

COUNCIL ACTION FORM

**SUBJECT: ORDINANCE REQUIRING ELECTRONIC REPORTING OF
SECONDHAND GOODS TRANSACTIONS**

BACKGROUND:

At the March 3, 2015 City Council meeting, the City Council directed staff to develop an ordinance requiring electronic reporting of secondhand goods purchases. The attached ordinance borrows largely from that used by other communities in incorporates the following components:

Secondhand Good – This term has effectively been defined as previously owned tangible personal property. “Tangible personal property” has been defined separately using a list of common items that have value and are transacted among secondhand dealers.

Electronic Reporting – Requires anyone buying secondhand goods to report their purchases to an electronic records system designated by the Chief of Police. Chief Cychoz intends to designate Leads Online as that system. Because itinerant dealers do not always have ready access to the internet, those dealers have the option of reporting electronically or continuing to bring their physical record books to the Police Department for photocopying prior to leaving the area.

Dealer’s Permits – Pawnbrokers and itinerant dealers are still required to obtain dealers permits; other secondhand stores, such as stores that buy jewelry or electronics, do not have to obtain a Dealer’s Permit.

Records – Details of the items, seller, and transaction must be recorded. If an item lacks a serial or model number, an overall photo of the item(s) must be submitted.

Reporting Exemptions – **Numismatic coins, books and textbooks, and transactions that take place at auctions or garage sales are not subject to the reporting requirements. Additionally, transactions between private individuals not subject to state taxes are exempted.**

Holding Period – All items must be held for 10 days prior to sale or disposal. There are two existing exceptions to this requirement: (1) when written permission is granted by the Chief of Police, and (2) when a person who pawned an item reclaims it. **A third exception has been added to permit disposal of the item before ten days if the item is bullion.** Bullion has been specifically defined in the ordinance.

Intentional Misrepresentation of a Record – An additional prohibition has been added to the ordinance to make it unlawful for a person to intentionally misrepresent or falsify any of the information required to be reported.

Additionally, a handful of typographical errors in this section have been corrected.

The City Attorney's Office recommended that the fine of \$50 for a first offense and \$100 for a second offense be increased to \$100 for a first violation and \$200 for a repeat violation. This brings the fine for violating this ordinance in line with other similar offenses. Alternatively, any violation can be charged as a simple misdemeanor.

ALTERNATIVES:

1. Approve on first reading the attached ordinance regarding electronic reporting and expanded reporting requirements for dealers of secondhand goods.
2. Direct staff to modify the ordinance.
3. Do not approve the attached ordinance.

MANAGER'S RECOMMENDED ACTION:

The City Council has directed staff to develop this ordinance revising the reporting requirements for secondhand dealers. It modernizes the recordkeeping process and, per the City Council's direction, eliminates the holding period for bullion and exempts numismatic coins from the reporting and holding process.

City staff understands that opposition remains to this proposal from some of the affected local businesses. Staff has worked to address some of those concerns through modifications to the draft ordinance language. The attached draft is consistent with the language found in other ordinances in Iowa communities. City staff believes this is an enforceable, fair, and helpful tool for law enforcement to address theft. If the City Council feels that exceptions or further modifications should be made, it can direct staff to incorporate revisions into a new draft ordinance.

Assuming the City Council intends to adopt an ordinance that uses language similar to that of other communities in Iowa, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving on first reading the attached ordinance regarding electronic reporting and expanded reporting requirements for dealers of secondhand goods.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTION 17.25 AND ENACTING A NEW SECTION 17.25 THEREOF, FOR THE PURPOSE OF ESTABLISHING REPORTING REQUIREMENTS FOR SECONDHAND GOODS DEALERS; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Section 17.25 and enacting a new Section 17.25 as follows:

“Sec. 17.25. PAWNBROKERS, ITINERANT DEALERS, AND SECONDHAND DEALERS

(l) **Definitions.** The following words and phrases shall have the meanings respectively ascribed to them for the purpose of the regulations in section 17.25.

(a) **Antique Dealer.** Any dealer primarily engaged in the buying and selling of collectible objects, including but not limited to pieces of furniture or works of art that have high value because of the item’s considerable age.

(b) **Bullion.** Any bar, ingot, or coin comprised of one or more precious metals, including but not limited to gold, silver, platinum, and palladium, and which can be exchanged on the basis of the commodity market price for its metal composition.

(c) **Dealer.** Any pawnbroker, secondhand dealer, or itinerant dealer, and any principal, employee, agent, or servant thereof, engaged in or conducting business for purchase, sale, barter, exchange, or pawn of gold, silver, platinum, including coins, and precious or semiprecious gems or stones.

(d) **Engaged in or conducting business.** The purchase, sale, barter, pawn, or exchange of any item in Sec. 17.25(1), including the advertising therefor, by any business entity or individual subject to State sales tax.

(e) **Itinerant Dealer.** Any dealer as defined herein who engages or has engaged in any temporary or transient business conducted in a shop, room, hotel room, motel room or other premises used for any duration less than thirty (30) consecutive days or used on a temporary basis.

(f) **Pawnbroker.** Any person who shall in any manner lend or advance money or other things for profit on the pledge or possession of personal property, or other valuable things, other than securities or written evidences of indebtedness, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.

(g) **Secondhand Dealer.** Any person engaged in the business of buying or selling secondhand goods, excluding consignment of secondhand goods or the sale of secondhand goods donated without compensation. This definition shall include the use of any automated or camera-enabled kiosk used to purchase secondhand goods from a seller without the buyer’s physical presence.

(h) **Secondhand Goods.** Tangible personal property previously owned by another person, whether used or not, which property, in its present state, possesses utility for the purpose for which it was originally intended.

(i) **Tangible Personal Property.** Items including:

(i) items made in whole or in part of gold, silver, platinum, copper or other precious metals;

(ii) items containing or consisting of precious or semiprecious gemstones or other polished stones used for decoration or jewelry;

(iii) articles with serial numbers, model numbers, or other identifying marks, including, but not limited to appliances, tools, radios, stereo equipment, radar detectors, televisions, cellular phones, video

recorders, camcorders, video equipment, computers, computer equipment and accessories, digital music recorders and players, and cameras, but not including clothes washers, clothes dryers, refrigerators, and auto parts;

- (iv) musical instruments;
- (v) rifles, shotguns, handguns, and other firearms;
- (vi) movie cassette tapes and discs, music cassette tapes and discs, record albums, computer software and diskettes, and video game cartridges; and
- (vii) any other item of value, except:

a. One or more coins collected or exchanged for their numismatic value, where the scarcity, historical significance, quality, and other unique factors determine the market value of a coin rather than the commodity price of the metals that comprise it; and

b. Books and textbooks.

- (j) **Transaction.** Any purchase, sale, barter, pawn, or exchange of any item.

(Ord. No. 3323, Sec. 1, 3-28-95)

(2) **Dealer's Permit.**

(a) A pawnbroker or itinerant dealer must apply for and obtain a dealer's annual permit prior to being engaged in or conducting business as a dealer. Such permit shall be posted conspicuously in each place of business named therein.

(b) **Application.** To obtain a dealer's permit a dealer shall file a written, sworn application on a form provided by the City Clerk signed by the applicant if an individual, by all partners if a partnership, and by the president if a corporation, with the City Clerk showing:

(i) The name or names of the principals, agents, and employees of the applicant's business during the time that it is proposed that such business will be carried on in the City of Ames; the local address or addresses of such person or persons while engaged in such business; the permanent address or addresses of such person or persons; the capacity in which such person or persons will act (as proprietor, agent, employee or otherwise); the name and the address of the person, firm or corporation for whose account the business will be carried on, if any; and if a corporation, under the laws of what state it is incorporated;

(ii) The place or places in the City of Ames where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that said business shall be conducted;

(iii) The place or places, other than the permanent place of business of the applicant, where the applicant within the six (6) months next preceding the date of said application conducted an itinerant business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted;

(iv) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers; and

(v) Credentials from the person, firm or corporation for which the applicant proposed to do business, authorizing the applicant to act as such representative.

(c) **Fee Requirement.** Every application for a dealer's annual permit shall be accompanied by the application fee. The fee for a dealer's annual permit shall be in such amount as is set by the City Council.

(Ord. No. 2941, Sec. 1, 2-4-86)

(d) **Issuance.** Upon receipt of an application for a dealer's permit, the City Clerk shall notify the Ames Chief of Police or Chief's designee who shall cause such investigation of the applicant as the Chief deems necessary for the public good, and may recommend issuance or refusal of a dealer's permit. Within ten (10) days of the filing of an application, the City Clerk shall issue a dealer's permit or refuse to do so for reasons including but not limited to the following:

(i) fraud, misrepresentation or false statement of material or relevant facts contained in the application;

(ii) that the applicant has engaged in a fraudulent transaction or enterprise; or

(iii) that the applicant has engaged in a pattern of criminal activity.

(e) **Appeal.** If the City Clerk denies an application for a dealer's permit, the City Clerk shall mail to the applicant, by certified mail, a written statement of the decision with a brief statement of the reason(s) therefore. An appeal from the decision of the City Clerk may be made in writing to the City Manager, or Manager's designee, within ten (10) days of the receipt of the decision. The written appeal shall state the specific grounds for the appeal. The City Manager, or Manager's designee, shall hold a hearing within a reasonable time from the receipt

of the appeal. At the hearing, the applicant or permit holder may be represented by counsel, may cross-examine witnesses and may present evidence in his or her favor. The City Manager, or Manager's designee, may grant or deny the appeal. That decision shall be final.

(f) **Expiration.** A dealer's permit shall expire on December 31 of the year in which it is issued. If a dealer's business is discontinued, moved, or sold within one (1) year after issuance, the dealer's permit expires and a new permit must be obtained before the dealer's business is recommenced. The dealer's annual permit is a personal privilege and shall not be transferable, nor shall there be a partial refund of the application fee where the permit holder discontinues his business prior to December 31 of the year in which the permit was issued. (*Ord. No. 2941, Sec. 1, 2-4-86*)

(g) **Revocation.** Any dealer's permit may be revoked by the City Manager, or Manager's designee after notice and hearing if it is found that the dealer has knowingly violated any provision of section 17.25. The City Manager shall mail to the permit holder, by certified mail, a written notice of the hearing twenty (20) days before the hearing date. The notice shall set forth the grounds of the proposed revocation and the time and place of the hearing. At the hearing the permit holder may be represented by counsel, may cross-examine witnesses, and present evidence in his or her favor. The decision of the City Manager, or Manager's designee, shall be final.

(h) **Itinerant dealers** must register with the City of Ames Police Department before engaging in or conducting business each time that such dealer is in the City of Ames to conduct business. (*Ord. No. 3323, Sec. 1, 3-28-95*)

(3) **Records of Transactions and Retention of Purchases.**

(a) **Records.** The City of Ames Chief of Police shall designate an Internet-based property tracking service. Every dealer, itinerant dealers excepted, shall report each transaction of secondhand goods and tangible personal property by the end of each business day to the Internet-based tracking service. The record of each transaction shall include:

- (i) an accurate and detailed account of the sale, purchase, pawn, trade, or exchange;
- (ii) serial and model numbers, a transcription of any engraving or other identifying labels, marking, or writings located on the item, the brand name and model name;
- (iii) the titles of any movie cassette tapes or discs and computer software;
- (iv) the titles and artist names of any musical cassette tapes, discs, and albums;
- (v) the number and description of any decorative precious or semiprecious gems, stones, or jewelry;
- (vi) the amount paid, advanced, or loaned for each item;
- (vii) the date and time of the transaction;
- (viii) a clear and recognizable digital photograph of each item, which shall only be required if the item lacks a serial or model number; and
- (ix) a description of the person selling, purchasing, pawning, trading, or exchanging the item, which description shall include the person's first and last name, address of residence, date of birth, sex, and driver's license or state issued identification card number including the state

(b) **Itinerant dealers.** Every itinerant dealer shall record transactions according to one of the following methods, which records shall consist of the information in Sec. 17.25(3)(a)(i) through Sec. 17.25(3)(a)(ix):

- (i) keep and maintain a physical record book of transactions, which record book shall be presented to the Police Department for inspection and photocopying before the itinerant dealer leaves the City of Ames; or
- (ii) report transactions to the Internet-based property-tracking service designated by the City of Ames Chief of Police.

(c) **Antique dealer.** Every antique dealer shall be exempt from the recording, reporting, and retention requirements of this Section.

(d) **Transactions Exempt From Reporting.** Any transaction of the following shall not be required to comply with the reporting and retention requirements of this Section:

- (i) Any transaction of goods at a garage sale, yard sale, or estate sale, which shall be construed as the infrequent, periodic sale of miscellaneous household or personal articles on the premises of a private residence;

(ii) Any consignment transaction of secondhand goods or the sale of secondhand goods donated without compensation;

(iii) Any transaction of goods at an auction.

(e) **Retention of Items.**

(i) No dealer shall sell, deliver, melt, change the form of, or dispose of any item subject to Section 17.25 of the Municipal Code within ten (10) days of the acquisition of such item unless one of the following exceptions is met:

(1) Permission to do so is granted in writing by the City of Ames Chief of Police or the Chief's designee;

(2) A pawned item is returned to the person who pawned the item within the ten (10) day retention period pursuant to the agreed upon terms; or

(3) The item is bullion.

(ii) The City of Ames Chief of Police or the Chief's designee may inspect all items for which a request to dispose has been granted before the end of the ten (10) day retention period.

(Ord. No. 3323, Sec. 1, 3-28-95)

(4) **Inspection of Premises.** Every dealer shall admit any police officer to its premises during its regular business hours to examine articles purchased or received; and to search for and to take into possession any article known by that officer to have been reported missing or known or believed by the officer to have been stolen.

(Ord. No. 3323, Sec. 1, 3-28-95)

(5) **Prohibitions.**

(a) No dealer shall conceal, secrete, or destroy for the purpose of concealing, any item purchased or acquired by the dealer for the purpose of preventing identification thereof by a police officer or any person claiming to own the same.

(b) It shall be unlawful for any dealer in the course of the dealer's business or occupation to acquire, by purchase, barter, exchange, or pawn, any goods from any person under eighteen (18) years of age.

(c) It shall be unlawful for any dealer to acquire, by purchase, barter, exchange or pawn, items bearing evidence of a serial number which has been tampered with or scratched or obliterated in any manner unless such person immediately contacts the Ames Police Department.

(d) It shall be unlawful for any dealer to acquire, by purchase, barter, exchange or pawn, any items prior to examining photo identification with a physical description of the person selling, bartering, exchanging or pawning said articles.

(e) It shall be unlawful for any dealer to intentionally misrepresent or falsify any record of an item, seller, or transaction required to be reported to the Ames Police Department under this chapter.

(Ord. No. 2938, Sec. 1, 10-15-85; Ord. No. 3323, Sec. 1, 3-28-95)

(6) Violation of this section shall be a municipal infraction punishable by a penalty of \$100 for a person's first violation thereof and \$200 for each repeat violation. Alternatively, violation of this section can be charged by a peace officer of the City as a simple misdemeanor.

(Ord. No. 3497, Sec. 34, 8-25-98; Ord. No. 3551, 3-7-00)

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law. Alternatively, violation of this section can be charged by a peace officer of the City as a simple misdemeanor.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, 2015.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor