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Legislation Details (With Text)

File #: SO2017-5552
Type: Ordinance **Status:** Passed
File created: 7/26/2017 **In control:** City Council
Final action: 9/6/2017
Title: Amendment of Municipal Code Titles 4 and 8 by modifying Chapters 4-240 and 4-264 and adding new Section 8-4-053 regarding regulation of secondary cell phone market
Sponsors: Emanuel, Rahm, Burke, Edward M., Mitts, Emma
Indexes: Ch. 4 Public Peace & Welfare, Ch. 240 Pawnbrokers, Ch. 264 Secondhand Dealers
Attachments: 1. SO2017-5552.pdf, 2. O2017-5552.pdf

Date	Ver.	Action By	Action	Result
9/6/2017	1	City Council	Passed as Substitute	Pass
8/31/2017	1	Committee on Public Safety	Substituted in Committee	Pass
7/26/2017	1	City Council	Referred	

SUBSTITUTE ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 4-240 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

4-240-010 Definitions.

As used in this chapter:

(Omitted text is not affected by this ordinance)

"Secondhand property" has the meaning ascribed to that term by Section 4-264-005 of this Code.

"Serial number" has the meaning ascribed to that term by Section 4-264-005 of this
Code.

"Stolen cell phone database" has the meaning ascribed to that term by Section 4-264-005 of this Code.

"Wireless communication device" or "cell phone" means any device through which personal wireless services, as defined in 47 U.S.C. 332(c)(7)(C)(i), are transmitted.

4-240-150 Prohibited pledges or purchases.

a) No licensee under this chapter shall take or receive in pawn or pledge, for money loaned, or shall buy any property from a minor, or shall so take, receive or buy any such property, the ownership of which is in, or which is claimed by, any minor, or which may be in the possession or under the control of any minor.

b) LU No licensee under this chapter shall take any article in pawn or buy from any person appearing to be

intoxicated or under the influence of any drug, nor from any person known to be a thief or to have been convicted of theft, er-burglary, robbery or armed robbery, and when any person is found to be the owner of stolen property which has been pawned or bought, such property shall be returned to the owner thereof without the payment of the amount advanced by the pawnbroker thereon or any costs or charges of any kind which the pawnbroker may have placed upon the same.

(2) No licensee under this chapter shall purchase or take in pawn any property which any law enforcement officer or any individual acting in behalf of a law enforcement agency explicitly represents to the licensee as being stolen or represents to the licensee such circumstances as would reasonably induce the licensee to believe that the property was stolen.

(Omitted text is not affected by this Ordinance) Page 1 of 8

(e) (1) No licensee under this Chapter shall purchase, take or receive from any person in pawn or pledge, for money loaned, any cell phone whose make, model and serial number is identified in a stolen cell phone database. Before purchasing, taking or receiving from any person in pawn or pledge, for money loaned, any cell phone, the licensee shall check the stolen cell phone database to verify that the cell phone is not a stolen or lost cell phone, and shall record in an inventory log the date and time of such verification, the make, model and serial number of the cell phone, and a unique inventory number for each such cell phone. The licensee shall attach a sticker to the cell phone with the corresponding unique inventory number contained in the inventory log. The log and the sticker attached to the cell phone shall be made available at all reasonable times, as defined in Section 4-4-290 of this Code, to inspection by authorized personnel of the department or any member of the City's Department of Police.

2) A licensee under this Chapter shall issue to any person who purchases a secondhand cell phone from the licensee a receipt, in a form provided by the Commissioner, acknowledging that the cell phone is not identified, at the time of sale, in a stolen cell phone database as a stolen or lost cell phone. Such receipt shall include date and time of such sale, and the make, model and serial number of the cell phone.

3) A licensee under this Chapter shall report, within a reasonable time, to the Chicago Department of Police any secondhand cell phone that is brought to the licensee for pawn or pledge, and whose make, model and serial number is identified in a stolen cell phone database. Upon request, such licensee shall surrender such cell phone to any member of the City's Department of Police, if the licensee is in possession of the cell phone.

4-240-170 Violation - Penalty.

a) Any person violating any of the provisions of this chapter or any rule or regulation promulgated thereunder shall be fined not less than \$1,000.00 nor more than \$2,000.00 for each offense. Each violation in regard to a separate transaction shall constitute a separate and distinct offense to which a separate fine shall apply.

b) In addition to any other penalty provided by law, any violation of this chapter or rule or regulation promulgated thereunder ~~on two different days within any 12 month period~~ may result in license suspension or revocation in accordance with the requirements of Section 4-4-280 of this Code.

SECTION 2. Chapter 2-264 of the Municipal Code of Chicago is hereby amended by adding new Sections 4-264-160 and 4-264-240, by deleting the language struck through and by inserting the language underscored, as follows:

4-264-005 Definitions.

For purposes of this chapter:

"Audio-video equipment" includes, but is not limited to, any stereo, speaker, radio, video recorder, audio recorder,

camera, video camera, television, DVD player, VHS player, CD player,

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tape or disc player of any type, digital audio disc, digital video disc, telephone, cell phone. Smartphone, iPhone, iPad, iPod, interactive panel system, interactive display, amplifier, microphone, projector, computer, laptop computer, computer hardware, monitor, slide projector, wireless slate, pager, public assembly system, wireless communication device, satellite signal device or similar equipment, regardless of whether such equipment is individually identifiable by a serial number, or by other applied numbers, letters, characters or markings, or by other unique features that serve to distinguish the equipment from similar equipment in order to establish ownership of the equipment.

"Automated recycling kiosk" means an unmanned interactive device that purchases secondhand wireless communication devices and any person who installs, remotely operates or monitors the unmanned interactive device. The place of business of an automated recycling kiosk shall be the location of the kiosk and not the location of any remote operator.

(Omitted text is not affected by this ordinance)

"Licensee" means a secondhand dealer licensed under this Chapter.

"Precious metal" means gold, silver or platinum

(Omitted text is not affected by this ordinance)

"Secondhand dealer" means any person who engages in the business of purchasing, selling, receiving, trading, consignment selling or otherwise transferring for value any secondhand property. Notwithstanding the foregoing, nothing in this chapter applies to: (i) pawnbrokers licensed under Chapter 4-240, junk peddlers licensed under Section 4-6-150; junk facilities permitted under Chapter 11-4 of this Code; or manufacturing establishments licensed under Chapter 4-224, (ii) sales or exchanges of used articles and materials conducted by or controlled by charitable or religious organizations; (iii) any person who purchases used articles or materials from a charitable or religious organization for the purpose of resale, if the person spends in excess of \$1,000,000.00 per annum on purchases of used articles and materials from religious and charitable organizations for purposes of resale, and maintains an indoor facility of not fewer than 10,000 square feet for the sale of such used articles and materials; (iv) the sale of Chicago Transit Authority fare tokens pursuant to permission of the Authority; (v) the purchase or sale of precious metals or currency on the Chicago Mercantile Exchange or on a similar exchange, wherever located; (vi) the exchange of currency by a licensed currency exchange, national bank, federal savings bank or other financial institution as defined in the Illinois Banking Act; or (vii) a manufacturer of wireless communication devices that acquires the devices as part of a trade-in program, or a provider of commercial mobile service, as defined in 47 U.S.C. 332(d), and such provider's authorized agents and retailers that have contractual relationships with the provider to sell the provider's authorized products and services.

(Omitted text is not affected by this ordinance)

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"Serial number" means, in reference to cell phones or other wireless communication devices, a Mobile Equipment Identifier (MEID), International Mobile Equipment Identity (IMEI) number or Electronic Serial Number (ESN).

"Stolen cell phone database" means a stolen cell phone database into which the make, model and serial number of a stolen or lost cell phone is identified. At the time of the enactment of this amendatory ordinance of 2017. "stolen cell phone database" means any electronic service linked to the Groupe Speciale Mobile Association (GSMA) database that is used to search a cell phone's International Mobile Equipment Identity (IMEI) number across international networks to determine whether the cell phone has been reported lost or stolen. The commissioner may, by rule, identify one or more additional or alternative stolen cell phone databases.

"Unlicensed secondhand dealer" means any person who engages in the business of purchasing, selling, receiving, trading, consignment selling or otherwise transferring for value any secondhand property without obtaining a secondhand dealer license from the City. If any person possesses five or more secondhand cell phones on one business premises without a valid license from the City, a rebuttable presumption shall exist that the person is an unlicensed secondhand dealer.

"Trade-in program" means a program offered by a wireless telephone service provider or manufacturer of wireless communication devices that is not primarily engaged in purchasing personal property of any type from a person who is not a wholesaler, pursuant to which used wireless communications devices are accepted from customers for trade-in when purchasing a new device or in exchange for a noncash credit usable only for the purchase of goods or services from the wireless telephone service provider, manufacturer of wireless communication devices, or from authorized agents of such provider or manufacturer, or a rebate from a manufacturer on the purchase of one of the manufacturer's wireless communications devices.

"Wireless communication device" or "cell phone" means any device through which personal wireless services, as defined in 47 U.S.C. 332(c)(7)(C)(i), are transmitted.

4-264-010 License-Required.

It shall be unlawful for any person to engage in the business of a secondhand dealer without first obtaining a license therefor for each separate place, premises or location where such business is to be conducted, or for each automated recycling kiosk. The license issued pursuant to this chapter shall be administratively categorized as either secondhand dealer or secondhand dealer - non-valuable (collectively, "secondhand dealer")

4-264-090 Prohibited purchases.

(Omitted text is not affected by this ordinance)

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c) £1) No secondhand dealer shall purchase any article of secondhand property from any person known to be a thief or to have been convicted of theft, of-burglary, robbery or armed robbery, and when any person is found to be the owner of stolen property which has been bought, such property shall be returned to the owner thereof without the payment of the amount paid by the secondhand dealer for the stolen property.

(2) No secondhand dealer shall purchase any property which any law enforcement officer or any

individual acting in behalf of a law enforcement agency explicitly represents to the dealer as being stolen or represents to the dealer such circumstances as would reasonably induce the dealer to believe that the property was stolen

d) No secondhand dealer shall purchase, take or receive from any person any catalytic converter that is not attached to a motor vehicle, or any portion of a dismantled catalytic converter that is reasonably identifiable as such. In addition to any other penalty provided by law, any person who violates this subsection (d) shall be fined not less than \$1,000.00 nor more than \$2,000.00 for each offense

e) (1) No secondhand dealer shall purchase, take or receive from any person any cell phone whose make, model and serial number is identified in a stolen cell phone database. Before purchasing, taking or receiving from any person any cell phone, the secondhand dealer shall check the stolen cell phone database to verify that the cell phone is not a stolen or lost cell phone, and shall record in an inventory log the date and time of such verification, the make, model and serial number of the cell phone, and a unique inventory number for each such cell phone. The licensee shall attach a sticker to the cell phone with the corresponding unique inventory number contained in the inventory log. The log and the sticker attached to the cell phone shall be made available at all reasonable times, as defined in Section 4-4-290 of this Code, to inspection by authorized personnel of the department or any member of the City's Department of Police.

2) A secondhand dealer shall issue to any person who purchases a secondhand cell phone from the licensee a receipt, in a form provided by the Commissioner, acknowledging that the cell phone is not identified, at the time of sale, in a stolen cell phone database as a stolen or lost cell phone. Such receipt shall include the date and time of such sale, and the make, model and serial number of the cell phone.

3) A secondhand dealer shall report, within a reasonable time, to the Chicago Department of Police any secondhand cell phone that is brought to the licensee for sale, and whose make, model and serial number is identified in a stolen cell phone database. Upon request, such dealer shall surrender such cell phone to any member of the City's Department of Police, if the dealer is in possession of the cell phone.

4-264-160 Automated recycling kiosks.

(a) Automated recycling kiosks shall: (i) be installed within a secure retail space; (ii) purchase secondhand wireless communications devices for the purpose of recycling or refurbishment; (iii) not resell the secondhand wireless communications devices at the licensed

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place of business, (iv) remotely monitor all transactions by a live representative during all business operating hours; (v) obtain at least two forms of identification from each seller, at least one of which is a government-issued photographic identification card used to verify the seller's identity; (vi) for each functioning wireless communication device purchased, compare serial numbers of wireless communication devices against a stolen cell phone database and shall not purchase such device if it is identified in a stolen cell phone database; (vii) prepare and deliver, using the LeadsOnline electronic reporting form, to a location or locations designated by the superintendent of police, reports of all transactions, to include images taken of the transaction; (viii) retain possession of the secondhand wireless communications devices for 30 calendar days after receipt of such devices, (ix) upon request, surrender any secondhand wireless communications device to any member of the City's Department of Police, if in possession of the device, at no cost to the City's Department of Police; and (x) in addition to any reporting requirements established under this section, issue a monthly report to the commissioner of business affairs and consumer protection on the number of wireless communication devices identified as lost or stolen at each an automated recycling kiosk. It shall be the responsibility of any automated recycling kiosk licensee to comply with the requirements of this subsection.

(b) Except as set forth in subsection (a) of this section, and Sections 4-264-005, 4-264-010, 4-264-020, 4-264-030, 4-264-225 and 4-264-230 of this Code, nothing in this Chapter shall apply to automated recycling kiosks.

4-264-230 Violation - Penalty.

a) Except as otherwise provided in subsection (c), any Any person who violates any requirement of this chapter or any rule or regulation promulgated thereunder shall be fined not less than \$500.00 nor more than \$1,000.00 for each offense. Each violation in regard to a separate transaction shall constitute a separate and distinct offense to which a separate fine shall apply.

b) In addition to any other penalty provided by law, any violation of this chapter or rule or regulation promulgated thereunder on two different days within any 12-month period may result in license suspension or revocation in accordance with the requirements of Section 4-4-280 of this Code.

c) In addition to any other penalty provided by law, any person who purchases or offers for sale secondhand cell phones in violation of this Chapter or who otherwise violates subsection (e) of Section 4-264-090 of this Chapter, as applicable, shall be fined not less than \$1,000.00 nor more than \$2,000.00 for each offense. Each violation shall constitute a separate and distinct offense.

4-264-240 Confiscation of secondhand cell phones - Illegal purchase or offer for sale.

(a) In addition to any other applicable penalty, if any licensee or unlicensed secondhand dealer purchases or offers for sale secondhand cell phones in violation of this Chapter, the superintendent of police or any member of the City's Department of Police shall

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have the authority: (1) to issue notices of violation, in accordance with Section 2-14-074, to such licensee or unlicensed secondhand dealer found in possession of such cell phones; and (2) to seize and store all such cell phones.

b) Within ten days of the issuance of a notice of violation pursuant to subsection (a) of this section, the commissioner of business affairs and consumer protection shall notify by United States mail the licensee or the unlicensed secondhand dealer of the date, time and location of a hearing to determine whether the cell phones, at the time of issuance of the notice of violation, were purchased or offered for sale in violation of this Chapter.

c) At any time before a determination is made by an administrative law officer under subsection (d) of this section, the commissioner of business affairs and consumer protection shall notify by United States mail the owner of each cell phone, if the identity of the owner is reasonably ascertainable, of the date, time, and location of a hearing to determine whether the cell phones, at the time of issuance of the notice of violation, were purchased or offered for sale in violation of this Chapter.

d) After issuing a notice of violation, the commissioner of business affairs and consumer protection shall institute an action with the department of administrative hearings, which shall appoint an administrative law officer who shall conduct the hearing, no later than 45 days after the issuance of the notice of violation, to determine whether the cell phones, at the time of issuance of the notice of violation, were purchased or offered for sale in violation of this Chapter. If the alleged violation is not contested or the administrative law officer determines by a preponderance of the evidence that any or all of the cell phones, at the time of issuance of the notice of violation, were purchased or offered for sale in violation of this Chapter, the administrative law officer shall enter an order requiring payment by the licensee or the

unlicensed secondhand dealer of a penalty of \$1,000.00 for each cell phone purchased or offered for sale in violation of this Chapter. Any penalty imposed under this section shall be in addition to any other penalty imposed under this Chapter. If the administrative law officer determines that a violation has occurred, all cell phones that were purchased or offered for sale in violation of this Chapter shall be: (i) forfeited to the City; or (ii), in case of stolen or lost cell phones, returned to each lawful owner, if the identity of the owner is known or reasonably ascertainable. If the administrative law officer determines that a violation has not occurred, all cell phones that were seized pursuant to this Section shall be: (i) returned to the licensee; or (ii), in case of stolen or lost cell phones, returned to each lawful owner, if the identity of the owner is known or reasonably ascertainable.

SECTION 3. Chapter 8-4 of the Municipal Code of Chicago is hereby amended by adding new Section 8-4-053, underscored as follows:

8-4-053 Stolen cell phone database.

(a) For purposes of this section.

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"Provider" means a manufacturer of wireless communication devices, or a provider of commercial mobile service, as defined in 47 U.S.C. 332(d), and such provider's authorized agents and retailers that have contractual relationships with the provider to sell the provider's authorized products and services

"Serial number" has the meaning ascribed to that term by Section 4-264-005 of this Code.

"Stolen cell phone database", "trade-in program" and "wireless communication device" have the meaning ascribed to these terms by Section 4-264-005.

b) Any provider that does business in the City shall'

- 1) not purchase or activate for service a secondhand cell phone that is brought to the provider, and whose make, model and serial number is identified in a stolen cell phone database. Before purchasing or activating for service any such secondhand cell phone, the provider shall check the stolen cell phone database to verify that the cell phone is not a stolen or lost cell phone.
- 2) report, within a reasonable time, to the Chicago Department of Police any secondhand cell phone that is brought to the provider for sale or activation for service, and whose make, model and serial number is identified in a stolen cell phone database. Upon request, such provider shall surrender such cell phone to any member of the City's Department of Police, if the provider is in possession of the cell phone: and
- 3) encourage customers to report the make, model and serial number of a cell phone for entry into a stolen cell phone database in the event of the theft or loss of the customer's cell phone. The requirement of this subsection (b)(3) can be satisfied by providing the customers of the provider with written or online information regarding: (i) the availability of a stolen cell phone database; and (ii) how to identify a stolen or lost cell phone in such database, and by posting similar information in the provider's business premises located in the City.

c) The requirements of this section shall not apply to any acquisition of secondhand cell phones by a provider through a trade-in program.

- d) Any person who violates this section shall be subject to a fine of not less than \$1,000.00 nor more than \$2,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

SECTION 4. This ordinance shall take effect 10 days after its passage and publication.

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