



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## OFFICE OF THE CITY ATTORNEY

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### MEMORANDUM

TO: Mayor Sam Kooiker  
Legal & Finance Committee

FROM: Ryan Soye, Assistant City Attorney

DATE: June 21, 2013

RE: Ordinance No. 5938

As you are aware, over the last several months the City Attorney's Office has been working with law enforcement, private citizens, and industry representatives to amend the existing Chapter 5.36 of the Rapid City Municipal Code. This chapter controls the licensing framework and regulations applicable to pawnbrokers and secondhand dealers. The proposed amended ordinance is meant to accomplish two purposes. First, the proposed ordinance will fill a void in the licensing framework as it applies to gems and precious metals dealers. This void was created through the prior repeal of Chapter 5.40 of the code. Second, the proposed ordinance will update the existing language and regulations contained in Chapter 5.36, which was drafted over 30 years ago. During the revision process, we have reached out to a number of industry representatives and included these individuals in the drafting process to achieve the most workable regulatory scheme possible. Shortly before this ordinance appeared on the committee agenda, we had the opportunity to meet with a group of pawnbroker representatives who had not previously been involved in the drafting process. Following this meeting, we determined additional consideration of the comments received was necessary to determine if the suggested changes should be accommodated in the ordinance. Although not all suggestions were incorporated in this updated ordinance, all matters were discussed internally and researched to determine if the changes were prudent. Following is a brief overview of the substantive suggested changes we received from the pawnbrokers and an explanation of why we felt such changes should or should not be included. As some of the recommendations received by the industry representatives were implemented in this updated ordinance, which included the removal of certain provisions and



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language, when referencing the changes discussed below, please refer to the initial proposed ordinance for such language.

#### **5.36.010: Definitions: Definitions (C) & (J)**

During our discussion with the pawnbroker representatives, there was a concern raised with respect to the portion of these definitions that reads, “[t]his 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.” During the drafting process, this language was initially included in Part (J)(1), which defines a secondhand dealer. The exemption was applied because stores such as BestBuy, Target, and Walmart, provide a service in which an individual may trade in certain specific items in exchange for a setoff to the purchase price of a new item or for an in-store gift card. This theory was then applied to the definition of gems and precious metals dealers in order to exempt businesses such as Riddles and Stampers, where the mass majority of businesses transactions consists of the sale of new items at retail. The industry representatives are concerned these exceptions provide an unfair competitive advantage for these larger retailers at the expense of small local businesses. We partially agree with the concern. The primary driving factor behind the push to amend this ordinance is the recent issues the Rapid City Police Department has observed in the trade of stolen goods and the difficulty in tracking these items when a stolen property report is received. With respect to the service provided by the big box stores, we feel the definition should remain. The PD has not observed a large number of stolen items being passed through these stores and we attribute this to the fact the stores do not provide cash in exchange for the traded items. In addition, these businesses generally maintain records sufficient to identify the seller and the product if an item does end up being lost or stolen. However, with respect to the exemption for gems and precious metals dealers, we believe this concern is legitimate. Unlike the exemption for the trade of secondhand goods, in the case of purchasing gems and precious metals from the public, there is no differentiation in the service provided by small dealers and larger businesses. Although, we do not currently experience the same level of trade in stolen property at the larger retail providers, we understand this could eventually occur if we regulate only a portion of this activity. As such, this specific exemption was removed from the definition of gems and precious metals dealers.

#### **5.36.070: License – Revocation & Suspension**

The industry representatives were very concerned on this specific provision as they stated a 60-day suspension could put a dealer out of business. They wanted to see something more definite, or a tiered system. However, we maintained our original language on this provision as we believe requiring a hearing before the Council will best serve the interests of all parties. Unlike a tiered system of specific outcomes for a specific number of violations of the code, by requiring any suspension or revocation request to be heard by the Council, all relevant circumstances can be considered. For instance, if a new employee takes in an item that is stolen on his or her first day of work without approval, but then gets fired for that action the following day, one may argue the licensee should not receive the same suspension if he or she had personally taken that same item after years of experience. As any hearing would require facts be presented to the Council, who then decide on a suspension or revocation, this greatly reduces the risk of a dealer’s license being suspended or revoked for minor violations. With respect to effective enforcement, under the current ordinance, a violation of the code warrants issuance of a class 2

misdemeanor. Experience has shown, this provides little, if any, deterrent effect to some individuals and this has greatly impeded the effective enforcement of this licensing scheme. Without the proper deterrent to continual or egregious violation of the code, we do not believe the revised ordinance will be effective in stifling the trade of stolen goods.

**5.36.080(3): Recordkeeping requirements - Photographs of items serial numbers.**

There has been disagreement over the ability and time it takes to photograph the serial number of each item taken in. As the current ordinance already requires that each serial number for items received be recorded, we feel the additional time of photographing this number would be minimal. In addition to this concern, the industry representatives have argued the ability of modern cameras to provide a clear photograph of a serial number on certain items, such as modern electronics, may be difficult if impossible. Although there may be certain circumstances when a photograph of a serial number may be unclear, in many circumstances it would be sufficient. The interest behind this provision is the added surety it would provide the PD in tracking lost or stolen items. The LeadsOnline system allows a search for stolen property to be performed through input of a serial number. With this information, attempting to locate a stolen article would take very little time and would produce definite results. Due to the added benefit this requirement would provide in lost or stolen property investigations, we did not remove this provision from this ordinance.

**5.36.090 Holding periods: Holding items on the licensed premises.**

In this section, several industry representatives expressed concern over the change in language that required a licensee to hold all items received "on the licensed premises" during relevant holding periods. The current Chapter 5.36 provides that items received can be held "on the licensed premises, or some other secure location within the city." The language referring to "some other secure location" was removed as storage of items off the licensed premises can impede a lost or stolen property investigation. When items are stored off the licensed premises, this may require a licensee to leave the premises during regular business hours and either obtain the property from the alternate location or the allow the PD to accompany the licensee to this location. At time the alternate location can be the licensee's private residence, storage facility, or elsewhere. If a licensee is busy at the licensed premises, obtaining an item or sales record can prove difficult. Nevertheless, having discussed this matter further with the industry representatives, we understand that some licensee do not hold sufficient storage space on a licensed premises to hold all items at all times. To accommodate this issue, the language referring to "some other secure location within the city" was replaced in the proposed ordinance.

**5.36.100: Hold Period – Exemptions.**

Concern was expressed over the provisions contained in this section of the proposed ordinance. The primary issue of this section focused on the exemption as it applied to bullion. While drafting this ordinance, some of the gems and precious metals dealers stated a desire to eliminate a holding period on investment grade metals. These dealers stated the price fluctuation in investment grade metals makes a holding period overly burdensome due to the large capital investment required to purchase these metals and the small profit margin realized when the metals are sold. However, a number of the pawnbroker representatives expressed a concern this would provide certain dealers with an unfair competitive advantage. When the prior Chapter

5.40 was repealed, any holding period for gems and precious metals was removed. Apparently, this caused a large portion of the business to be directed towards dealers trading exclusively in gems and precious metals and away from the general pawnbrokers. As the pawnbrokers have been required to conform to a 10-day holding period for such items over the last several years, they wanted to see this removed to place all dealers back on a level playing field. Although a holding period was not a great concern for the PD as the new electronic record keeping requirements will allow these items to be tracked more efficiently, a short holding period will assist in stolen property investigations. As such, we have removed these exemptions from the updated ordinance and the 5-day holding period now applies to any item received by a licensee.

#### **5.36.120(B): Lost or Stolen Property.**

Several industry representatives expressed concern over the language contained in Part (B) of this section. Specifically, this stated, “[a]ny 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.” Although this language is carried over from the existing Chapter 5.36, the industry representatives feel it creates an unfair burden on them when an item is purchased and later turns out to be lost or stolen. Certainly, there are times when a local dealer will receive an item and there is nothing to indicate the item is lost or stolen. In addition, if the dealer expends funds on purchasing an item which is later confiscated for investigative purposes, there is a loss to the dealer. To avoid the imposition of any unfair burden on the dealers, this language was removed and the general rules of law will apply to determine the property interest of a dealer in these situations.

#### **Additional Provision Requested: Prohibition against the sale of lost or stolen items to a dealer.**

The proposed ordinance already prohibits the receipt of lost or stolen property by a dealer. However, the dealers have expressed a concern that when a lost or stolen item is received and later taken by the PD as evidence, they have no way to recoup the money they spent to purchasing the item. A problem often faced in stolen property cases is when a family member or person known to the victim takes property from the victim and sells to a local dealer. When the items are found at a local business, often times the victim will refuse to proceed with the charges against the family member or friend. However, in these circumstances the standard practice has been that a victim must proceed with charges and the item seized for evidence, or the victim must reimburse the dealer for the money spent on purchasing the item from the individual who stole the item. As such, in these circumstances, there is nothing lost by the dealer other than the potential profit that could be made through sale of the item. In other circumstances, when an item is found to be stolen and charges are filed, complications will arise preventing the charges from going forward. This may involve something like a witness refusing to testify. In these circumstances, a local dealer can be left without the ability to recoup the money spent on the item as the property is returned to the victim and there is no opportunity for reimbursement through reimbursement as the matter never reached the courts. Initially, we considered a proposition offered by the industry representatives to include a new provision in the ordinance that would allow the city to proceed against the criminal and seek restitution. However, after discussing this issue, we realized such a provision would not remedy the issues previously identified. If a victim refuses to press charges or a criminal case cannot proceed due to other

issues, the City Attorney's Office would have no more authority or ability to seek restitution than the State's Attorney's Office. As such this would require a large number of hours being expended by the City Attorney's Office to pursue these matters without the ability to improve the current situation. Although, we believe this represents a legitimate concern, we do not believe adding this provision is the proper course of action. After speaking with the Sioux Falls City Attorney's Office, we discovered the City of Sioux Falls holds a short hearing on the release of items taken into evidence when several individuals claim a proprietary interest over these items. At such a hearing all interested parties may appear and the court will decide the status of the property and the claims of the individuals. We would like to see this same process implemented in Rapid City.