CODE

CHAPTER 23 SECONDHAND GOODS
ARTICLE II. PAWNBROKERS, JUNK DEALERS, SECONDHAND DEALERS,
AND FLEA MARKETS
SECTIONS 23-16 THRU 23-29

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 23, Article II, Pawnbrokers, Junk Dealers, Secondhand Dealers and Flea Markets, Division 1, Sections 23-16 thru 23-20 of the Portland City Code are hereby amended to read as follows:*

Sec. 23-16. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Disqualifying Criminal Conviction means and include any conviction or any criminal offense punishable by imprisonment for more than one year whether or not the sentence was imposed or served, but shall not include any conviction which is more than five (5) years old or is shown to have been set aside on appeal or collaterally, or for which a pardon, certificate of rehabilitation, or equivalent under the law of the sentencing jurisdiction has been granted.

Flea market shall means ~~and include~~ any group of five (5) or more unrelated persons selling tangible used or secondhand personal property or collectors' items to the public.

Flea market operator means any person who provides tables, space or otherwise operates a flea market.

Flea market sellerdealer shall means ~~and include~~ any person who sells goods at a flea market.

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Junk collector ~~shall~~ means and include any person having a trucking license, or traveling from place to place within the city for the purpose of purchasing junk, or making a business of purchasing junk from persons who desire to sell it; and who carries it away after purchasing it.

Junk dealer ~~shall~~ means and include any person engaged in the purchase, sale or barter of old iron, steel, chain, aluminum, brass, copper, tin, lead, or other base metals, belting, waste paper, old rope, old bags, bagging, barrels, piping, rubber, glass, empty bottles, and jugs of all kinds and quantities of less than one (1) gross, and all other articles discarded or no longer used as manufactured articles composed of any one (1) or more of the materials hereinbefore mentioned.

Pawnbroker ~~shall~~ means and include any person whose business or occupation is to take or receive, by way of pledges, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon at a stipulated rate of interest or at a stipulated amount of repayment; or who purchases any such property on condition of selling the same back again to the seller thereof or his assignee at a stipulated price; provided, however, that this definition shall not apply to banking institutions, brokerage houses, members of the stock exchanges, or persons who make loans exclusively upon stocks, bonds, bills of lading, warehouse receipts, mortgages, contracts, commercial paper, or other written or printed evidence of ownership of property or of indebtedness to the holder or owner of any such security.

Secondhand dealer ~~shall~~ means and includes any person, except a person licensed as a flea market seller engaged in the business of selling, exchanging, dealing in, or dealing with secondhand articles, including, but not limited to, electronics, firearms, opera glasses, telescopes, watches, clocks, diamonds or other precious stones, gold, silver, platinum or other precious metals, jewelry, furs, fur coats or other kinds of wearing apparel, antique furniture, furnishings, glass and dishes, musical instruments, radios, used cars, tires, automobile accessories, office and store fixtures and equipment, electrical, gas and water meters, and all classes of fixtures and their connections.

Sec. 23-17. Purchases from minors.

No pawnbroker, junk dealer, junk collector or secondhand dealer shall directly or indirectly either purchase or receive by way of barter or exchange any goods or articles from a minor, knowing or having reason to believe him or her to be such.

Sec. 23-18. Record keeping.

(a) *Pawnbrokers.* Every pawnbroker, at the time of receiving any article pawned, pledged or received in exchange, or any other article or consideration, shall give the pawnor a statement that the pawnbroker will return the article at a stipulated price which shall be computed in accordance with the requirements of 30-A M.R.S.A., Chapter ~~183215~~, Subchapter ~~6VII~~, and shall complete a sworn statement, blanks for which shall be furnished by the chief of police, stating the full name, age, sex and address of the person with whom the transaction is being made, the day and hour when the transaction took place, and a full, accurate and detailed description including all distinguishing marks and numbers of each article so pawned, pledged or exchanged as will make its identification certain and plain; and the fair market value thereof and the price paid by the licensee; the source from which and the time when the pawnor, pledgor or vendor procured the same, and cause such statement to be signed and sworn to by the person with whom such transaction has been made, and within forty-eight (48) hours after the transaction shall electronically report the relevant information contained in the sworn statement to the chief of police or his or her designee. He or she shall retain the statement in his or her possession, which, together with any article therein listed, may be inspected by any officer of the law at any and all times. Articles purchased outright by pawnbrokers shall be retained on the premises not less than ten (10) days, unless sooner released by the chief of police, and no article pawned, traded or sold shall be altered or changed until opportunity shall have been given for examination of such articles by the chief of police.

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Sec. 23-20. State law to apply.

Except to the extent that this article contains a contrary provision, all provisions of Title 30-A M.R.S.A. §§ ~~3960-3971-A3101-3155~~ shall be additional to the provisions of this article.

Sec. 23-21. Stolen property in possession of pawnbroker, junk dealer, flea market seller or secondhand dealer.

(a) Whenever a law enforcement officer has reasonable suspicion to believe that property in the possession of a pawnbroker, junk dealer, secondhand dealer, or flea market seller is stolen; the officer may place a hold on the property for a period not to exceed 90 days. When an officer places a hold on the property, the officer shall give the pawnbroker, junk dealer, secondhand dealer, or flea market seller a written notice at the time the hold is placed, describing the item or items to be held. During that period the officer shall take possession of the property and store it in the police department's evidence system ~~or allow the pawnbroker, junk~~. The pawnbroker, junk dealer, secondhand dealer, or flea market seller shall not release or dispose of the property, except upon receipt of a written authorization signed by a police officer for the City of Portland.

(b) Whenever property that is in the possession of a pawnbroker, junk dealer, secondhand dealer, or flea market seller, whether or not the property has been placed on hold, is required by a law enforcement officer in a criminal investigation, the pawnbroker, junk dealer, secondhand dealer, or flea market seller shall produce the property and deliver it to the officer.

(c) Whenever a law enforcement agency has knowledge that property in the possession of a pawnbroker, junk dealer, secondhand dealer, or flea market seller is, in fact, stolen and has received reliable evidence of ownership from the property owner, the law enforcement agency may retrieve the stolen property from the pawnbroker, junk dealer, secondhand dealer or flea market seller without payment of a fee and return it to the owner.

(d) When property that is in the possession of a pawnbroker, junk dealer, secondhand dealer, or flea market seller is subject to a hold as provided in subdivision (a), and the property is no longer required for the purpose of a criminal investigation and the owner has not been identified, the law enforcement agency that placed the hold on the property shall release the hold on the property and the pawnbroker, junk dealer, secondhand dealer, or flea market seller may treat the property as property received in the ordinary course of business.

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(e) Nothing in this section shall be construed to alter the authority of a law enforcement officer to seize property pursuant to any other provision of statutory or case law.

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2. *That Chapter 23, Article II, Pawnbrokers, Junk Dealers, Secondhand Dealers and Flea Markets, Division 1, Sections 23-16 thru 23-20 of the Portland City Code are hereby amended to read as follows:*

Sec. 23-26. Required.

No person shall engage in the business of pawnbroker, junk dealer, junk collector, ~~or~~ secondhand dealer or ~~conduct any~~ flea market seller without having a license issued by the city for such activity.

Sec. 23-27. Application.

Application for a license required by this chapter~~for pawnbroker, junk dealer, junk collector or secondhand dealer~~ shall be made to the city clerk, with payment of the fees and in accordance with the procedures set forth in chapter 15.

Sec. 23-28. Disqualifications.

No person who has a disqualifying criminal conviction shall receive a license required by this chapter~~.pawnbroker, junk dealer, junk collector or secondhand dealer license.~~

Sec. 23-29. Flea markets.

Any person who provides tables, space, or otherwise operates a flea market shall obtain a license from the city clerk. ~~for such flea market, and shall report the names and addresses of all flea market dealers in such flea market and the number of times the dealer has participated in the flea market since the previous March first to the clerk within three (3) days after such flea market. In addition, the operator of a flea market shall cause each flea market dealer to register on a form prescribed by the clerk and shall give the clerk a copy of such registration.~~

There shall be no purchasing of goods by a flea market ~~sellerdealer~~ from any person, except another flea market ~~sellerdealer~~, at the flea market prior to the opening of the flea market to the general public. No food shall be sold at a flea market unless appropriate licenses have been obtained.

Any individual selling or working at a table or tables ~~at more than six (6) flea markets between March first and the last day of February of each year~~ shall obtain a flea market ~~seller'sdealer's~~ license. Related individuals working at the same table or tables need only obtain one (1) flea market ~~seller'sdealer's~~ license which lists all the individuals involved in selling. As used in this paragraph, "related individuals" shall mean and include persons who are related by either affinity or consanguinity and reside at the same address. Persons who sell only craft items made by the flea market ~~sellerdealer~~ shall not be required to obtain a flea market ~~seller'sdealer's~~ license.

The flea market operator shall exclude from participation in any flea market any person the operator knows is required to obtain a flea market ~~seller'sdealer's~~ license who does not present proof of such licensing or whom the operator knows has been barred from selling under this section.

No person under the age of eighteen (18) shall be permitted to sell goods or work as a flea market ~~sellerdealer~~ unless his/~~her~~ parents or guardian have given permission.

Persons who are licensed as secondhand dealers must also obtain a flea market ~~seller'sdealer's~~ license if they wish to participate in the flea market ~~more than six (6) times~~. Such licensed secondhand dealers shall at all times comply with the requirements of their secondhand dealer's license and the provisions of this section.

~~An operator or seller~~A ~~person~~ who is determined by the clerk to have violated any provision of this section may have their license revoked and not renewed ~~be barred from selling at a flea market~~ for a period not to exceed one (1) year. Any person so charged shall be afforded notice and an opportunity to be heard prior to ~~being barred~~ the revocation of the license.

