

SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6 (a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including protecting the health, safety and welfare of its citizens; and

WHEREAS, the City of Chicago desires that persons who conduct business within the city limits maintain open and honest business practices and deal fairly with consumers; and

WHEREAS, repossession agencies have long conducted business in the City of Chicago and their industry has gone relatively unregulated by the City or the State of Illinois although this industry has long been regulated elsewhere in the United States by other law-making bodies; and

WHEREAS, due to the nature of danger involved in repossessing a motor vehicle and other collateral, it is important that repossessors and repossession agencies be monitored by the City and that they carry credentials that will easily identify them to citizens whose property they repossess; and

WHEREAS, in an attempt to discourage any potential breach of the peace, licensed repossessors will be held to a certain standard of conduct, the violation of which will result in serious penalties, including possible jail time; and

WHEREAS, it is in the best interest of the citizens of the City of Chicago that their representatives in the City Council encourage the responsible repossession of property within the city limits; NOW, THEREFORE,

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

SECTION 1. The above recitals are expressly incorporated herein and made part hereof as though fully set forth herein.

SECTION 2. Title 4 of the Municipal Code of Chicago is hereby amended by creating a new chapter underscored as follows:

4-226 REPOSSESSORS

4-226-010 Definitions.

“City” means City of Chicago.

“Collateral” means any motor vehicle, boat, recreational vehicle, motor home, motorcycle, appliance or other personal property that is subject to a security agreement.

“Controlling person” means any person who: (1) is an officer, director, partner, general partner, limited partner, manager, managing member or member of any entity seeking or holding a license under this chapter; or (2) owns, directly or indirectly through one or more intermediate ownership entities, 25% or more of the interest in the applicant or licensee, as applicable.

“Debtor” means any person obligated under a security agreement.

“Department” means the department of business affairs and licensing.

“Director” means the director of the department of business affairs and licensing.

“Legal owner” means a person holding: (1) a security interest in any collateral that is subject to a security agreement, (2) a lien against any collateral, or (3) an interest in any collateral that is subject to a lease agreement.

“Licensee” means any person that holds or is required to hold a reposessor license under this chapter.

“Person” means an individual, corporation, partnership, or limited liability company.

“Photographic identification” means identification issued by a federal, state, or local governmental entity, including, but not limited to, a state driver’s license, state identification card, passport or military identification card.

“Repossessor” means any person that, for any type of consideration, engages in the business of or provides: skip tracing services, collateral locating services, collateral recovery services, recovered collateral transportation, recovered collateral storage, or any and all services relevant to any of the following:

- (1) the location, disposition, or recovery of collateral as authorized by the self-help provisions of the Uniform Commercial Code, 810 ILCS 5/1 et seq.;
- (2) the location, disposition, or recovery of lost or stolen collateral;
- (3) securing evidence concerning repossession and recovery to be used before any court, board, office, or investigating committee;
- (4) inventory of personal effects contained within recovered collateral;
- (5) the possession of collateral on behalf of a legal owner.

“Repossessor” does not include any of the following:

- (1) an attorney at law who is performing his or her legal duties;
- (2) the legal owner of collateral that is subject to a security agreement which is not engaged in the physical recovery of collateral within the City; and
- (3) an officer or employee of the United States of America, the State of Illinois, or the City, while the officer or employee is engaged in the performance of his or her official duties.

“Security agreement” means an obligation, pledge, mortgage, chattel mortgage, lease agreement, deposit, or lien, given by a debtor as security for payment or performance of his or her debt, by furnishing the creditor with a recourse to be used in case of failure in the principal obligation. “Security agreement” includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

4-226-020 License – Required.

(A) No person shall engage in the business of reposessor within the city without first having obtained a license pursuant to this chapter.

(B) If an entity requires a Class A license under this chapter, each employee of such entity shall require a Class B license under this chapter if such employee is engaged in the physical recovery of collateral within the City.

4-226-025 License – Classification.

Repossessor licenses shall be divided into the following classifications:

Class A License: This license authorizes a legal entity, other than a natural person, to engage in the business of reposessor.

Class B License: This license authorizes a natural person to engage in the business of reposessor.

4-226-030 Repossessor License – Application.

(A) Any application for a license under this chapter shall be made in conformance with the general requirements of the Code relating to application for licenses. Applicants shall also submit:

- (1) if applicable, the name, business address and business telephone number of the company or organization that employs or otherwise retains the applicant as a reposessor;

- (2) proof that the applicant has completed the Certified Asset Recovery Specialist (CARS) national certification program or any other national certification program approved by the director;
- (3) proof of liability insurance as required under section 4-226-090;
- (4) proof that the applicant and/or all controlling persons are at least 18 years of age;
- (5) the date of birth and social security number of each natural person named in the license application;
- (6) fingerprints of each applicant and each controlling person in accordance with procedures and regulations prescribed by the director; and
- (7) a statement as to whether the applicant or any controlling person has ever been convicted, in custody, under parole or under any other non-custodial supervision resulting from a conviction in a court of any jurisdiction for the commission of a felony or criminal offense of whatever degree involving theft, fraud, forgery, perjury, bribery, dishonesty, or deceit and if so, the circumstances surrounding each such conviction or finding of liability.

(B) It is a condition of the license that all information in the license application be kept current. Any change in required information shall be reported in writing to the director within 14 business days of such change.

4-226-040 License – Posting and badge required – Nontransferability.

(A) Each Class A license issued under this chapter shall be posted by the licensee in a conspicuous place near the entrance of the licensee's chief place of business.

(B) While engaged in the business of repossessor, each Class B licensee under this chapter shall: (1) at all such times carry on his or her person a copy of such license; and (2) upon request of the department or a member of the department of police produce a copy of such license and photographic identification as defined in Section 4-226-010; and (3) in a conspicuous place on the outside of such licensee's outer clothing, wear a badge issued by the City indicating that such individual is licensed as a repossessor under this chapter. Such badge shall state the licensee's full name and license number; the name of the licensee's employer; and the expiration date of the license.

(C) No transfer of ownership shall be allowed on any license issued under this chapter.

4-226-050 License renewal.

Each license issued under this chapter shall be renewed on the date indicated in Section 4-4-021. Provided, however, that if the holder of a Class B license issued under this chapter terminates his or her employment with the employer identified in the application for a Class B license, the holder of such Class B license shall be required to obtain a new Class B license prior to engaging in the business of reposessor with a new employer.

4-226-060 License fee.

The license fee shall be as set forth in Section 4-5-010.

4-226-070 Eligibility for license.

(A) No license under this chapter shall be issued to the following persons:

(1) any applicant who has not completed the Certified Asset Recovery Specialist (CARS) national certification program or any other national certification program approved by the director;

(2) any person whose license under this chapter has been revoked for cause at any time within the last four years;

(3) any person who has ever been convicted in a court of any jurisdiction for the commission or a felony or criminal offense of whatever degree involving theft, fraud, forgery, perjury, bribery, dishonesty, or deceit unless, upon request of such person, the director determines that such person has been substantially rehabilitated to warrant the public trust. The burden of proof of substantial rehabilitation shall be on the person seeking such rehabilitation; or

(4) any person under the age of 18 years of age.

(B) The prohibitions and requirements set forth in subsection (A) of this section shall apply to the licensee and to all controlling persons.

(C) Eligibility for issuance of a license under this section shall be a continuing requirement for maintaining a license under this chapter. Failure to maintain such eligibility may result in a license suspension or revocation in accordance with the requirements of Section 4-4-280 of this Code.

4-226-080 Prohibited acts

(A) It shall be unlawful for any licensee under this chapter to engage in any of the following conduct:

- (1) to obtain or conspire with others to obtain a license by inducing the issuance thereof in consideration for the payment of money or delivery of anything of value or by and through willful misrepresentation of facts to the department;
- (2) failure or refusal to comply with any provision of this chapter;
- (3) employment of any fraudulent or misleading device, method, or practice in connection with repossession;
- (4) circumvention of any provision or regulation relating to repossession including, but not limited to, the self-help provisions of the Uniform Commercial Code, 810 ILCS 5/1 et seq.; and
- (5) breach of the peace that includes threats or use of violence, unlawful breaking and entering of the collateral, or the intentional damaging of collateral.

4-226-090 Examinations

The department may authorize, implement and require examinations of applicants for licensure under this chapter at its discretion. The director shall promulgate rules governing the examinations and may employ consultants for the purposes of preparing and conducting examinations.

4-226-100 Insurance required

No license shall be issued under this chapter unless the applicant first files with the department a certificate of insurance that provides for a combined single limit policy in the amount of at least \$1,000,000, per occurrence, which shall include commercial general liability for wrongful repossession, garage keepers, on hook, drive-away, bodily injury and property damage arising in any way from issuance of the license.

Each policy of insurance required under this section shall: (1) be issued by an entity authorized to insure in Illinois; and (2) name the City as additional insured. The licensee shall maintain the insurance required under this section in full force and effect for the duration of the license period.

4-226-110 Duty to Cooperate

- (A) A licensee under this chapter shall have the following duties:
- (1) to comply with all reasonable requests made by any authorized city official necessary to implement the requirements of this chapter; and
 - (2) to cooperate fully with any authorized city official in any inquiry, inspection or investigation necessary or appropriate to implement the requirements of this chapter.
- (B) The duties set forth in subsection (A) of this section shall apply to the licensee and to all controlling persons.

4-226-120 License – Suspension or revocation.

Any violation of this chapter or any regulation promulgated thereunder may result in license suspension or revocation in accordance with the requirements of Section 4-4-280 of this Code.

4-226-130 Regulations.

The director shall have the authority to promulgate rules and regulations necessary to implement the requirements of this chapter.

4-226-140 Violation – Penalty

Any person who violates any provision of this chapter, who conspires with another person to violate any provision of this chapter, or who retains an unlicensed person to repossess collateral on his or her behalf is guilty of a misdemeanor punishable by a fine in the amount of \$2,500.00 per offense and/or imprisonment for a period not to exceed six months.

4-226-150 Severability

If any provision, clause, sentence, paragraph, section or part of this chapter or application thereof to any person or circumstance is held unconstitutional or otherwise invalid by a court of competent jurisdiction, such judgment shall not affect other provisions or applications of this chapter which can be given effect without the invalid application or provision, and to this end each such invalid provision or invalid application of this chapter is severable, unless otherwise provided by this chapter. It is hereby declared to be the legislative intent of the city council that this chapter would have been adopted had any such unconstitutional or otherwise invalid provision or application not been included.

SECTION 3. Section 4-5-010 of the Municipal Code of Chicago is hereby amended by adding the new language underscored as follows:

Document No. S02008 - 5484

PASSED by the City Council of the City of Chicago and deposited in the office of the City Clerk of said City.

OCT 08 2008

Margaret A. Daley
City Clerk
City of Chicago