

Ordinance No. 6213

AN ORDINANCE AMENDING CHAPTER 5.36 OF THE RAPID CITY MUNICIPAL CODE RELATING TO PAWNBROKERS, SECONDHAND DEALERS, AND GEMS AND PRECIOUS METALS DEALERS

WHEREAS, the City of Rapid City has adopted provisions concerning pawnbrokers, secondhand dealers, and gems and precious metals dealers in Chapter 5.36 of the Rapid City Municipal Code, entitled “Pawnbrokers, Secondhand Dealers and Gems and Precious Metals Dealers”; and

WHEREAS, the Common Council of the City of Rapid City deems it to be in the City’s best interests to amend Chapter 5.36 to make necessary modifications to the licensing requirements, to reenact subsection 5.36.080-A.2 regarding photographs of all jewelry purchased or received, to clarify the recordkeeping requirements, and to make modifications to the license revocation provisions.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City that Chapter 5.36 of the Rapid City Municipal Code is hereby amended to read in its entirety as follows:

CHAPTER 5.36: PAWNBROKERS, SECONDHAND DEALERS, AND GEMS AND PRECIOUS METALS DEALERS

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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.** Gold, silver, platinum or other precious metal in the form of bars, coins, or

any other form, with a purity rating of 90% or greater.

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

C. *CRIME OF VIOLENCE.* Includes murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in SDCL 22-22-7, felony child abuse as defined in SDCL 26-10-1, or any other felony in the commission of which the perpetrator used force, was armed with a dangerous weapon, or used any explosive or destructive device as defined by South Dakota Codified Law.

D. *DRUG-RELATED OFFENSE.* Includes unauthorized manufacture, distribution, counterfeiting, or possession of controlled drug or substance, obtaining possession of controlled substance by theft, misrepresentation, forgery or fraud, or keeping place for use or sale of a controlled substance as defined by South Dakota Codified Law.

~~C.~~**E. *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.

~~D.~~**F. *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.~~**G. *PAWNBROKER.*** Any person who holds oneself out to the public as engaging in the regular business of:

1. Lending money on the deposit or pledge of tangible personal property as collateral, other than choices in action, securities or evidence of indebtedness.
2. Purchasing tangible personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price.

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

~~G.~~**I. *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.~~**J. *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.~~**K. *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.L.~~ **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 through immediate exchange or provision of in-store credit, and the sale of new items represents at least 75% of the receiver's business income 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.

~~K.M.~~ **TRADESHOW.** An exhibition, consisting at a minimum of 5 dealers in secondhand goods or gems and precious metals, organized to participate in the trade of such items during a designated period of time, either on an isolated or recurring basis. Any business having a fixed location within city limits, where the exchange of such items is conducted on a regular basis, shall not be deemed a trade show for purposes of this chapter.

N. **WEAPONS OFFENSES.** Includes possession of firearm with altered serial number, possession of controlled weapon, concealment of weapon with intent to commit a felony, commission of a felony while armed with firearms, or possession of a firearm by one with prior violent or drug-related conviction as defined by South Dakota Codified Law.

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 a license shall contain all pertinent information required by this chapter and Chapter 5.04 of this code and the city's Finance Office, and shall be issued and governed in accordance with this chapter and 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. An application for a license must be made on an application provided by Rapid City.~~

D. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide the information (including fingerprints) so as to enable Rapid City to determine whether the applicant meets the qualifications established in this chapter. Failure to disclose a complete history of criminal convictions will result in a denial of the license.

E. If a person who wishes to operate a business for which a license is required under this chapter is an individual, the person must sign the application for a license as the applicant. If a person who wishes to operate a business for which a license is required is other than an individual, each individual who has any financial interest in the business must sign the application for a license as an applicant and must specify each individual's financial interest. If there are more than five individuals with financial interests in the business, the people with the top five financial interests (by percentage of total financial interest) in the business must sign the application as an applicant and specify each individual's financial interest.

Each applicant must be qualified under the requirements of this chapter. If one of a business's applicants is not qualified under the requirements of this chapter, the entire business's license shall be denied. Each applicant shall be considered a licensee if a license is granted.

If an individual holds or gains a top five financial interest (by percentage of total financial interest) in a business for which a license is required and the individual has not signed an application as an applicant, the individual must file an application for a license. The individual must be qualified under the requirements of this chapter in order to hold a top five financial interest in a business for which a license is required. If the individual is not qualified under the requirements of this chapter, the individual will not be eligible to be considered a licensee, and thus may not hold a top five financial interest in the business. Even an individual who is holding a top five financial interest under a license granted before the effective date of this provision is subject to this requirement.

1. An individual is exempt from the requirement above if there are more than five individuals with financial interests and the individual will not hold one of the top five financial interests (by percentage of total financial interest). If an individual receiving this exemption will gain a top five financial interest, the individual will no longer be eligible for this exemption upon gaining such interest.

F. Any license issued pursuant to these provisions shall be sufficient for all employees (that do not have a top five financial interest in the business) located at the premises designated on the license.

5.36.030 Unauthorized license.

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 either one felony-class conviction for a crime of theft or dishonesty, a drug-related offense, a weapons offense, a crime of violence offense, or 3 misdemeanor-class convictions for ~~of~~ 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 under this chapter may be revoked, or suspended for a designated period of days, by the Common Council for violating the provisions of this chapter. Any suspension period under this chapter shall be at the discretion of the Common Council but in no circumstances shall exceed a period of 20 days. A violation of this chapter by any person acting as an employee of a licensee shall constitute a violation on part of the licensee.

B. A license issued under this chapter shall be revoked if a licensee is either convicted of a felony-class crime of theft or dishonesty, a drug-related offense, a weapons offense, a crime of violence offense or convicted of at least three misdemeanor-class crimes of theft or dishonesty as defined by this chapter. If the business for which a license is required under this chapter has more than one licensee operating it, a revocation of one licensee's license under this provision does not impair another licensee from continuing to operate the business independently of the person whose license was revoked. The person whose license was revoked shall not have any financial interest in a business for which a license is required under this chapter for at least five years from the date of revocation.

~~B.C.~~ 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 Common Council to determine the nature of alleged violations and to provide a decision of revocation/suspension, or the need for additional hearings.

~~C.D.~~ 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. Whenever documenting a violation of this chapter, a copy of the stated violation shall be provided to the licensee at the address on file. A licensee, who is subject to a documented violation, shall have the opportunity to submit a responsive statement to be included in the file. Any responsive statement must be received by the Rapid City Police Department no later than 30 days following receipt of the violation notice by the licensee.

~~D.E.~~ 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 subsection ~~C.D.~~ 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 driver's 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 all jewelry 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;~~Photographs of all jewelry 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. ~~If available, the manufacturer's name, style or model number, and serial number of the item;~~An accurate and detailed account and description of each article purchased or received,

including, but not limited to, any and all trademarks, identification numbers, serial numbers, model numbers, owner-applied number, engraved initials, brand names, or other identifying marks;

4. The date and time of transaction;
5. The amount paid for the item or necessary for redemption;
6. The date when the item is to be redeemed if the item is held on deposit ~~or pledge~~; and
7. A written declaration of the customer's ownership stating the following: whether the tangible personal property is solely owned by the customer and, if not solely owned by the customer, the customer shall attach a power of attorney from all co-owners of the property authorizing the customer to sell or otherwise dispose of the property; how long the customer has owned the property; whether the customer or someone else found the property; and, if the property was found, the details of the finding. The customer shall print and sign his name in such register in the presence of the pawnbroker and on the declaration of ownership.

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 subsection A. of this section. All information obtained under subsection 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 subsection A. of this section.

D. The records required by this section shall be maintained for a period of 1 year 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.

~~F. The provision contained in subsection A.2. of this section, requiring photographs to be taken of all jewelry which is purchased or received by a licensee, is subject to a sunset provision and will cause this requirement to expire 1 year from the effective date of Ord. 5938, unless reenacted by the Common Council as a permanent addition to this section.~~

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, or some other secure location within the city, 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 subsection A. of this section has elapsed.

5.36.100 Hold period-Exemption.

The provisions of § 5.36.090 shall not apply to the purchase, receipt, and sale of items when the person selling or releasing such items to a licensee 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.

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 a licensee, for purposes of investigation by the Police Department when the item is believed to be lost or stolen. A hold order shall remain in effect for a period of 40 days commencing the day on which 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 an officer of the Rapid City Police Department.

5.36.120 Lost or stolen property.

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.

5.36.130 Prohibited transactions.~~Transactions with minors Prohibited.~~

A. 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 § 5.36.080 of this chapter is obtained from the legal guardian.

B. It is unlawful for any licensee under this chapter to receive any item in purchase or pawn if doing so would violate state or federal law.

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, or some other secure location within the city, and shall be open to inspection by city police officers during reasonable business hours.

B. Any licensee under this chapter who shall fail to provide or refuse access to records, items received, licensed premises, or alternate storage location, 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. Upon request of the Rapid City Police Department, the organizer of a trade show held within the city limits, shall provide a list of all transactions relating to the purchase, sale, exchange, and trade of any and all items that occurred during the period of the trade show.

B. Trade shows shall be exempt from all requirements and restrictions contained in §§ 5.36.020 through 5.36.100 of this chapter.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

First Reading:
Second Reading:
Published:
Effective: