

## CHAPTER 08 BUSINESS REGULATIONS

### ARTICLE 8-6. AUCTIONEERS, PAWNBROKERS, SCRAP DEALERS, AND SECONDHAND DEALERS

#### Sec. 8-6-1. Definitions in General

The definitions in A.R.S. tit. 9 (A.R.S. § 9-101 et seq.) shall be applicable to this Article unless a term is specifically defined in this Article, or unless the context requires otherwise.

#### Sec. 8-6-2. Definitions Pertaining to this Article

In addition to the definitions prescribed in A.R.S. §§44-1601, -1621, and -1641, the terms of this Article shall have the following meanings:

(a) *Auctioneer* – Any Person who either operates an establishment in which is carried on the business of auctioning articles or who as principal or agent offers any articles for sale by public outcry, where such items offered for auction are sold immediately to the highest bidder.

(b) *Control* – The power to direct or cause the direction of the management and policies of an applicant, Licensee or Controlling Person, whether through the ownership of voting securities or a partnership interest, or by agreement or otherwise. Control is presumed to exist if a Person has the direct or indirect ownership of or power to vote ten percent (10%) or more of the outstanding voting securities of the applicant, Licensee or Controlling Person or to Control in any manner the election of one or more of the directors of the applicant, Licensee or Controlling Person. For the purposes of determining the percentage of voting securities owned, controlled or held by a Person, the voting securities of any other Person directly or indirectly controlling, controlled by or under common control with the other Person, or by an officer, partner, employee or agent of the Person or by a spouse, parent or child of the Person shall be included. Control is also presumed to exist if a creditor of the applicant, Licensee or Controlling Person holds a beneficial interest in fifty percent (50%) or more of the liabilities of the Licensee or Controlling Person.

(c) *Controlling Person* – A Person directly or indirectly possessing Control of an applicant or Licensee.

(d) *License*- Authorization issued by the City to any Person to operate as an Auctioneer, Pawnbroker, Scrap Dealer or Secondhand Dealer.

(e) *Licensee* – Any Person to whom the city has issued a license under this Article or any Person acting on behalf of such Person.

(f) *Licensing Office* – The Finance Department for the City of Maricopa or other department as designated by the city manager.

(g) *Minor Traffic Violation* – A conviction or finding of responsibility not to include the following, which shall be considered serious traffic violations: excessive speeding involving a single offense for a speed of fifteen miles per hour or more above the posted speed limit; reckless driving as provided by A.R.S. §§28-693; aggressive driving as provided by Section A.R.S. §§28-695; racing as defined in A.R.S. §§28-708; improper or erratic traffic lane changes as provided by A.R.S. §§28-729; following the vehicle ahead

too closely as provided by A.R.S. §§28-730; a violation that is connected with a fatal traffic accident; driving a motor vehicle if the person has not been issued a valid driver license; driving a motor vehicle without a driver license in the person's possession; driving a motor vehicle without having a valid endorsement for the type of motor vehicle or motor vehicle combination being operated.

(h) *Pawnbroker* – Any Person engaged in conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other Person, receiving as security for the repayment thereof, pawns or pledges of personal property, or the business of purchasing personal property and reselling or agreeing to resell such articles to vendors, their personal representatives or their assignees, at prices agreed upon at or before the time of such purchase, whether such business be the principal or sole business so carried on, managed or conducted, or merely incidental to, in connection with or a branch or a department of some other business or businesses.

(i) *Person* – Any individual, partnership, limited partnership, firm, corporation, association, or any other group acting as a unit.

(j) *Police Department* – The Police Department for the City of Maricopa.

(k) *Scrap Dealer* – Any Person engaged in the business of purchasing or obtaining material of any kind, such as any vehicle parts or accessories, machinery, iron, copper, brass, lead, zinc, tin, steel, aluminum and other metals, metal alloys, metallic cables, wire, batteries, rope, rubber and other like materials which are purchased or obtained from Persons other than the original manufacturer or authorized distributor selling the same for money, credit or exchange. The material purchased or obtained is put to a use inconsistent with the original purpose of the property; to be scrapped, dismantled, melted, pressed or otherwise disfigured, and to be resold to others in the form so altered, or used by the purchaser in its altered form. The provisions of this Article shall not apply to any Persons engaged solely in recycling metal cans, paper, cardboard or glass.

(l) *Secondhand* – Has been owned previously by someone other than the manufacturer or dealer whose business it is to sell such items to the public.

(m) *Secondhand Dealer* – Any Person, other than a Person who deals exclusively in Secondhand books, magazines, audio or video recordings regardless of media, handbills or posters, engaged in conducting, managing or carrying on the business of buying, selling, trading, exchanging or otherwise dealing in Secondhand goods, wares, merchandise or articles, whether such business be the principal or sole business so carried on, managed or conducted or be merely incidental to, in connection with or a branch or a department of some other business. This definition does not include trade-ins, dealers or Auctioneers in articles of property, the transfer of title to which is required by state law to evidence by written instrument and recorded properly. This definition does not include garage sales, rummage sales or similar nonrecurring sales between individuals.

### **Sec. 8-6-3. Applicability; Provisions Cumulative**

(a) The provisions of this Article shall apply to all Auctioneers, Pawnbrokers, Scrap Dealers, and Secondhand Dealers and Persons as defined herein.

(b) The provisions of this Article shall be in addition to any other regulations, privilege or license taxes or permit requirements required by the City, the state or other applicable agency and cumulative to any other applicable regulations, procedures or penalties.

**Sec. 8-6-4. License Application; Fee**

(a) Any Person desiring to obtain an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license must apply to the Licensing Office. Each application must be accompanied by all required application fees.

(b) Upon approval, and prior to issuance of the license, the applicant must pay all required license fees.

**Sec. 8-6-5. License Required**

(a) It is unlawful for any Person to conduct business or operate as an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer in the City without first obtaining and maintaining in effect a current, unrevoked and unsuspended license as required by this Article.

(b) It is unlawful for any Person licensed as provided in this Article to operate under any name or conduct business under any designation not specified in the license.

(c) It is unlawful for any Person licensed as provided in this Article to conduct business at any location not specified on such license.

(d) The license required by this Article is in addition to any other licenses or permits required by any governmental authority necessary to lawfully conduct business.

**Sec. 8-6-6. License Application; Contents**

(a) Each application for an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license shall include a description of the proposed business activity. Such description shall include, but not be limited to, the following information. Paragraphs (1) through (9) below are required to be completed about the applicant, the business owner, the Licensee if not the applicant or the business owner, the agent responsible for managing the premises on a day to day basis (hereinafter "Managing Agent") and any Controlling Person:

- (1) Full legal name and any name by which the Person is or has been known;
- (2) Current home address and telephone number and addresses over the past five (5) years;
- (3) Driver's license number or other government-issued, federally recognized identification;
- (4) Birth date, height, weight, hair and eye color;
- (5) Business occupation and employment history for five (5) years;
- (6) License history, including issuance, revocation, suspension or termination of any current or past related licenses;
- (7) The applicants, agents, and all employees shall submit to a fingerprinting process as directed by the Licensing Office for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the Licensing Office or designee.

- (8) Listing of any prior felony or misdemeanor convictions except Minor Traffic Violations;
- (9) Documentation of age over eighteen (18) years;
- (10) Designation of the Managing Agent who will be managing or operating the business at the indicated location and proof of the Managing Agent's authorization to act on behalf of the prospective Licensee;
- (11) Name, address and telephone number of any other local agent authorized to conduct daily business and proof of authority to act on behalf of the prospective Licensee;
- (12) Name, address and telephone number of statutory agent in Arizona if a corporation or an out-of-state applicant, Licensee or owner;
- (13) Except for corporations listed on the major stock exchanges, the names and addresses of all Persons financially interested in the business. If a Person financially interested in the business of the prospective Licensee is a corporation, the names and addresses of all Persons financially interested in that corporation shall be provided;
- (14) The names and addresses of any Controlling Persons. If the Controlling Person is a corporation, the names and addresses of all Persons having Control of the controlling corporation shall be provided;
- (15) Evidence of current, valid conditional use permit or any other applicable zoning approval for the proposed activity issued by the City; and
- (16) Such other information as may be requested by the Licensing Office to determine the truth of the information required to be set forth above.

(b) Any change in ownership of the business or in the information required to be provided in paragraphs (1), (10), (11), (12), or (13) above shall be reported to the Licensing Office within ten (10) calendar days after the change. Such changes shall be subject to investigation and approval by the City as provided in Subsection (c) set forth below and, if disapproved, the disapproval shall be grounds for automatic termination of the license. The requirement for reporting changes as required herein is effective at all times during the City's consideration of the application and at all times when a license issued hereunder is in effect. All other information set forth in subsection (a) above must be updated at the time of the renewal of the license.

(c) The Police Department shall conduct an investigation of the application and background of the applicant and proposed Licensee. Based on such investigation, the Police Department shall recommend to the Licensing Office the approval or denial of the license. In addition, the development services department and fire department, and any other affected department, may inspect any premises proposed as the site of the establishment and may make separate recommendations to the Licensing Office concerning compliance with the provisions of this Article and any other applicable rules or regulations.

**Sec. 8-6-7. Location of Business; Public Hearing; Notice**

A license will not be issued for any location not permitted in the City of Maricopa Zoning Code.

**Sec. 8-6-8. Payment of Fees and Taxes**

An application for an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license will not be processed or renewed if the applicant is delinquent in any payment to the City for charges including, but not limited to, taxes, fees, renewal fees or fees incurred as a result of a Code violation.

**Sec. 8-6-9. Fees**

- (a) An application for an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license must be accompanied by all fees required by this Chapter or by any other applicable laws, rules or regulations.
- (b) Submission of a license application must include all applicable fees before it will be processed.
- (c) Submission of the annual renewal form must include all applicable fees before it will be processed.
- (d) Fees are not prorated, transferable or refundable unless otherwise provided by law.

**Sec. 8-6-10. Term of License**

Any Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license issued pursuant to the provisions of this Article, shall be valid only during the calendar year in which it is issued. Any license may be renewed by filing a renewal application for approval and paying the renewal fee before the first day of the year in which the applicant wishes to be licensed.

**Sec. 8-6-11. Inspection of Premises, Property and Records**

To ensure compliance with this Article and other applicable laws, the business premises of any Person required to be licensed under this Article, including any property on the premises related to the Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer establishment, must be open to inspection by representatives of the City upon request at any time during the Licensee's regular business hours, or reasonable hours as agreed upon by the Licensee and the City.

**Sec. 8-6-12. Grounds for Denial**

The following include, but are not limited to, grounds for denial of an application for an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license:

- (a) The applicant, or proposed conduct of the business, fails to meet the requirements of this Article or any other applicable rule, regulation or law;
- (b) The applicant is a corporation which is not qualified to transact business in the state of Arizona;
- (c) Misrepresentations or material misstatements are made in the application;
- (d) Harm to the public health, safety or welfare of the community, or clear or present danger of serious damage or danger to the public, would result from granting the license; or

(e) A business owner, Managing Agent, applicant, other managing employee or a Controlling Person in the business to be licensed has been convicted of:

(1) A felony as set forth in A.R.S. §44-1627(H), as may be amended from time to time; or

(2) A misdemeanor which relates to the activity to be licensed,

or has, within two (2) years preceding the date of the issuance of a license, violated any of the provisions of this Article or the Maricopa City Code while conducting a related business activity.

### **Sec. 8-6-13. Grounds for Revocation, Suspension, or Non-Renewal of License**

(a) In addition to the automatic termination of a license as provided in this Article, the license may be revoked, suspended or denied renewal for any one or more of the following grounds:

(1) The Licensee has violated the requirements of this Article or any other applicable provision of this Code or law;

(2) The Licensee has been convicted of fraud in conducting the business or found guilty of deceit in obtaining a license to conduct the business;

(3) The Licensee has been convicted in a court of competent jurisdiction of a felony or of any misdemeanor which relates to the licensed activity;

(4) The Licensee is grossly ignorant or willfully negligent in the business of the licensed establishment;

(5) There occurs on the premises repeated acts of violence or disorderly conduct;

(6) The Licensee or any employee or Managing Agent thereof fails or refuses to make the premises or records available for inspections and examination as provided in this Article;

(7) The Licensee knowingly files an application or other document with material information which is false or misleading or knowingly gives testimony in an investigation or other proceeding which is false or misleading;

(8) The Licensee is delinquent for more than thirty (30) days in the payment of any applicable taxes or fees payable to the City following formal notice of delinquency; or

(9) Any completion of non-permitted improvements to the premises of the establishment occurs without appropriate approvals from the City.

(b) Upon discovery of any of the grounds set forth in subsection (a) above, the provisions of Section 8-1-10 of this Chapter shall apply.

### **Sec. 8-6-14. Appeals**

Any Person aggrieved by the denial of an application for license or by the restrictions placed upon the license or by the suspension or revocation of such license, and who is not satisfied with the decision of the city manager or his or her designee, shall have the right to an appeal before the city council in accordance with Section 8-1-11 of this Chapter.

**Sec. 8-6-15. Application after Denial or Termination**

No Person may apply for an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license within one (1) year from:

- (a) The denial of any such license to the applicant; or
- (b) The suspension, revocation, termination or non-renewal of such license unless the cause of the denial, suspension, termination, revocation or nonrenewal has been, to the satisfaction of the Licensing Office, removed in such time.

**Sec. 8-6-16. Display of License**

A licensee shall display such license in a conspicuous place in the licensed establishment.

**Sec. 8-6-17. Transferability; Automatic Termination of License**

- (a) Licenses issued hereunder are not transferable.
- (b) The following shall result in automatic termination of an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer license:
  - (1) Any change in location of a licensed establishment;
  - (2) Upon the sale or transfer of more than fifty percent (50%) of the stock or ownership of the licensed establishment; or
  - (3) Upon the revocation or termination of any use permit or other zoning approval issued by the City relating to the licensed establishment.
- (c) A new application may be made by the Person whose license is terminated as provided in this Section, or by another Person desiring to own or operate an Auctioneer, Pawnbroker, Scrap Dealer, or Secondhand Dealer establishment.

**Sec. 8-6-18. Reports to the Police Department; Fruits of a Crime**

- (a) Pawnbrokers shall file reports with and in a manner approved by the Police Department consistent with all of the requirements contained in A.R.S. §44-1625 as amended or as may be amended upon forms provided or approved by the Police Department. The required forms are paid for in advance at a location designated by the Police Department.
  - (1) No article shall be sold or exchanged by any Pawnbroker until it shall have been in the custody thereof for twenty (20) calendar days after making out and delivering to the Police Department the report required under Subsection (a) above. Any article held in custody pursuant to the paragraph shall not be altered or transformed in any way but shall be held in the same condition in which it was delivered to the reporting party. This Subsection shall not apply to redemption of pawned or pledged articles.
- (b) All Auctioneers, Pawnbrokers, Secondhand Dealers, and Scrap Dealers shall submit to a fingerprinting process as directed by the Licensing Office in accordance with Section 8-6-6 of this Article.
- (c) Scrap Dealers shall file reports with the Police Department consistent with all of the requirements contained in A.R.S. §44-1644 as amended or as may be amended.

(d) Secondhand Dealers shall file reports with and in a manner approved by the Police Department consistent with all of the requirements contained in A.R.S. §44-1602(C) as amended or as may be amended and the requirements of this Article upon forms provided or approved by the Police Department. The required forms are paid for in advance at a location designated by the Police Department.

(1) Any Person subject to the provisions of this Article who is engaged in the business of Secondhand Dealer shall, at the time of the transaction, include in the report all goods or articles received on deposit, consignment, trade, exchange or purchase which bear a serial number, owner applied number (O.A.N.) or have a fair market value in excess of one hundred dollars (\$100.00).

(2) A Secondhand Dealer shall retain any property obtained in a reportable transaction at its place of business or other storage location approved by the Police Department for a period of ten (10) calendar days after making out and delivering to the Police Department the report required under this Subsection. Any article held in custody pursuant hereto shall not be altered or transformed in any way but shall be held in the same condition in which it was delivered to the reporting party. If a Secondhand Dealer comes into possession of abandoned property, the dealer shall turn over such property to the Police Department.

(3) Notwithstanding the foregoing, the provisions of this Subsection shall not apply to purchases by a Secondhand Dealer from a business with a fixed business location of either business inventory or business equipment, provided that the licensee has acquired by the time of the transaction documentation of:

- (i) the name and address of the business;
- (ii) the state and local privilege (sales) tax license number of the business, if applicable;
- (iii) a copy of the invoice or other document showing the business' bona fide purchase of or right to possess the article sold, or a representative of the business with authority to on its behalf had completed and signed the report required by this section in all its particulars, without regard to the amount of the transaction.

(4) The provisions of this Subsection shall not apply to Secondhand Dealers' purchases of household items from a place of residence provided that:

- (i) the purchase is made by the licensee by check or other negotiable instrument made payable to the seller, or the purchase is made in cash and the licensee has obtained a receipt for that cash payment from the seller bearing the seller's name and address verified to be accurate by the licensee;
- (ii) the seller has produced for the licensee's inspection documentary evidence which establishes that the seller is either the lawful occupant of the premises or has the legal right to sell the items offered for sale. The licensee shall record from the documentary evidence produced a description of the document, including the name or nature of the document, and, to the extent available, its date, the individual's name and address thereon, and any account number;



(iii) notwithstanding the fair market value of one hundred dollars (\$100.00) or more rule contained in Subsection 8-6-19(D)(1), the licensee records the serial numbers and descriptions of all items bearing serial numbers.

(5) The provisions of this Subsection shall not apply to consignments to Secondhand Dealers, other than a firearm, provided that no payment is made by the licensee to the consignor for a period of ten (10) calendar days after the date of consignment.

(6) The provisions of this Subsection shall not apply to articles of used clothing or furniture received by a Secondhand Dealer in trade, exchange, purchase or on consignment, excluding electronic appliances and equipment.

(7) The provisions of this Subsection shall not apply to goods or articles received by a Secondhand Dealer in trade, exchange or by purchase from a business engaged in the lawful liquidation of its business.

(8) The provisions of this Subsection shall not apply to goods or articles received by a Secondhand Dealer in trade, exchange, purchase or on consignment from an auction house or Pawnbroker possessing a valid license issued pursuant to this Article.

(9) The business premises of any Secondhand Dealer, along with their transaction records and stock of goods and articles shall be open to reasonable inspection by any peace officer of this state when the business premises are lawfully occupied and during regular business hours. All documentation required to substantiate the above exclusions shall be retained on the business premises for a period of twenty-four (24) months. Each Secondhand Dealer shall maintain a current copy of this Article on the premises and shall make it available upon request to any employee or customer and to local law enforcement.

(e) Auctioneers shall file true, complete, and legible reports with the Police Department of all goods and articles received except clothing, books, records, and audio tapes. The reports shall be made upon forms provided or approved by the Police Department and shall be delivered or postmarked within twenty-four (24) hours after receipt of the property. An Auctioneer shall describe the property using either of the following methods:

(1) By attaching a legible copy of the Auctioneer's consignment agreement, purchase receipt, purchase invoice, or other similar document containing a property description; or

(2) For groups of items that are received as part of one (1) business transaction that are not readily distinguishable or identifiable as individual items, by furnishing on one (1) report a general description of the group of items.

(f) It shall not be considered a violation of this Section if the violation is the result of a bona fide error, provided that the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer maintains procedures reasonably adapted to avoid the occurrence of such bona fide error. For purposes of this Section, "bona fide error" shall mean clerical, calculation, computer malfunction, programming, printing, and other similar errors.

(g) Upon notification by any peace officer or representative of the Police Department that goods or articles received on deposit or consignment, in pawn, pledge, trade, or exchange, or by purchase are the fruits of a crime, no Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer shall dispose of such property.

(1) A peace officer or representative of the Police Department may place a hold on property in person, on the telephone, or by any other reasonable means if the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer is notified in writing within five (5) working days after the hold is placed. This written notice shall include all of the following information:

- (i) The date of the hold;
- (ii) A description of the property, including serial number if applicable;
- (iii) The representative's name and, if applicable, badge number;
- (iv) The telephone number of the representative;
- (v) The Police Department report number.

(2) If a peace officer or representative of the Police Department declares a "police hold" on the property, the Person shall attach a tag supplied by the Police Department to the property. The tag shall include the representative's name and serial number, telephone number, and the date of the hold. The tag shall remain on the property until the Police Department releases the hold or until the hold expires pursuant to paragraph 3 of this Subsection.

(3) A hold shall expire ninety (90) days after the date of the hold. A hold may be extended by the Police Department in ninety- (90-) day increments by written notification to the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer if the notification is received prior to the expiration of the hold.

(4) Interest upon such goods and articles pawned or pledged shall cease to accrue on the date of official notification.

(5) Upon receiving a receipt from any peace officer or representative of the Police Department, the Pawnbroker, Scrap Dealer, Secondhand Dealer, or Auctioneer shall turn over such items to the peace officer or representative of the Police Department.

(h) The reporting requirements of this Section on goods and articles received on deposit or consignment, trade or exchange, or by purchase shall not apply to organizations qualified under Section 501(C) of the Internal Revenue Code.

**Sec. 8-6-19. Penalty**

(a) A violation of this Article is an offense, punishable as provided in Article 1-8 of this Code. Each day on which a violation continues shall be a separate offense.

(b) In addition to the punishments provided in this Section, a violation of this Article is grounds for revocation of the license as provided in Section 8-6-14 of this Article.