

ORDINANCE NO. 1386

AN ORDINANCE ADDING CANBY MUNICIPAL CODE (CMC) CHAPTER 5.06 REGARDING THE REGULATION OF SECONDHAND DEALERS IN THE CITY OF CANBY.

WHEREAS, the City of Canby currently has businesses that operate as secondhand dealers; and

WHEREAS, the City of Canby desires to provide local law enforcement with tools to strictly regulate and enforce best practices in the field of secondhand dealing; and

WHEREAS, the Canby Municipal Code currently does not have an ordinance that regulates secondhand dealers; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:


Section 1. The Canby Municipal Code (CMC) is hereby amended to include Chapter 5.06 Secondhand Dealers. A copy of the Chapter 5.06 is attached hereto as Exhibit "A."

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, October 16, 2013, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, November 6, 2013, commencing at the hour of 7:30 PM at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.


Kimberly Scheafer, MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on November 6, 2013 by the following vote:

YEAS 5 NAYS 0


Brian Hodson
Mayor

ATTEST:


Kimberly Scheafer, MMC
City Recorder

EXHIBIT "A"

Chapter 5.06: SECONDHAND DEALERS

5.06.010 Purpose

The purpose of this chapter is to strictly regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. This risk is present despite the best effort of legitimate Secondhand Dealer and Pawnbroker businesses, because these businesses process large volumes of goods and materials that are frequently the object of theft. This chapter is intended to reduce this type of criminal activity by facilitating timely police notification of such property transactions, and by regulating the conduct of persons engaged in this business activity. The need for these regulations outweighs any anti-competitive effect that may result from their adoption.

5.06.020 Definitions

As used in this chapter, unless the context requires otherwise:

A. ACCEPTABLE IDENTIFICATION means either a current driver license, an Identification Card issued by the Department of Motor Vehicles of a United States state, or two current United States federal, state or local government-issued identification one of which has a photograph of the seller.

B. ACQUIRE means to take or transfer any interest in personal property in a voluntary transaction, including but not limited to: sales, consignments, memoranda between a Dealer and a private party seller, leases, trade-ins, loans, refinements and abandonments. Any acquisitions of regulated property by a Dealer will be presumed to be an acquisition on behalf of the Secondhand Dealer business. Notwithstanding the foregoing, "acquire" does not include:

1. Any loans made in compliance with state laws by persons licensed as Pawnbrokers by the State of Oregon for the purposes of making a pawn loan; or

2. Memoranda between a Dealer and a person engaged in the business of selling regulated property.

C. COUNCIL means the City of Canby City Council or its designee;

D. CRIMINAL CONVICTIONS RELATED TO FRAUD, DECEPTION, DISHONESTY, OR THEFT means any conviction for a criminal violation of this ordinance; ORS 162.015 to 162.121; 162.265 to 162.385; 164.005 to 164.235; 164.377; 164.395 to 164.415; Chapter 165, or any similar provision of previous or later Oregon statutes, or statutes of another state, or of the United States;

E. DEALER or SECONDHAND DEALER

1. Means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business and that either:

a. Acquires regulated property on behalf of a business, regardless of where the acquisition occurs, for the purpose of reselling the property; or

b. Offers for sale regulated property in the City of Canby.

2. Notwithstanding Subsection 1 above, DEALER or SECONDHAND DEALER does not include any of the following:

- a. A business whose acquisitions of regulated property consist exclusively of donated items and/or purchases from 501(c)(3) organizations; or
- b. An individual or business whose only transactions involving regulated property in the City of Canby consist of the acquisition of regulated property for personal use, or the sale of regulated property that was originally acquired by the seller for personal use; or
- c. A person whose only business transactions with regulated property in the City of Canby consist of a display space, booth, or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 calendar days in any calendar year.

F. HELD PROPERTY means any regulated property that cannot be sold, dismantled, altered, or otherwise disposed of for a proscribed period of time as more specifically described in Section 5.06.090.

G. INVESTMENT PURPOSES means the purchase of personal property by businesses and the retention of that property, in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.

H. MEDICATION means any substances or preparation, prescription or over-the-counter, used in treating or caring for ailments and/or conditions in humans or animals.

I. NEW means anything conspicuously not used.

J. PAWNBROKER has the meaning set forth in ORS 726.010 (2) and includes any business required by ORS 726.040 to hold an Oregon Pawnbroker's license.

K. PERSON means any natural person, or any partnership, association, company, organization or corporation.

L. PRINCIPAL means any person who will be directly engaged or employed in the management or operation of the Secondhand Dealer business, including any owners and any shareholders with a 5% or greater interest in the company.

M. REGULATED PROPERTY means any property of a type that has been determined by the Chief of Police to be property that is frequently the subject of theft, including but not limited to the following property, unless excluded by subsection 3 below, and may be revised as necessary by the Chief of Police after giving appropriate advance notification.

1. Used Items:

- a. Precious metals;
- b. Precious gems;
- c. Watches of any type and jewelry containing precious metals or precious gems;
- d. Sterling silver including, but not limited to, flatware, candleholders, salt and pepper shakers, coffee and tea sets or ornamental objects;
- e. Audio equipment;

- f. Video equipment;
- g. Other electronic equipment including, but not limited to: global positioning systems (GPS), electronic navigation devices or radar detectors;
- h. Photographic and optical equipment:
- i. Electrical office equipment;
- j. Power equipment and tools;
- k. Automotive and hand tools;
- l. Telephones or telephone equipment;
- m. Power yard and garden tools;
- n. Musical instrument and related equipment;
- o. Firearms including, but not limited to, rifles, handguns, shotguns, pellet guns or BB guns;
- p. Sporting equipment;
- q. Outboard motors, and boating accessories;
- r. Household appliances;
- s. Cell phones, smart devices, smart phones, tablets, ipods, and all similar devices;
- t. Property that is not purchased by a bona fide business for investment purposes, limited to:
 - i. Gold bullion bars (0.995 or better);
 - ii. Silver bullion bars (0.995 or better);
 - iii. All tokens, coins, or money, whether commemorative or an actual medium of exchange adopted by a domestic or foreign government as part of its currency whose intrinsic, market or collector value is greater than the apparent legal or face value; or
 - iv. Postage stamps, stamp collections and philatelic items whose intrinsic market or collector value is greater than the apparent legal or face value.
- u. Computers and computer related software and equipment;

2. New items.

a. New items purchased from a licensed business shall be exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent for the new items that specifies the seller's business name, physical and mailing address, date of transaction and description of the purchased items. The bill of lading shall be held by the Dealer for one (1) year, or as long as the property is in the Dealer's possession, whichever is longer. Upon reasonable belief that a specific licensed business is dealing in stolen property, the Chief of Police may deem that new items purchased from that specific licensed business are regulated property.

b. Items acquired from a manufacturer, manufacturer's representative or distributor that are discontinued or have been used for display or demonstration but not previously sold are new and exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent that includes the information specified in subsection (2)(a) of this section. The Dealer must hold the bill of lading, receipt, and invoice or equivalent for one (1) year or as long as the property is in the Dealer's possession.

3. Regulated property does not include any of the following property:

- a. Books and comic books;
- b. Sports cards and sports memorabilia;
- c. Glassware and objects d'art including, but not limited to, paintings, prints, sculptures, ceramics, and porcelains;
- d. Vehicles required to be registered with the Oregon Motor Vehicles Division;
- e. Boats required to be certified by the Oregon Marine Board;
- f. Furniture;
- g. Refrigerators, freezers, stoves, ovens, dishwashers, washers and dryers;

N. REMANUFACTURED means that an item has been altered to the degree that that the main components are no longer identifiable as the original item.

O. CHIEF OF POLICE means the Chief of Police for the City of Canby Police Department, or his or her designee;

P. SELLER means any person who:

1. Offers items of regulated property in exchange for money or other property; or as collateral for a loan; or
2. Donates or abandons items of regulated property.

Q. TRANSACTION REPORT means the record of the information required by Section 5.06.080, transmitted to the Chief of Police by means required in Section 5.06.090.

R. TRADE SHOW means an event open to the public, held in a venue other than a Dealer's business location, at which vendors of a specific type of merchandise may exhibit, buy, sell or trade items that may include regulated property.

S. USED means anything that has been put into action or service.

T. HEARINGS OFFICER means an officer, official of the City or other employee of the appropriate authority, but shall not have participated in any determination or investigation related to the incident that is subject of the hearing. The Hearings Officer is to be designated by the City Administrator.

5.06.030 Permit Required

A. No person shall act as a Secondhand Dealer in the City of Canby without a valid Secondhand Dealer's Permit issued by the Chief of Police.

B. Any person or business that advertises or otherwise holds him/ herself out to be acquiring or offering for sale regulated property within City of Canby will be presumed to be operating as a Secondhand Dealer subject to the terms of this chapter.

C. Any Pawnbroker operating within the City of Canby shall be required to maintain a valid license pursuant to the Oregon Revised Statutes Chapter 726. If any Pawnbroker also acts as a Secondhand Dealer, that Pawnbroker shall be required to obtain a Secondhand Dealer permit and meet all requirements of this chapter. Any Pawnbroker that is not a Secondhand Dealer shall nonetheless be subject to the following sections of this chapter:

1. 5.06.080 Reporting requirements (this section shall be used by Pawnbrokers in order to meet the requirements of ORS 726.280 – 726.285).

2. 5.06.090 Sale Limitations

3. 5.06.095 Exceptions to Sale Limitations

4. 5.06.100 Tagging and Inspection of Property

5. 5.06.110 Prohibited Acts

6. 5.06.120 Citations

7. 5.06.150 Nuisance

D. The sale of regulated property at events known as “garage sales,” “yard sales,” “flea markets” or “estate sales,” is exempt from these regulations if all of the following are present:

1. No sale exceeds a period of seventy-two (72) consecutive hours; and

2. No more than fourteen (14) calendar days of sales are held in any twelve- (12) month period.

5.06.035 Minimum Standards

A. No person may operate as a Secondhand Dealer within the City of Canby unless the person maintains a fixed physical business location.

B. Any Secondhand Dealer who holds a valid permit may not change the business name of the premises without notifying the Chief of Police at least 30 days prior to the actual effective date of the name change.

C. Dealers shall comply with all federal, state and local regulations.

D. Dealers will also obtain and maintain a current business license with the City of Canby.

5.06.040 Application for Permit

A. An application for Secondhand Dealer’s Permit shall set forth the following information:

1. The name, business and residential address, business and residential telephone number, birth date, driver license information, including state of issue and license number and principal occupation of the applicant and any person who will be directly engaged or employed in the management or operation of the business or the proposed business;

2. The name, address, telephone number, and electronic mail address of the business or proposed business and a description of the exact nature of the business to be operated;

3. The web address of any and all web pages used to acquire or offer for sale regulated property on behalf of the Dealer, and any and all internet auction account names used to acquire or offer for sale regulated property on behalf of the Dealer;

4. Written proof that the applicant and all principals of the business are at least 18 years of age;

5. Each principal's business occupation or employment for the five (5) years immediately preceding the date of application;

6. The business license and permit history of the applicant in operating a business identical to or similar to those regulated by this chapter.

7. A brief summary of the applicant's business history in the City of Canby or in any other city, county or state including:

a. The business license or permit history of the applicant; and

b. Whether the applicant has ever had any such license or permit denied, revoked, or suspended, the reasons behind it, and the business activity or occupation of the applicant subsequent to the suspension or revocation;

8. The form of the business or proposed business, whether a sole proprietorship, partnership or corporation, etc., and

a. If a partnership, the names, birth dates, addresses, telephone numbers, principal occupations, along with all other information required of any individual applicant, for each partner, whether general, limited, or silent, and the respective ownership shares owned by each;

b. If a corporation, or limited liability company, the name, copies of the articles of incorporation and the corporate bylaws, and the names, addresses, birth dates, telephone numbers, and principal occupations, along with all other information required of any individual applicant, for every officer, director, and every shareholder owning more than five percent of the outstanding shares, and the number of shares held by each.

9. If the applicant does not own the business premises, a true and complete copy of the executed lease (and the legal description of the premises to be permitted) must be attached to the application;

10. All arrests and criminal convictions relating to fraud, deception, dishonesty or theft, or citations for violation of Secondhand Dealer ordinance or statutes of any city, county, or state of each principal and all natural persons enumerated in paragraphs 1 through 7 of this section; and B. New employees of dealers shall complete and submit the Secondhand Dealer personal history information as required in Section A of this Subsection. Employees may not acquire regulated property until all required information has been reviewed by the Chief of Police, unless the Dealer receives permission from the Chief of Police while those employees' background checks are being evaluated. The criteria used to review a new employee will be the same as those used in the review of an initial application in Section 5.06.050(B).

5.06.050 Issuance and Renewal of Permit

A. Applications for Secondhand Dealer's Permit must be notarized, and shall be filed with the Chief of Police and shall include payment of the required annual permit fee. Individual employee

history forms containing the required information of each employee need not be notarized, but must be signed by the specific individual represented on the form.

B. The Chief of Police shall conduct an investigation of the applicant and all principals and employees directly engaged in the management or operation of the business listed according to the requirements in Sections 5.06.040(A) and 5.06.040(B). The Chief shall issue such permit if no cause for denial as noted herein exists.

C. The Chief of Police shall deny an application for a Secondhand Dealer's Permit if:

1. The applicant, or any other person who will be directly engaged in the management or operation of the business, or any person who owns a five percent or more interest in the business, has previously owned or operated a business regulated by this chapter or a similar ordinance or law of another city, county or state, and

a. the license and permit for the business has been revoked for cause which would be grounds for revocation pursuant to this chapter; or

b. The business has been found to constitute a public nuisance and abatement has been ordered; or

2. Any person involved in the business has been convicted of any criminal offense related to fraud, deception, dishonesty or theft, or convicted of any violation of this chapter or laws of any city, county or state; or

3. The operation as proposed by the applicant would not comply with all applicable requirements of statutes and local ordinances including, but not limited to: building, health, planning, zoning and fire chapters; or

4. Any statement in the application is found to be false or any required information is withheld; or

5. Evidence exists to support a finding that the location of the business for which the application has been filed has a history of violations of the provisions of this chapter; or

6. The operation does not comply with applicable federal or state licensing requirements.

D. Notwithstanding Section 5.06.050(B), the Chief of Police may grant a permit despite the presence of one or more of the enumerated factors, if the applicant establishes to the Chief's satisfaction that:

1. The behavior evidenced by such factor(s) is not likely to recur;

2. The behavior evidenced by such factor(s) is remote in time; and

3. The behavior evidenced by such factor(s) occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this chapter.

E. Secondhand Dealer's Permits shall be for a term of one year and shall expire on the anniversary of their issuance. The permits shall be nontransferable and shall be valid only for a single location. When the business location is to be changed, the permit holder shall provide the address of the new location in writing to the Chief for approval or disapproval at least 30 days prior to such change.

F. All Secondhand Dealer's Permits shall be displayed on the business premises in a manner readily visible to patrons.

G. The Chief of Police will have primary authority concerning the issuance of a permit. If an applicant for permit is denied, denied applicants will make their first appeal to the Hearings Officer. If denial of an application for permit is denied by the Hearings Officer, review shall be by writ of review as provided in ORS 34.010 to 34.100.

5.03.060 Permit Fees

Every person engaged in conducting, carrying on or controlling a Secondhand Dealer's business shall:

A. File an application as described in Section 5.06.050 and pay a nonrefundable fee as required by the Chief of Police. This fee shall be set by resolution.

B. For renewal of a Secondhand Dealer's Permit, file an application and pay a nonrefundable fee as required by the Chief of Police.

5.06.070 Additional Locations

A. The holder of a valid Secondhand Dealer's Permit shall file with the Chief an application for a permit for each additional location, and shall pay a nonrefundable fee as required by the Chief for each additional location.

B. Permits issued for additional locations shall be subject to all the requirements of this chapter, and the term of any permit issued for an additional location shall expire on the same date as the initial permit.

5.06.080 Reporting of Secondhand Dealer Regulated Property Transactions and Seller Identification

A. Dealers shall provide to the Chief all required information listed for each regulated property transaction (not including sales). The Chief may designate the format of transfer of this information and may direct that it be communicated to the City of Canby Police Department by means of mail, the internet or other computer media.

1. In the event the Chief directs that the transaction information be transmitted via computer media, the Chief will specify the system that will be utilized in order to ensure conformity among all dealers.

2. If, after establishing the format and requirements for the transmission of computerized reports of transactions, the Chief alters the required format; Dealers will be given at least sixty (60) days to comply with the new format requirements. If unable to implement the reporting system before the deadline, a Dealer must, prior to the deadline submit a written request to the Chief for additional time.

3. Pawnbrokers are required to report only new transactions. Loan renewals and redemptions by the original client do not need to be reported as long as the property involved in the transaction has not left the store for any period of time. If someone other than the original pawnbroker attempts to redeem the pawned item(s), a photocopy of the redeemer's license or other valid ID is required.

B. In the event of legitimate technical difficulties, pre-approved paper forms can be provided to Dealers with transaction report forms at cost. Any technical difficulties shall be remedied by Dealer as soon as practicable. The chief may specify the format (size, shape and color) of the transaction report form. The Chief may require that the transaction report form include any information relating to the regulations of this chapter. Dealers may utilize their own forms, in

lieu of those supplied by the Police Department, if the Chief has approved such forms. The Declaration of Proof of Ownership is considered to be included in references in this chapter to the transaction reports, as appropriate. Declaration of Proof of Ownership will be retained by the business and made available to law enforcement.

C. When receiving regulated property, the Dealer must do all of the following:

1. The Dealer must obtain acceptable photo identification from the seller or pledger and verify that person in the photograph is the individual participating in the transaction.

2. The Dealer must record the seller's current residential address, telephone number and thumbprint on the transaction report.

3. The dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. If an item is new, the Dealer must include the word "new" in the property description.

a. The Dealer must complete the transaction report in its entirety, and the individual completing the report must initial it.

b. Transaction reports must be completed in legible printed English.

4. The Dealer must require the Seller to legibly complete the Declaration of Proof of Ownership except that no such Declaration of Proof of Ownership is required for pawn loans made in compliance with state law by licensed pawnbrokers.

a. In completing the Declaration of Proof of Ownership the Seller must, at the time of the transaction, certify in writing that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased.

b. The Dealer or Dealer's employee must place the identifiable print of the seller's right thumb (left if right is unavailable) in the thumbprint box on the Declaration of Proof of Ownership. Thumbprints and the information on the Declaration of Proof of Ownership may be produced using a digital format with prior approval of the process from the Chief.

c. When no Declaration of Proof of Ownership is required for pawn loan transactions, the Dealer or Dealer's employee shall verbally verify that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased, and enter that information in the transaction report by noting in the item description the length of time the seller has owned the item.

5. A Dealer may provide a description of any motor vehicle (including license number) identified as used in the delivery of regulated property and record the description and license number next to the seller's thumbprint.

6. Transaction reports are designed to assist in the investigation of the theft of property. Therefore, additional reporting for Dealers includes unregulated property that is identifiable with markings indicating apparent ownership.

7. Dealers must take either a photograph or still video of each person selling or loaning on an item of regulated property or make a copy of the acceptable identification presented by the

seller. All information on the copy must be legible and may be made by photostatic copying, computerized scanning or any other photographic, electronic, digital or other process that preserves and retains an image of the document, and which can be subsequently produced or reproduced for viewing of the image. If a photograph is taken, a print of the photograph must be referenced to the transaction report number. A video photograph (still) must be referenced by time and date and transaction report number to correspond to the regulated property accepted. Copied identification must be kept with the transaction report or shall be referenced to the transaction report number. The photograph or videotape or copied identification must be kept by the Dealer for one year and must be provided to the Chief of Police upon request.

D. Dealers must mail or deliver to the Chief of Police at the close of each business day the original of all transaction reports describing articles received during that business day.

E. Dealers must retain at their business location a copy of all completed and voided transaction reports for a period of not less than one year from the date of acquisition. Any unused transaction reports must be available for inspection by the Chief of Police.

5.06.090 Regulated Property Sale Limitations

A. Regulated property is subject to the following limitations:

1. Holding Period: Regulated property acquired by any Dealer must be held for a period of thirty (30) full days from the date of acquisition. Pawnbroker loan transactions are exempt from the 30-day hold requirements of this section because of the redeemable nature of the loans and the holding requirements of ORS 726. However, if the loan is converted to a buy by the Pawnbroker within 30 days from the date of the pawn transaction, the difference between the original date of the pawn and the buy will count toward the 30-day hold requirement. All other provisions of this section remain in effect.

2. Requirements of held property: All held property must remain in the same form as when received, must not be sold, dismantled, altered or otherwise disposed of, and must be kept separate and apart from all other property during the holding period to prevent theft or accidental sale, and to allow for identification and examination by the Chief of Police. Held property must be kept at the business location during this holding period so that it can be inspected during normal business hours as provided in Section 5.06.100.

B. Upon reasonable belief that an item of regulated property is the subject of a crime, any peace officer may provide notice to any Dealer that a specifically described item of regulated property must be held in a separate Police Hold area for a period not to exceed thirty (30) days from the date of notification, and is subject to the (30) days upon notice provided to the Dealer that additional time is needed to determine whether a specific item of regulated property is the subject of a crime. The Dealer shall comply with the hold notice and notify the Chief of Police of the hold notice not later than five (5) calendar days from the day the notice was received, either by telephone, fax, email or in person. A Dealer must notify the Chief of its intent to dispose of any item of regulated property under Police Hold at least ten (10) days prior to doing so. A Police Hold area must meet the following criteria:

1. Located out of public view and access, and
2. Marked "Police Hold", and
3. Contains only items that have been put on Police Hold

C. Any peace officer or Community Service Officer (unsworn peace officers employed by law enforcement agencies) who places a police hold on any property suspected of being the subject of a crime shall provide the Dealer with a DPSST number and a valid incident number.

D. Upon probable cause that an item of regulated property is the subject of a crime, the Chief may take physical custody of the item or provide written notice to any Dealer to hold such property for a period of time to be determined by the Chief, not to exceed the statute of limitations for the crime being investigated. Any property placed on hold pursuant to this subsection is subject to the requirements of subsection (A)(2) above, and will be maintained in the Police Hold area unless seized or released by the Chief. Seizure of property will be carried out in accordance with ORS.

E. If a Dealer acquires regulated property with serial numbers, personalized inscriptions or initials, or other identifying marks which have been destroyed or are illegible due to obvious normal use, the Dealer shall continue to hold the regulated property at the business location for a period of ninety (90) full days after acquisition. The Dealer must notify the Chief of Police by writing "90-day hold" next to the item on the transaction report or by an electronic means approved by the Chief. The held property must conform to all the requirements of this section.

F. If a peace officer seizes any property from a Dealer, the Dealer must notify the Chief of Police not later than five (5) calendar days from the day the seizure occurs. The Dealer must provide the name of police agency, the incident or case number, the name and DPSST number of the peace officer, the number of the receipt left for the seizure, and the seized property information. Notification to the Chief of Police may be given by telephone, fax, email or in person.

5.06.092 Release of Held or Seized Property

Items held or seized under Section 5.06.090 D may not be released to anyone other than the Dealer unless the property is released to:

A. Another law enforcement agency that has provided documentation to the satisfaction of the Chief of Police of the stolen status of the property, or

B. A person who reported the property as stolen; and

1. A stolen property report has been filed with a law enforcement agency where making an untruthful report is a violation of the law, and

2. A notice has been delivered to the Dealer holding the property or from whom the property was seized.

a. The notice required by this subsection will state that the property will be released to the person who has filed the stolen property report unless the Dealer or pawnor/seller files a motion for return of seized property within 10 days of the date of the notice and in the manner set forth in the notice.

b. The notice required by this subsection will be sent electronically with a request for acknowledgement, or delivered in person to the Dealer at the email or physical address shown on the Dealer's permit application or most recent permit renewal application, and to the pawnor/seller at the address shown in the transaction report required by Section 5.06.080.

c. The notice required by this subsection will provide the information necessary to submit a motion for return of seized property.

d. The failure of any person to receive the notice required in this subsection will not invalidate or otherwise affect the proceedings of this subsection.

5.06.095 Exceptions to Regulated Property Sale Limitations

A. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, or have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements in Section 5.06.080 and if:

1. The item is acquired through consignment by a Dealer and the consigned property is mailed or shipped to the Dealer.

2. The item is acquired during a trade show. Items acquired during a trade show may be sold or traded during the trade show without being held or creating a transaction record. Items still in a Dealer's possession at the end of the show held at a location within 400 miles of the City of Canby will be subject to the hold period and reporting requirements in effect for that Dealer's acquisitions of regulated property. The required reporting of the acquisitions must occur within two business days of the end of the trade show. The Dealer must enter at least the following information into the transaction record: a complete, clear and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other, and the name and date of the event and the address of the venue in the name, date, and address fields.

An item acquired during a trade show held at a location more than 400 miles from the City of Canby is exempt from regulation under Section 05.06.080 if the Dealer has a bill of lading, receipt, invoice or the equivalent for the item that specifies the seller's name, physical and mailing address, show location, date of transaction and a description of the purchased item. The bill of lading, receipt, invoice or the equivalent must remain in the Dealer's possession for one year or as long as the property is in the Dealer's possession, whichever is longer.

3. The item is acquired from a business whose acquisitions of regulated property consists exclusively of donated items and/or purchases from a 501(c)(3) organization. The Dealer must record the name and location address of the business in the name and address fields of the transaction report form and the date of acquisition.

4. The item is acquired through an internet transaction. The Dealer must record on the transaction report the seller's email address or seller's identification, the name of the internet website that listed the item, and the date of the acquisition.

5. The item is acquired by the Dealer from a yard sale, garage sale, estate sale or swap meet. The Dealer must record on the transaction report the physical address of the sale location and the date of acquisition.

Items acquired under subsection (A) must be held in compliance with the hold period requirement in effect for the Dealer's other acquisitions of regulated property. The hold period begins the day the acquisition is reported to the Chief.

B. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, have the seller complete the Declaration of Proof of Ownership, or hold the item if the Dealer complies with the remaining requirements Section 5.06.080 and if:

1. The item is regulated property acquired from a duly registered business located outside the state of Oregon or Washington. The Dealer must keep a receipt for the item from the registered business that includes the registered business' name and a description of the item. The receipt must be retained at the Dealer's business location for one year or until the item is sold, whichever is longer. The Dealer must enter in the transaction record:

- a. the name and location address of the business into the name and address fields;
- b. the date of the acquisition; and
- c. a digital photograph of sufficient size and focus to identify an item and distinguish it from similar items.

C. A Dealer is not required to photograph the seller, record the seller's thumbprint or have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements of Section 5.06.080 and if:

1. The item is regulated property taken to the Dealer for repair;
2. The Dealer photocopied the customer's valid identification when the item was brought in for repair;
3. The item has been abandoned or consigned to the Dealer;
4. The item is reported in a transaction record on the same day that it is abandoned or consigned; and
5. The item is held for 15 days after it is reported to the Chief.

D. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint if the Dealer complies with the following requirements:

1. Conducts each and every acquisition of regulated property by either:
 - a. Not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer; or
 - b. Offering in-store credit that must be used for merchandise only and not redeemed for cash; and
2. Holds each and every item of regulated property for a minimum of fifteen (15) days from the date of acquisition; and
3. Complies with the remaining requirements set forth in the Section 5.06.080; and
4. Notifies the Chief in writing that each and every acquisition of regulated property will be conducted by not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer.

E. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint when the Dealer acquires an item of regulated property on consignment if the Dealer complies with the following requirements:

1. Does not tender payment to the consignor for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer;
2. Holds each and every item of consigned regulated property for a minimum of fifteen (15) days;

3. Complies with the remaining requirements in Section 5.06.080.

F. The hold period for items may be reduced from 30 days to 20 days if the item either displays a complete legible serial number; or is an item of jewelry; or is precious metal scrap. The Dealer must:

1. Report the acquisition in a transaction record on the same day the acquisition occurs; and

2. Include a description in the transaction record of the degree of detail for the type of item as required Section 5.06.080; and

3. Include a digital photograph of sufficient size and focus to identify the item and distinguish it from similar items and that clearly shows any legible serial number on the item in the transaction record; and

4. Comply with all remaining requirements in Section 5.06.080.

A Dealer may be required to reinstate a 30 day hold period if an examination of RAPID entries reveals a pattern of insufficient item descriptions or insufficient photographs.

G. A Dealer is not required to create a transaction record or hold the item if the acquired item is regulated property acquired from a registered business that has verifiably already entered the acquisition of that item in a transaction record in a jurisdiction approved by the Chief. The Dealer must keep the receipt for the item from the registered business that includes the registered business' name and a description of the item. The receipt must be kept at the Dealer's business location for one year or until the item is sold, whichever is longer.

H. A Dealer is not required to create a transaction record or hold the item if a customer, who originally purchased the item from the Dealer, returns it to the Dealer with the original receipt.

5.06.100 Tagging Regulated Property for Identification, Chief's Inspection

A. Secondhand Dealer acquiring any regulated property shall affix to such property a tag upon which shall be written a unique number, in legible characters, which shall correspond to the number on the transaction report forms required by Section 5.06.080. After the holding period has expired, the transaction number must remain identifiable on the property until it is sold.

B. After the applicable holding period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.

C. After the applicable holding period has expired, items that are remanufactured need not remain tagged.

D. Upon presentation of official identification, the Chief or his designee may enter onto the business premises of any person with a Secondhand Dealer's Permit to ensure compliance with the provisions of this chapter. An inspection shall be for the limited purpose of inspecting any regulated property acquired by the dealer, held by the dealer pursuant to Section 5.06.090, or the records incident thereto. Such inspections shall occur only during normal business hours. The failure to grant permission to the Chief or his designee for inspection could result in a violation of this chapter.

5.06.110 Prohibited Acts

A. It shall be unlawful for any principal, employee or Dealer regulated by this chapter to:

1. Receive any property from any person known to the principal, employee or Dealer to be prohibited from selling by a court order or is under the age of eighteen (18) years,

2. Receive property prohibited by this chapter. Items specifically prohibited from being acquired by Secondhand Dealers include:

a. Medications;

b. Gift cards, in-store credit cards, or activated phone cards;

c. Property with serial numbers, personalized inscriptions or initials or other identifying marks which appear to have been intentionally altered, obliterated, removed, or otherwise rendered illegible;

d. Any item that cannot be lawfully possessed pursuant to local, state, or federal law.

3. Act as a Secondhand Dealer within City of Canby without a valid Secondhand Dealer's Permit issued by the Chief of Police.

4. Fail to obtain acceptable identification from the person selling any regulated property;

5. Fail to have the person selling any regulated property sign the transaction report form describing the article acquired;

6. Fail to retain on the business premises a copy of the transaction report form describing the acquired regulated property for a period of one (1) year from the date of acquisition;

7. Fail to mail or deliver to the Chief at the close of each business day the original and second copy of all transaction report forms describing regulated property acquired during that business day;

8. Fail to include on transaction report forms all readily available information required by the form;

9. Fail to withhold from sale any regulated property for the required holding period after acquisition;

10. Fail, after acquiring regulated property, to retain the property on the business premises for the required holding period after its acquisition;

11. Fail to allow inspection by the Chief of any regulated property being retained pursuant to this chapter;

12. Fail to allow inspection by the Chief of any records required by this chapter;

13. Fail to have affixed to any acquired regulated property, during the required holding period, a tag on which is written a number in legible characters which corresponds to the number on the transaction report form required by this chapter;

14. Continue activities as a Secondhand Dealer after suspension or revocation of a permit or a business license.

B. Any initial violation of Section 5.06.110(A) is a City Code violation punishable by a fine in an amount set by resolution of the City of Canby City Council or its designee. Fines for non-criminal violations of this section are presumptively \$500 and are not to exceed \$1000 per violating transaction and could also result in revocation of the secondhand dealer's permit.

Subsequent or repeated violations of this section can be punishable criminally as could any secondhand dealing that occurs after permit revocation due to violations of this section. Any criminal charges resulting from this ordinance shall go before the Canby Municipal Court and be punishable by no more than 365 days jail and/or a \$6250 fine per violating transaction.

5.06.120 Citation

A. The Chief or his designee, upon learning of a violation of Section 5.06.110(A) may issue the Secondhand Dealer a citation. Such citation shall be delivered at the address listed on the permit application during regular business hours to a person who appears to be in charge.

B. The citation shall list the nature of the violation, whether it is a non-criminal or criminal, and the time and date of the citation. The citation shall also indicate the fine assessed for said violation, which is to be paid to the City, or appealed within ten (10) days from the date of delivery. Appeal of non-criminal violations must be in writing, state the grounds for appeal, and must be delivered to the Canby Municipal Court within ten (10) days of the citation date. Criminal citations are handled through the Canby Municipal Court.

C. Nothing in this section shall affect the ability of the Chief to take any and all actions otherwise authorized to abate any violation.

D. Any principal of a Dealer that has been assessed civil penalties under this Chapter in excess of \$2,000 in the previous 365 days who knowingly violates Section 5.06 may be punished, upon conviction, by a fine of not more than \$6,250 and a jail sentence of not more than 12 months.

E. Any principal of a Dealer that has been denied a permit or whose Secondhand Dealer permit has been revoked who knowingly violates Section 5.06 may be punished, upon conviction, by a fine of not more than \$6,250 and a jail sentence of not more than 12 months.

5.06.130 Revocation or Suspension of Permit

A. The Chief may revoke or suspend any permit issued pursuant to this chapter:

1. For any cause which would be grounds for denial of a permit; or
 2. Upon a finding that any violation of the provisions of this chapter, federal, state or other local law has been committed and the violation is connected with the operation of the permitted business location so that the person in charge of the business location knew, or should reasonably have known, that such violations or offenses were permitted to occur at the location by the Dealer or any principal or employee engaged or employed in the management or operation of the business location; or
 3. If lawful inspection has been refused; or
 4. If the Secondhand Dealer's activities cause significant litter, noise, vandalism, vehicular or pedestrian traffic congestion or other locational problems in the area around the Dealer's premises; or
 5. If a fine assessed under this chapter has not been paid to the City of Canby or appealed within ten (10) days after the date of delivery of a citation; or
 6. If any statement contained in the application for the permit is found to have been false;
- or

7. If any Secondhand Dealer fails to meet federal or state licensing requirements.

B. The Chief shall give the permittee written notice of proposed revocation or suspension of any permit issued pursuant to this chapter by causing notice to be served upon the permit holder at the address listed on the permit application. Service of the notice shall be accomplished by personal service, mailing the notice by certified mail, return receipt requested, or by service in the same manner as a summons served in an action at law. Refusal of the service by the person whose permit is revoked or suspended shall be prima facie evidence of receipt of the notice. Service of the notice upon the person in charge of a business, during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business.

C. Revocation or suspension shall be effective and final ten (10) days after the giving of such notice unless such revocation or suspension is appealed in accordance with Section 5.06.140.

5.06.140 Appeals

A. Appeals of revocations or suspensions of permits shall be made to the Hearings Officer, to be designated by the City Administrator. A Hearings Officer may be an officer, official of the City or other employee of the appropriate authority, but shall not have participated in any determination or investigation related to the incident that is subject of the hearing. Hearings under this section may be informal in nature, but the presentation of evidence shall be consistent with that required for contested cases under ORS 183.450. The determination of a hearings officer at the hearing for non-criminal violations under this section is final and is not subject to appeal.

B. Orders of the Hearings Officer:

1. The Hearings Officer shall provide a written statement of the results of the hearing held under this section to the person requesting the hearing.

2. Findings of fact and conclusions of law shall accompany a final order. The findings of fact shall consist of a concise statement of the underlying facts supporting the Hearings Officer's order.

3. The Hearings Officer shall notify the appellant and respondent of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the appellant and respondent or, if applicable, their attorney of record. The Hearings Officer shall issue a final order within fourteen (14) days from the conclusion of the hearing.

4. The Hearings Officer shall file all final orders with the City Recorder. A final order shall become effective five (5) days after it is filed unless a party makes objections to the form of the order within five (5) days of filing and the Hearings Officer subsequently amends the final order.

C. Enforcement of Hearings Officer Order:

1. Fines and costs are payable upon receipt of the final order declaring the fine and costs. Fines and costs under this chapter are a debt owing to the City of Canby and may be collected in the same manner as any other debt allowed by law.

2. The City of Canby may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce any order of the Hearings Officer, including, but

not limited to, an action to obtain judgment for any fine or any assessment for costs imposed pursuant to Sections 5.06.110(B) or 5.06.140(G).

D. Judicial Review of the final order of the Hearings Officer under this chapter shall be by writ of review as provided in ORS 34.010 – 34.100.

E. Appeals of criminal violations of this chapter can be made *de novo* with the Clackamas County Circuit Court following the procedures governing criminal appeals in the State of Oregon.

5.06.150 Maintenance of Regulated Business Activity in Violation Declared a Nuisance, Abatement

Any business maintained in violation of the provisions of this chapter is hereby declared to be a public nuisance. The Chief is authorized to bring any action or suit to seek imposition of fines or other authorized penalties for violation of this chapter or to abate such nuisance by seeking injunctive or other appropriate relief to:

- A. Cease all unlawful activities;
- B. Close the unlawful business establishment;
- C. Return property obtained through unlawful activities to the rightful owners; or
- D. Seek such other relief as may be appropriate.