

ORDINANCE NO. 5938

AN ORDINANCE TO AMEND CHAPTER 5.36 OF THE RAPID CITY MUNICIPAL CODE TO UPDATE THE LICENSING FRAMEWORK APPLICABLE TO PAWNBROKERS AND SECONDHAND DEALERS, AND TO INCORPORATE GEMS AND PRECIOUS METALS DEALERS UNDER THIS CHAPTER.

WHEREAS, the City of Rapid City maintains a licensing and regulatory framework for all pawnbrokers and secondhand dealers pursuant to the authority granted by Chapter 9-34 of the South Dakota Codified Laws; and

WHEREAS, the City recognizes a need to revise the existing provisions contained in Chapter 5.36 of the Rapid City Municipal Code, as many of the provision have become outdated or do not represent the most efficient method of regulation; and

WHEREAS, the prior repeal of Chapter 5.40 of the municipal code “Dealers in Precious Metals and Gems,” created a void in the licensing and regulatory framework as applied to this type of dealer; and

WHEREAS, the City deems it necessary to maintain a functional and efficient set of licensing provisions to regulate the trade of pawnbrokers, secondhand dealers, and gems and precious metals dealers; and

WHEREAS, the proposed amendments to the existing Chapter 5.36 of the Rapid City Municipal Code will provide the necessary changes to bring the regulatory framework within current industry practices, remedy outdated provisions, provide clarification, and eliminate redundancy.

NOW THEREFORE, BE IT ORDAINED, by the City of Rapid City, that Chapter 5.36 of the Rapid City Municipal Code is hereby amended through the adoption of the amendments as follows:

Chapter 5.36 – Pawnbrokers, Secondhand Dealers, and Gems and Precious Metals Dealers

5.36.010 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. ***BULLION***. Refers to gold, silver, platinum or other precious metal in the form of bars, coins, or any other form, with a purity rating of 95 percent or greater.

B. ***CRIME OF THEFT OR DISHONESTY***. Shall include perjury, false official statement, robbery, theft, burglary, forgery, counterfeiting, or identity crimes as defined by South Dakota Codified Law.

C. ***GEMS AND PRECIOUS METALS DEALER***. Any person who holds oneself out to the public as engaging in the regular business of purchasing from the general public, for the purpose of resale, any precious metals, precious gems, or numismatic coins. This term shall not include those businesses for which the sale of new items at retail constitutes at least 75% of regular business transactions for at least 10 months per calendar year.

D. **NUMISMATIC COINS.** Any investment grade coin whose value is in excess of its bullion or metal value, or whose value is in excess of its legal tender value.

E. **PAWNBROKER.** Any person who holds oneself out to the public as engaging in the regular business of lending money on the deposit or pledge of tangible personal property, other than securities or evidence of indebtedness, with an understanding or agreement to sell back or return the property to the person at a stipulated price.

F. **PERSON.** Any individual, partnership, corporation, association, or any other legal entity, and/or any agent or employee thereof.

G. **PRECIOUS GEM.** Diamonds, emeralds, rubies, sapphires, pearls, and other precious or semi-precious gemstones or minerals, or any article made, in whole or in part, of the gems.

H. **PRECIOUS METAL.** Gold, silver, platinum, palladium, and any other precious or semi-precious metals, or any article made, in whole or in part, of such metals. This definition shall not include those items which may contain nominal quantities of such metals, the value of which has little or negligible value on the items worth.

I. **REGULATED TRANSACTION.** The receipt of tangible personal property in purchase or pawn by a licensee, or any person acting on behalf of a licensee under this chapter.

J. **SECONDHAND DEALER.** Any person who holds oneself out to the public as engaging in the regular business of purchasing from the general public, for the purpose of resale, the following secondhand goods; business machines, electronics, musical instruments, tools, sporting goods, weapons, bicycles, and appliances. This definition shall exempt the following transactions:

1. Any person receiving used items from the purchaser of new items, the value of which is set against the purchase price of the new item which is sold at market value and the sale of new items represents at least 75% of the receiver's business for at least 10 months per calendar year.
2. Transactions involving goods sold on consignment; and
3. Transactions in secondhand goods at stores or events sponsored by nonprofit corporations or associations, or fraternal or religious organizations.

5.36.020 License – Required.

A. It is unlawful for any person to engage in the business of a pawnbroker, secondhand dealer, or gems and precious metals dealer without first obtaining a license from the city's Finance Office. Any person operating such a business without a duly issued license shall be in violation of this code and shall be subject to the general penalty provisions of Chapter 1.12 and those penalties permitted under state law, each day of operation without a valid license shall constitute a separate offense.

B. The application for the license shall contain all pertinent information required by Chapter 5.04 of this code and the city's Finance Office, and shall be issued and governed in accordance with Chapter 5.04.

C. Licensing application requirements under this chapter shall apply to the primary owner/operator of a single premises and any license issued pursuant to these provisions shall be sufficient for all employees located at the premises designated on the license.

5.36.030 Unauthorized licensee.

Any person applying for a license under this chapter must, before their application will be considered, appear at the Rapid City Police Department and furnish adequate identification and authorization to enable a criminal background history search to be performed. No license shall be issued to any person, who within the preceding 5 years has received one felony class or 3 misdemeanor class convictions for a crime of theft or dishonesty as defined by this chapter.

5.36.040 License – Fees and term.

A. The licensing fee for a license under this chapter shall be \$50 payable in advance. A license shall remain valid for a period of 24 months from the date of issuance, unless sooner revoked, canceled, or otherwise terminated.

B. Any person having a business which encompasses more than 1 of the designated categories set forth in this chapter, and all businesses are conducted on a single premises, shall obtain all appropriate licenses applicable to such businesses, but the total licensing fee for a single premises shall not exceed \$50.

C. Any person conducting several or separate places of business shall pay the appropriate license fees and procure the appropriate licenses for each place of business.

5.36.050 License – Display.

Any licenses required by § 5.36.020 shall at all times be on display in a conspicuous place and available for inspection by city police officers during reasonable business hours. This section shall not apply when the license is being taken to the city's Finance Office to have a change of location recorded.

5.36.060 Fixed premises required.

A. Any person licensed under this chapter must maintain a fixed premises where the business is conducted, either on a continuing basis or from time to time.

B. For the purposes of this section, fixed premises shall include any non-mobile premises where the business is conducted and the pawned or purchased items are held, whether or not that premises remains in the same location during the period the license is in effect.

C. If, during the effective period of a license issued under this chapter, a licensee changes the location of the licensed premises within the city, the licensee shall inform the city's Finance Office of the change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises.

5.36.070 License – Revocation and suspension.

A. A license issued to a licensee under this chapter may be revoked, or suspended for a period not to exceed 60 days, by the Common Council for violating the provisions of this chapter. A violation of this chapter by any person acting as an employee of licensee shall constitute a violation on part of the licensee.

B. Prior to any license revocation or suspension, the licensee shall be provided 10-days' written notice, at the address of the licensed premises, specifying that a public revocation/suspension hearing will be held before the Commission Council to determine the nature of alleged violations and to provide a decision of revocation/suspension, or the need for additional hearings.

C. It shall be the duty of the Chief of Police or his or her designee, to maintain active files on all licensed premises, documenting all violations of this chapter. A copy of this file shall be made available at any license revocation/suspension hearing.

D. A license revocation/suspension hearing shall be commenced at the request of the Chief of Police. At least 5 days prior to the commencement of any revocation/suspension hearing, the file specified in part (C) of this section shall be provided to the licensee and the licensee shall have an opportunity to respond to the alleged violations.

5.36.080 Recordkeeping requirements.

A. Every licensee under this chapter shall keep records of all regulated transactions, in which he or she shall obtain and accurately record the following information:

1. A scanned copy of the person's drivers license, or alternate form of government-issued identification with identifying photograph and number; such scanned copy shall be of sufficient resolution to allow all letters, numbers, and pictures to be readily identifiable;
2. Photographs of the item being purchased or received, taken with a digital camera of sufficient resolution and from a reasonable distance to permit the specific characteristics and details of the item to be readily identifiable;
3. A photograph of the item's serial number taken with a digital camera of sufficient resolution and from a reasonable distance to permit all numbers to be readily identifiable;
4. The date and time of transaction;
5. The amount paid for the item or necessary for redemption; and
6. The date when the item is to be redeemed if the item is held on deposit or pledge.

B. A licensee under this chapter must own, maintain, and operate a computer system with internet access and keep a subscription service to the LeadsOnline (leadsonline.com) database. If approved by the Chief of Police, a licensee may utilize an alternate computer-based recordkeeping system capable of input and storage of all information to be gathered in part (A) of this section. All information obtained under part (A) of this section, shall be entered into LeadsOnline or approved alternate recordkeeping system on the date of the regulated transaction.

C. Every pawnbroker shall also record the date of disposition or redemption from pawn of an item or any portion thereof. The disposition report shall be noted with the receiving records required under part (A) of this section.

D. The records required by this section shall be maintained for a period of 2 years following a regulated transaction.

E. Any person who fails to keep the records or make the required entries identified in this section, or who shall intentionally or knowingly make any false or unintelligible entry, or any entry which he or she has reason to believe is untrue, or who shall fail to make the inquiries necessary to enable him or her to make the entries, or who shall destroy or willfully permit the records to be destroyed or lost, shall be in violation of this chapter.

5.36.090 Holding periods.

A. Any licensee who purchases or receives new or used items through a regulated transaction, shall hold the items received on the licensed premises and shall not dispose of nor alter an item from the form in which it was received, for a period of 5 business days, excluding Saturdays, Sundays, and calendar holidays, following a regulated transaction.

B. When items are acquired in a group or lot, they shall be kept together for identification purposes and shall not be separated until the 5-day holding period in part (A) of this section has elapsed.

C. Any article which is taken in pawn by a pawnbroker shall not be shown either for sale or for inspection to any person, other than a city police officer, during the time period set for redemption.

5.36.100 Hold Period – Exemption.

A. The provisions of 5.36.090 (A) & (B) shall not apply to the purchase, receipt, and sale of items which the person selling or releasing such items is able to provide proof of rightful ownership through original bill of sale, or written or verbal statement provided by the original merchant seller attesting to the person's rightful ownership of the item. To be deemed sufficient proof of rightful ownership, any attesting merchant under this section must be in the regular business of buying or selling commodities to the public and must maintain an established physical place of business.

B. The provisions of 5.36.090 (A) & (B) shall not apply to the purchase, receipt, and sale of bullion and numismatic coins as defined by this chapter.

5.36.110 Hold orders.

The Chief of Police or any authorized law enforcement officer may, by written order, require a licensee to hold any specified item, deposited with or in the custody of the licensee, for purposes of investigation by the Police Department when the item is believed lost or stolen. A hold order shall remain in effect for a period of 40 days commencing the day the hold order is delivered to the licensed establishment. A hold order shall supersede the provisions of 5.36.090 and 5.36.100, and no sale or other disposition may be made of the item while the hold order remains outstanding, unless released by the officer issuing the hold order.

5.36.120 Lost or stolen property.

A. No licensee or employee thereof, shall receive any item through a regulated transaction which is lost or stolen. No licensee shall receive any item from any person who is not the true owner of the item or who is not authorized by the owner to release such item in purchase or pawn. Ignorance as to the ownership status of any item received will not excuse a failure to comply with this section if a licensee fails or refuses to make reasonable inquiry as to the ownership status or disregards reasonable indications that an item is lost or stolen.

B. Any licensee under this chapter who receives an item from any person, who is not the rightful owner, obtains no property right or interest in the article. Ignorance of the fact that an item received was lost or stolen shall not affect the question of title.

5.36.130 Transactions with minors – Prohibited.

It is unlawful for any licensee under this chapter to receive any item in purchase or pawn from any person less than 18 years of age, unless that person is accompanied by a legal guardian who consents in writing to the sale and the identifying information specified in part 5.36.080 of this chapter is obtained from the legal guardian.

5.36.140 Inspection–Police Department’s authority.

A. It shall be the duty of the Rapid City Police Department to periodically make physical inspection of a licensed premises for the purpose of verifying compliance with this chapter. The records required by § 5.36.080 and items received in a regulated transaction shall be kept on the licensed premises and shall be open to inspection by city police officers during regular business hours.

B. Any licensee under this chapter who shall fail or refuse access to records, items received, or licensed premises by an authorized officer of the Rapid City Police Department for purposes of compliance verification or investigation of stolen property, shall be in violation of this chapter.

5.36.150 Transient trade shows.

A. Transient trade shows in the business of buying, selling, new or used tangible personal property shall provide, upon request of the Rapid City Police Department, a list of all transactions relating to the purchase, sale, exchange, and trade of any and all items that occurred within the city limits during the period of the trade show.

B. Transient trade shows shall be exempt from all requirements and restrictions contained in 5.36.020 through 5.36.080 of this chapter.

Sam Kooiker, Mayor

ATTEST:

Pauline Sumption, Finance Officer

First Reading: _____
Second Reading: _____
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