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ORDINANCE 14-53

AN ORDINANCE OF THE CITY OF WESTFIELD INDIANA GOVERNING PAWNSHOPS, SECONDHAND DEALERS, METAL RECYCLING ENTITIES & SECONDHAND METAL DEALERS

WHEREAS, pawnshops, secondhand dealers, metal recycling entities and secondhand metal dealers ("Secondhand Entity" or collectively, "Secondhand Entities") operate throughout central Indiana;

WHEREAS, the City of Westfield, Indiana ("Westfield") recognizes the business concerns of Secondhand Entities while also seeking to protect Westfield citizens from perpetrators of crimes involving personal property;

WHEREAS, perpetrators of crimes involving personal property often attempt to sell stolen property to Secondhand Entities;

WHEREAS, Westfield desires to afford the Westfield Police Department ("Police Department") every lawful means to combat, prevent and investigate crimes involving personal property; and

WHEREAS, to help combat crimes involving personal property, it is necessary for Westfield to adopt an ordinance governing Secondhand Entities.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Westfield, Indiana, meeting in regular session as follows:

Section 1. Applicability. This ordinance applies to the owner or operator of any Secondhand Entity as defined herein. For purposes of this ordinance, the term Secondhand Entity does not include:

(A) not-for-profit charitable organizations that

i. do not pay cash for acceptance of secondhand personal property; and
ii. utilize second-hand, or personal property in furtherance of the charity's or not-for-profit's mission.

(B) retail stores that exclusively trade or purchase clothing.

Section 2. Registration, Fee and Bond. The owner or operator of any Secondhand Entity shall register with the Police Department; pay a registration fee of fifty dollars ($50.00) and execute a bond payable to Westfield in the penal sum of one thousand dollars ($1,000.00) with good and sufficient surety, to be approved by the Police Department and conditioned on the applicant agreeing to faithfully

observe and conform to all Westfield regulations and requirements governing Secondhand Entities (collectively, "Registration Requirements").

Section 3. License Requirement. No person, firm, corporation, partnership or association shall engage or continue to own or operate a Secondhand Entity except as authorized by this ordinance without having first satisfying the Registration Requirements.

Section 4. Definitions.

A. Secondhand Entity or Secondhand Entities. Any pawnshop, secondhand dealer, metal recycling entity, secondhand metal dealer or valuable metal dealer, except as set forth in Section 1.

B. Person. Any individual, firm, corporation, limited liability company, or partnership.

C. Metal Recycling Entity. Any person who from a fixed location engages in the business of utilizing machinery or equipment for the processing of or manufacturing of iron, steel, or nonferrous metallic scrap and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for re-melting purposes.

D. Secondhand Metal Dealer. Any person who operates or maintains a scrap metal yard or other place in which used or previously purchased metal items or scrap metal is collected or kept for shipment, sale or transfer.

E. Personal Property. This term shall include metal, iron and steel and shall also include jewelry, precious metals, office equipment, household goods, electronic equipment, tool and coins, as each of those items is defined in subsection (G) below.

F. Pawn Dealer. Any person lending money on the deposit or pledge of personal property or who deals in the purchase of personal property on the condition of selling the property back again at a stipulated price.

G. Secondhand Dealer. Any person who engages in the purchase or exchange of secondhand personal property for profit, except as set forth in Section 1. Secondhand personal property includes, but is not limited to the following:

1. Jewelry and Precious Metals. Watches, bracelets, rings, necklaces and other articles that have value and are generally used for personal adornment and metals that have an intrinsic value such as gold, silver and platinum.

2. Office Equipment. Typewriters, calculators, cash registers, copying machines, facsimile machines, telephones, cellular phones, computer hardware, software, computers, computer accessories including tape and disc drives, printers and storage media.

3. Household Goods. Washers, dryers, furnaces, air conditioners, microwave ovens, kitchen appliances, pianos, organs, guitars, and other musical instruments.

4. Electronic Equipment. Televisions, video cameras and receivers, still picture cameras, motion picture cameras and projectors, radios (receiving and sending), digital video disc players, camcorders, tape recorders, cassettes, video tape recorders, stereo equipment, compact disc players, compact discs, video gaming systems, video games, digital video disc players, digital video discs (DVDs), blue-ray disc players, blue-ray discs, VHS players, VHS tapes, portable music devices such as MP3 players, Ipods, Ipads and any other electronic equipment.

5. Tools. Any device used to facilitate manual or mechanical work, including but not limited to cutting, gardening, hand, machine and power tools.

6. Coins. Small pieces of metal, usually flat and circular, authorized for use as money by the United States Department of Treasury or any another governmental agency or department.

H. Valuable Metal Dealer. Any person engaged in the business of purchasing and reselling valuable metal either at a permanently established place of business or in connection with a business of an itinerant nature, including junk shops, junk yards, junk stores, auto wreckers, scrap metal dealers or processors, salvage yards, collectors of or dealers in junk, and junk cars or trucks. The term includes a core buyer. The term does not include a person who purchases a vehicle and obtains title to the vehicle.

Section 5. Record of Transaction. Except as otherwise provided herein, any person operating a Secondhand Entity within Westfield's municipal boundaries shall maintain an electronic inventory-tracking system and transmit all information required by this Section via computer to the LeadsOnline system ("LeadsOnline").

For Pawn Dealers and Secondhand Dealers, the information maintained and transmitted to LeadsOnline shall include:

1. The date and time of each transaction in which Personal Property is purchased pledged or received;

2. An accurate and detailed description of any and all Personal Property purchased or acquired during the regular course of business, including but not limited to the following information: (a) trademarks; (b) identification numbers; (c) serial numbers; (d) model numbers; (e) brand names; (f) inscriptions; and (g) other identifying marks;

3. The compensation or amount of money exchanged for each such transaction;

4. The full name, address, telephone number, date of birth, driver's license number or state-issued identification card and digital photograph of the person from whom Personal Property is acquired;

5. A digital photograph of any item not bearing a unique serial number and purchased or acquired for a sum or money or other compensation valued at twenty five dollars ($25.00) or more; and

6. Any additional information that the Westfield Chief of Police may reasonably require to ensure compliance with the laws of the State of Indiana or Westfield' ordinances (collectively, "Identifying Information").

The information required to be transmitted to LeadsOnline shall be transmitted within twenty-four (24) hours of the date and time a purchase or transaction is consummated.

Recycling entities and Secondhand Metal Dealers shall comply with Ind. Code§ 25-37.5-1-2 which provides that every valuable metal dealer in this state shall enter on forms provided by the state police department for each purchase of valuable metal the following information:

(1) The name and address of the dealer.
(2) The date and place of each purchase.
(3) The name, address, age, and driver's license number or Social Security number of the person or persons from whom the valuable metal was purchased.
(4) The valuable metal dealer shall verify the identity of the person from whom the valuable metal was purchased by use of a government issued photographic identification. The dealer shall enter on the form the type of government issued photographic identification used to verify the identity of the person from whom the valuable metal was purchased, together with the:

(A) name of the government agency that issued the photographic identification; and

(B) identification number present on the government issued photographic identification.

(5) The motor vehicle license number of the vehicle or conveyance on which the valuable metal was delivered to the dealer.

(6) The price paid for the metal.

(7) A description and weight of the valuable metal purchased.

(8) The source of the valuable metal.

(9) The photograph described in subsection (b).

After entering the information required in this subsection, the valuable metal dealer shall require the person or persons from whom the valuable metal is purchased to sign the form and verify its accuracy.

(b) In addition to collecting the information described in subsection (a), a valuable metal dealer shall take a photograph of:

(1) the person from whom the valuable metal is being purchased; and

(2) the valuable metal.

(c) A valuable metal dealer shall make and retain a copy of the government issued photographic identification described under subsection (a)(4) used to verify the identity of the person from whom valuable metal was purchased and the photograph described in subsection (b). However, a valuable metal dealer is not required to make a copy of a government issued photographic identification used under subsection (a)(4) to verify the identity of the person from whom valuable metal is purchased if the valuable metal dealer has retained a copy of a person's government issued photographic identification from a prior purchase from the person by the valuable metal dealer.

(d) The completed form, the photograph described in subsection (b), and the copy of the government issued photographic identification described in subsection (c) shall be kept in a separate book or register by the dealer and shall be retained for a period of two (2) years. This book or register shall be made available for inspection by any law enforcement official at any time.

Ind. Code §25-37.5-1-2

Precious metal dealers shall comply with IC24-4-19-15 by maintaining books, accounts, and records necessary to determine whether the precious metal dealer is complying with Indiana Law.

1) A precious metal dealer shall:
    a) Preserve the books, accounts, and records for a least two years after making the final entry on any purchase recorded; and

    b) Keep the books and records so that the business of purchasing precious metal for resale may be readily separated and distinguished from any other business in which the precious metal dealer is engaged.

2) If the precious metal dealer, in the conduct of the business, purchases precious metal from a seller, the purchase shall be evidenced by a bill of sale properly sighed by the seller verifying the accuracy of the information in the bill of sale. All bills of sale must be in duplicate form and must list the following separate items:

    a) The date of sale

    b) The:

        1. Name;
        2. Addresses;
        3. Date of Birth; and
        4. Driver's license number or Social Security number of the seller from whom the precious metal was purchased.

    c) The amount of consideration paid for the precious metal.

    d) The:

        1. Name of the precious metal dealer; and

        2. Address of the permanent place of business where the purchase occurred.

    e) A description of each article of precious metal sold. However, if multiple articles of precious metal of similar nature are delivered together in one transaction, the description of the articles is adequate if the description contains the quantity of the articles delivered and a physical description of the type of articles delivered, including any unique identifying marks, number, names, letters, or special features.

    f) The type of government issued photographic identification used to verify the identity of the seller under IC24-4-19-14, together with the name of the governmental agency that issued the photographic identification and the identification number present on the government issued photographic identification.

    g) If a precious metal dealer purchases precious metal, the precious metal dealer shall retain as part of the books, accounts, and records kept by the precious metal dealer under this section:

1. The original copy of the bill of sale; and

2. The:

   a. Copy of the seller's government issued photographic identification; and
   b. Photograph of the precious metal obtained by the precious metal dealer.

3. The second copy of the bill of sale shall be delivered to the seller by the precious metal dealer at the time of sale.

4. The heading on all bill of sale forms must be boldface type.

Statutory reference:
For similar provision under state law, see IC 25-37.5-1-2.

Section 6. Card Record; Fingerprint.

A. In addition to the requirements set forth in Section 5 above, all Secondhand Entities shall

   i. electronically scan the right thumb of any person transferring an item, Personal Property, or valuable metal to a Secondhand Entity and transfer the thumbprint to LeadsOnline; or

   ii. complete a card prescribed by the Police Department which card shall include a space for the person to (1) write in his or her own handwriting the person's name and address and date of the transaction; and (2) place his or her right thumbprint on the back of the card.

If the right thumb is missing, any of the person's fingerprints may be used. The thumbprint shall be made in the manner approved by the Chief of Police and shall not be blurred or obliterated.

B. If the card described in subsection (A)(ii) is used, it shall be in a form prescribed by the Chief of Police and shall cross-reference the information submitted to LeadsOnline pursuant to Section 5 in a manner that allows the Secondhand Entity to readily match the card to the person for which the Identifying Information was submitted to LeadsOnline.

C. All cards completed pursuant to this Section shall be maintained by the Secondhand Entity for not less than five (5) years.

D. The thumbprint required by subsection (A)(i) shall be transmitted to LeadsOnline within ~~forty-eight (48)~~ twenty-four (24) hours of the date and time a purchase or transaction is consummated.

Section 7. Retention Period for Personal Property Acquired. All Personal Property received by Secondhand Entities for resale or reclamation shall be retained by the Secondhand Entity for not less than seven (7) days. Transactions involving precious metals shall be retained for not less than ten (10 days. Further, during the ten day retention period applicable to precious metal transactions, the precious metal dealer may not change the form of the precious metal.

Section 8. Acceptance of Property from Minors or Persons Under the Influence. It shall be unlawful for any person owning or operating a Secondhand Entity to take, purchase or receive Personal Property from any person who is under the age of eighteen (18) or who is under the influence of narcotics or alcohol.

Section 9. Government or Utility Property. It shall be unlawful for any person owning or operating a Secondhand Entity to take, purchase or receive Personal Property on which words or markings appear indicating ownership of such item by the United States, State of Indiana, or any political subdivision, governmental agency or public utility company ("Governmental Entity"), except where the person offering such item for sale or transfer provides the following:

1. Written authorization from the Governmental Entity to convey the item on behalf of the Governmental Entity; or

2. A valid receipt from the Governmental Entity evidencing that the Governmental Entity has conveyed or relinquished ownership rights in the Personal Property.

It shall not be a defense to prosecution that the Personal Property contains no words or markings indicating ownership if the person who purchased or received the Personal Property knew or should have known that the Personal Property is owned by a Governmental Entity.

Section 10. Acceptance of Property Sealed or Unopened in its Original Packaging. It shall be unlawful for any owner or operator of a Secondhand Entity to purchase or receive Personal Property sealed or unopened in its original packaging unless:

1. The person conveying such Personal Property presents a receipt or proof of purchase for the Personal Property.

2. The Personal Property is considered collectible and the opening of the original packaging would decrease the item's value.

Section 11. Acceptance of Property Inscribed with a Company Name. It shall be unlawful for any owner or operator of a Secondhand Entity to purchase or receive Personal Property bearing the name, initials or logo of a business entity unless the person

conveying such Personal Property provides, at the time of conveyance, a valid receipt indicating lawful ownership, a signed statement attesting to lawful ownership, or written authorization from the business entity to convey the Personal Property on the entity's behalf.

Section 12. Violations and Prosecution of Violation. Any person receiving a notice of violation of this ordinance may appear at the Noblesville City Court and pay the fine indicated on the notice or deny the violation and contest the matter in City Court.

The case shall then proceed according to the rules and procedures of the City Court pertaining to the ordinance violations.

Section 13. Penalty. In addition to any and all other penalty provisions provided by the Ordinances of the City of Westfield, any person, firm or corporation who violates any section of this chapter shall be subject to a fine of $500. A separate offense shall be deemed committed upon each day during which a violation occurs or continues. Enforcement shall be pursued through the Noblesville City Court through the Interlocal Agreement with the City of Noblesville or through the Hamilton County Circuit or Superior Courts.

ALL OF WHICH IS ORDAINED THIS 23 DAY OF Nov 2015.

WESTFIELD CITY COUNCIL

Voting For	Voting Against	Abstain
Jim Ake	Jim Ake	Jim Ake
Charles Lehman	Charles Lehman	Charles Lehman
Steven Hoover	Steven Hoover	Steven Hoover
Robert L. Horkay	Robert L. Horkay	Robert L. Horkay
Cindy Spoljaric	Cindy Spoljaric	Cindy Spoljaric
Robert J. Smith	Robert J. Smith	Robert J. Smith
Robert W. Stokes	Robert W. Stokes	Robert W. Stokes

ATTEST:

Cindy Gossard, Clerk Treasurer

WESTFIELD CORPORATE SEAL WESTFIELD INDIANA

"I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law"

Signed

I hereby certify that ORDINANCE 14-53 was delivered to the Mayor of Westfield on the 24 day of Mar, 2015, at 9:00Am.

Cindy Gossard

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 14-53

this 25 day of March, 2015.

J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 14-53

this _____ day of _____, 2015.

J. Andrew Cook, Mayor

ATTEST:

Cindy Gossard, Clerk Treasurer

This document prepared by
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