

SPONSOR: Michael Opinker
5th District Councilman

ORDINANCE NO. 9329

**AN ORDINANCE TO CREATE A NEW SECTION OF CHAPTER 118 OF THE
HAMMOND MUNICIPAL CODE, TO PREVENT CELLULAR PHONE STORES,
RETAIL STORES, AND PAWN BROKERS LOCATED IN THE CITY OF HAMMOND
FROM UNLOCKING AND WIPING CELULAR PHONES AND TABLETS WITHOUT
PROPER AUTHORIZATION**

WHEREAS, §118 et seq. of the Hammond Municipal Code regulates operations for Pawn shops and scrap metal purchasers in the City of Hammond; and

WHEREAS, the Hammond Common Council wishes to include cellular store business that make money unlocking cellular phones and tablets in this section of the Municipal Code which regulates Pawn Shops and now treat both types of businesses similarly; and

WHEREAS, due the high price of stolen cellular phones and tablets, many cellular phone stores now accept these devices without verifying owner identity, and many of the devices unlocked and wiped by the stores are stolen but not yet reported as stolen to the mobile carrier; and

WHEREAS, Inadequate and incomplete record keeping by cellular phone stores for the unlocked merchandise allows thieves to quickly dispose of electronics without risk of identification, and the Hammond Common Council and Hammond Police Department wish to insure that items brought in for sale to such stores are the lawful property of the person disposing of them; and

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Hammond that Section §118.22 of the Hammond Municipal Code be amended to include as follows:

§118.XX CELLULAR PHONE STORES AND BUSINESSES THAT UNLOCK PHONES

- (A) Any person, entity or business licensed in the City of Hammond under any of the provisions of any of the Ordinances of the City of Hammond for the purpose of carrying on the business, full or part time, whether as a single trade business or as a part of an unrelated business, of being a cellular store, or electronic store, that purchases, unlocks or wipes electronic devices brought in by customers is covered by this ordinance and must have a license to engage in this business each year.
- (B) Any person, entity or business licensed in the City of Hammond under any of the provisions of any of the Ordinances of the City of Hammond for the purpose of carrying on the business, full or part time, whether as a single trade business or as a part of an unrelated business, of being a store that buys, sells, unlocks or wipes cellular phones or electronic devices, shall ask of every customer making an

exchange, deposit or sale transaction, a photographic identification.

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This photographic identification shall be verified, copied and kept with the receipt and photographs showing the date, time and items traded, deposited or sold by that person and shall be made available to the Hammond Police Department or any other Federal, State or Local Law Enforcement official when requested of the store.

(C) (i) For the purposes of this section:

1. The term “unlock” shall mean any process by which the software or hardware of a wireless communication device is modified so as to permit the device's use with a service provider other than the service provider initially associated with the device.
 2. The term “wireless communication device” shall mean any device through which personal wireless services, as defined in 47 U.S.C. 332(c)(7)(C)(i), are transmitted.
- (ii) Any person who unlocks, or attempts to unlock, a wireless communication device in the City of Hammond in exchange for a fee or other compensation must:
1. Require the requesting party to provide a driver's license or other government-issued identification showing the party's name, date of birth, and address. No minors may sell any electronic device without parental consent.
 2. Record the Mobile Equipment Identifier (MEID), International Mobile Station Equipment Identity (IMEI) or Electronic Serial Number (ESN) of the wireless communication device.
 3. Provide every day, before the hour of twelve noon, the information required in Subsections (ii)(1) and (ii)(2) to the Hammond Police Department, along with the name and address of the person offering the unlocking service, by submitting a Leads Online electronic reporting form.
 4. Comply with applicable restrictions or prohibitions on unlocking wireless communication devices set forth in federal statutes and regulations including 17 U.S.C. 1201(a)(1) and 17 U.S.C. 1202(b)(1), as interpreted by the Library of Congress Copyright Office and published in the Federal Register.
- (iii) It shall be a violation of this section to fail to comply with subsection (ii). This section shall be enforceable by the Hammond Police Department and Inspections Department Any person who violates this section shall be fined not less than \$500.00 nor more than \$2500.00 for each offense. Second and subsequent

offenses up to \$7500.00

- (D) Any person, business, corporation, company, pawn shop, cellular phone store, retail store, commercial purchaser or organization who violates this Ordinance for properly identifying the item's seller, or who violates this Ordinance requiring identifying and photographing merchandise or items received, shall have their City of Hammond business license revoked as per Section 119 et seq. of the Hammond Municipal code in addition to any fines imposed by the Hammond City Court.

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- (E) No phone or tablet brought in under this Ordinance may be "wiped" for a period of 24 hours or one business day, to allow for time for the unit be reported as stolen with the carrier/provider, or to be located with a phone app.

BE IT FURTHER ORDAINED, that if any part, paragraph, sentence, clause or provision of this Ordinance shall be held invalid, the remainder shall not be affected.

BE IT FURTHER ORDAINED, this Ordinance shall be in full force and effect after its passage by the Common Council and approval by the Mayor.

Michael Opinker, President /s/
Common Council

ATTEST:

Robert J. Golec, City Clerk /s/

PRESENTED TO ME, the undersigned City Clerk of the City of Hammond to the Mayor of said City for his approval on the 15th day of December, 2015.

Robert J. Golec, City Clerk /s/

The foregoing Ordinance No. 9329, consisting of three (3) typewritten pages, including this page, was approved by the Mayor on the 18th day of December, 2015.

Thomas M. McDermott, Jr., Mayor /s/
City of Hammond, Indiana

ADOPTED by the Common Council on the 14th day of December, 2015 and approved by the Mayor on the 18th day of December, 2015.

Robert J. Golec, City Clerk /s/