



MEMORANDUM

TO: Mayor and City Councilors

FROM: Rich Olson, City Manager
Eddie Buffaloe, Chief of Police

DATE: August 7, 2015

REF: Consideration ~ Call for a Public Hearing to Amend the City's Code of Ordinances Chapter 14 (Business Regulations); Article I (In General); Section 14-3 (Pistol Sale, exchange; license required).

BACKGROUND:

During the July 13, 2015 City Council meeting, the Council held a Public Hearing to receive comment regarding a proposed text amendment (TA-01-15) to the Unified Development Ordinance specific to Article XI, Section 11-4.56 Pawnshops. The Council took no action during that meeting; rather, City staff was directed to develop additional language for the text amendment, which would add regulatory guidance concerning security alarm systems, security bars over windows and doors and surveillance camera systems. In addition, members of the Police Department were requested to meet with the local pawn shop stakeholders to receive their input regarding the proposed ordinance amendment.

ANALYSIS:

Members of the Elizabeth City Police Department met with representatives of Chauncey's and Elizabeth City Pawn on July 23, 2015. The pawnshop owners were very supportive of the proposed ordinance amendment. It should be noted that both these pawnshops, which are the only two currently in operation within the City, are already in compliance with the regulations being proposed.

Many of the additions requested by the Council for the text amendment exceed the authority given by the General Statutes for zoning. After further evaluating City Council's direction, it has been determined that an amendment to Section 14-3 Pistol Sale, Exchange, License Required in the City Code would be a more appropriate place to include these changes. Based on this decision, staff has prepared a proposed amendment to the City Code, which you will find attached. I

have requested that June Brooks prepare a request to withdraw TA-01-15 from further consideration, which is being presented as a companion agenda item.

Staff is requesting that the Council call for a Public Hearing to receive comment regarding adopting an amendment to City's Code of Ordinances Chapter 14 (Business Regulations); Article I (In General); Section 14-3 Pistol Sale, exchange; license required in order to add language to provide regulatory guidance concerning security alarm systems, security bars over windows and doors and surveillance camera systems for pawn shops.

STAFF RECOMMENDATION:

By motion, call for a Public Hearing to be held at 7:30 p.m. on August 24, 2015 to adopt an amendment to the City's Code, Chapter 14 (Business Regulations) Article I (In General) Section 14-3(a) Security Requirements for Pawnshops and Businesses Who Sell, Trade, or Otherwise Store Firearms, as presented herein.

RCO/vdw

ORDINANCE #2015-08-_____

AMENDING CHAPTER 14 – BUSINESS REGULATIONS
ARTICLE I – IN GENERAL
BY THE ADDITION OF SEC. 14.3(a) SECURITY REQUIREMENTS FOR
PAWNSHOPS AND BUSINESSES WHO BUY, SELL, TRADE,
OR OTHERWISE STORE FIREARMS

WHEREAS, numerous break-ins occurring throughout the City in recent time have resulted in the theft of 36 firearms; and

WHEREAS, due to need to safeguard citizens from having the potential of stolen firearms on the streets and in an effort to curtail violent and/or property crimes from occurring, the Council desires to formulate regulatory guidance; and

WHEREAS, security enhancements including cameras, barricades, and alarm systems are believed to reduce liability for storeowners; equip law enforcement with useful investigative tools; and greater serve the public by decreasing the probability of firearms becoming accessible to those individuals seeking to commit illegal acts.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Elizabeth City that the following section be added to existing Section 14-3 of the City of Elizabeth City Code of Ordinances, as follows:

SECTION I.

“Section 14.3(a). Security requirements for pawn shops and other businesses that buy, sell, trade, or otherwise store firearms.

Section 14.3(a)(1). Purpose.

This section is enacted to reduce the potential for situations where employees of certain businesses are exposed to potential death and/or injuries because of the actions of people with criminal intent. It is also intended to assist law enforcement with the criminal investigation of crimes that occur at certain businesses. The businesses made subject to this section have certain characteristics which may tend to increase the potential risk of criminal activity at those businesses.

Section 14.3(a)(2). Terms defined.

The definitions and provisions contained within this section shall govern the construction, meaning, and application of the following words and phrases used in this section.

“*Alarm System*” means an assembly or equipment, mechanical or electrical, or both, designed and used to signal the occurrence of an illegal or unauthorized entry or attempted entry or other illegal activity on the premises of the alarm user, which requires or solicits urgent attention and to which the police are expected to respond.

"Alarm User" means a person, firm, partnership, corporation, association, or other legal entity in control of a building, structure, facility, or portion thereof within the City of Elizabeth City in which an alarm system is used.

"Barricades" refers to devices for preventing entry through windows and doors (including bars) and also known as guards.

"Business Establishments" or "Establishments" means those establishments listed and defined in this section as follows:

- a) "Firearm Dealer" means an establishment required to obtain a federal firearms license to buy or sell firearms; and/or
- b) "Pawn Broker" means a business required to obtain a Conditional Use Permit issued by the City Council, pursuant to the Elizabeth City Unified Development Ordinance, and also covered by Chapter 45 of the North Carolina General Statutes.

"Video surveillance system" (or "VSS") means a continuous digital surveillance system including cameras, cabling, monitors, and digital video recorders (DVR) which has been approved by the chief of police or his/her designee in accordance with this section.

Section 14.3(a)(3). Video surveillance system requirements.

- a) Every business establishment, as defined in this section, is hereby required to install a video surveillance system in accordance with this section. All establishments which have installed a video surveillance system prior to the effective date of this section shall ensure said systems are in full compliance with this section. All video surveillance systems shall be maintained in proper working order at all times; be kept in continuous operation 24 hours a day, 7 days a week; and meet the minimum technological standards established in this section.
- b) If a crime occurs, or any employee of an establishment believes or suspects a crime has occurred at the establishment premises, the establishment shall contact the police department immediately and the establishment shall provide the police department immediate access to the media containing the recorded event. The establishment shall retain the continuous digital images recorded by this system for no less than thirty (30) days. If the video surveillance system is web-enabled or has wireless capability, the establishment shall enable the police department to directly access the live system during incidents requiring a police response or intervention.
- c) The minimum technological standards required for video surveillance systems shall be established by resolution of the City

Council, which may be updated periodically. The police department shall review the minimum technical standards at least bi-annually to ensure they are consistent with current technology, and shall recommend appropriate updates to council.

- d) The video surveillance system shall have no less than one camera dedicated to each register or check-out, entrance/exit, loading dock, and parking lot or area designated for customer and/or employee parking use. The placement of cameras included in video surveillance systems required under this section must be approved by the police department. The chief of police or his/her designee will conduct an assessment of each site required to install a video surveillance system prior to installation of said system, and upon approval will issue an approval notice which will be placed in plain view inside the establishment premises. This approval notice will also inform customers and employees of the presence of the video surveillance system.
- e) The video surveillance system shall be subject to regular inspection by the chief of police or his/her designee, who is authorized to inspect any such system at reasonable times to determine whether it conforms to this section and any regulations and standards adopted by City Council resolution, pursuant hereto. If the video surveillance system does not so conform, the establishment in question shall take immediate steps to bring the system back into compliance, following notice of such non-compliance.

Section 14.3(a)(4). Barricade requirements.

- a) All barricades (also known as guards) shall, at a minimum, be constructed of rigid metal, free of sharp projections, edges, or rough surfaces. Barricades/guards shall be so constructed as to reject the passage of a solid twelve (12) inch sphere at every space and interval. Window barricades/guards may not be installed in the windows providing access to fire escapes. In the case of a fire escape, the guard mechanism shall be constructed to repel entry into a business after hours but not to deny exit from a building from the interior. Optional "above minimum standard precautions" include installation of a metal roll-down type door or window covering, similar to what is referred to as a roll-down hurricane shutter.
- b) All access points located below ten (10) feet above ground, including but not limited to windows, doors and those areas accessible by fire escape shall be barricaded after business hours. Barricades must be constructed to reject passage of any object more than twelve inches in diameter from any direction. Fire

escape stairs and drop ladders shall be chained and locked in the up position. If the fire escape cannot be rendered reasonably inaccessible in this manner, all windows along the fire escape must be barricaded.

- c) Every licensed firearms dealer who shall buy, sell, trade, or transfer ANY type of firearm is hereby required to install "barricades or guards" on all access points of the business. The barricades shall be maintained and in proper working order at all times and meet the minimum standards established in this section.
- d) The barricade system shall be subject to regular inspection by the chief of police or his/her designee, who is authorized to inspect any such system at reasonable times to determine whether it conforms to this section and any regulations and standards adopted by City Council resolution pursuant hereto.

Section 14.3(a)(5). Alarm system requirements.

- a) Every business establishment, as defined in this section, is hereby required to install an "alarm system" in accordance with this section. All establishments which have installed an alarm system prior to the effective date of this ordinance shall ensure said systems are in full compliance with this chapter. All alarm systems shall be maintained in proper working order at all times; be kept in continuous operation 24 hours a day, 7 days a week; and meet the minimum technological standards established in this section.
- b) Minimum technological standards required for "alarm systems" shall be established by resolution of the City Council, which may be updated periodically. The police department shall review the minimum technical standards at least bi-annually to ensure they are consistent with current technology, and shall recommend appropriate updates to the City Council.
- c) The alarm system shall be subject to regular inspection by the chief of police or his/her designee, who is authorized to inspect any such system at reasonable times to determine whether it conforms to this section and any regulations and standards adopted by Council resolution pursuant hereto. If the alarm system does not so conform, the establishment in question shall take immediate steps to bring the system back into compliance, following notice of such non-compliance.
- d) The alarm user shall maintain its alarm system in good operating condition and free of false alarms. The alarm user shall insure that all persons with access to the premises have an adequate

understanding of the alarm system so as to prevent unintended activation of the alarm system. The alarm user shall provide the Elizabeth City Police Department the names of at least two persons other than the alarm user who have access to keys to the premises would be available to assist the police to secure the premises or reset a malfunctioning alarm. Any changes in the information contained on the application shall be promptly submitted to the Elizabeth City Police Department within ten days of any such change.

Section 14.3(a)(6). Exemptions.

Any business establishment within the jurisdictional limits of the City of Elizabeth City, as defined in Section 14-3.(a)(2) that operates 24 hours a day; 7 days a week shall be exempt from complying with the security requirements contained within this ordinance.

Section 14.3(a)(7). Violations.

The chief of police or his designee is authorized to investigate all alleged violations of this section. A violation of any provision of this section by any owner or principal operator of an establishment shall result in a notice of violation from the chief of police or his/her designee to said establishment at the address provided by the establishment. The notice of violation required under this section shall be in writing, set forth the grounds for the violation, and inform the owner or principal business operator of the establishment that he/she has ten days from the date of mailing of the notice to file a written request for a hearing. A business which is otherwise required to install the security enhancements defined in this section may apply, on an annual basis, to the chief of police or his/her designee for exemption from the provisions of this section. Violators shall have thirty (30) days after receipt of the notice to provide the police department proof that the violation has been corrected. If the violation continues after the 30-day period, the chief of police or designee shall issue a citation against the violator and, subject in any event to the appeal process afforded under this chapter, the violator shall pay a civil penalty not to exceed \$500. The city attorney is authorized to bring a civil action in any court of competent jurisdiction to recover such civil penalties.

For purposes of this chapter, each day that a violation continues shall be a separate violation. In addition to the foregoing, the violation of any provision of this section shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief. A business found to be an exception to this code would be one that is open 24 hours a day and firearms are kept in a secured location where they are not readily accessible to the public. An example would be firearms locked in an impenetrable display case and a customer would require

assistance from an employee in order to physically take possession of the firearm.

Section 14.3(a)(7). Temporary exemptions/extensions granted.

The city manager or his designee may exempt a business for a period of up to twelve months if he/she finds that the business has or will undertake alternative security procedures which are substantially equal to or more effective in preventing criminal activity and in assisting in the apprehension of the perpetrators of crime or for the protection of employees. In addition, the chief of police or his/her designee may authorize alternate procedures on an experimental basis. Such an exemption shall carry a maximum duration of twelve months, and a business must either reapply for an exemption at the end of the exemption period or obtain the city's approval of security enhancements no later than 30 days prior to the end of the exemption period. The city manager or his designee may also authorize temporary extensions of time for installation when an establishment demonstrates to the satisfaction of the City that it is temporarily unable to comply for good cause shown.

Section 14.3(a)(8). Appeal process.

Any establishment found to be in violation of this chapter by the city manager or his designee shall have the right to a hearing before the city manager or his/her designee. Within ten (10) days of mailing of the written notice of violation by the chief of police or his/her designee, the owner or principal business operator of an establishment to which a notice of violation has been issued may appeal by requesting a hearing before the city manager. Such a request must be made in writing and must set forth the specific grounds for the appeal. Within ten (10) days after any timely request for a hearing, the city manager or his/her designee shall set a time and place for the hearing. That hearing shall be conducted no sooner than five days after the date of the notice which sets the hearing and no later than twenty (20) days after receipt of the request for a hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine any witness against them. The decision of the city manager or his/her designee to grant or deny the appeal shall be in writing and shall be rendered within one week of the hearing. The decision shall be considered a final administrative action for purposes of further review pursuant to North Carolina law.

SECTION II. EFFECTIVE DATE: This Ordinance shall be effective upon the date of adoption.

SECTION III. CODIFICATION. The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

SECTION IV. SEVERABILITY CLAUSE. If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION V. All ordinances and sections of the Elizabeth City Code, and parts thereof, inconsistent herewith be and the same hereby are repealed to the extent of such inconsistencies.

READ, CONSIDERED, AND ADOPTED at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the _____ day of August, 2015.

Joseph W. Peel
Mayor

Attest:

Vivian D. White, CMC/NCCMC
City Clerk