

7 VOTES REQUIRED FOR PASSAGE

Approved as to form and legality


CITY ATTORNEY

INTRODUCED BY COUNCIL MEMBER DE LA FUENTE

Ordinance No. _____ C.M.S.

Extension Of Ordinance No. 13095 C.M.S., An Interim Ordinance, Adopted As An Urgency Measure Pursuant To California Government Code Section 65858, Establishing A Temporary Moratorium On The Establishment Or Expansion Of Businesses Engaged In And/ Or Conducting Buying, Selling, And/Or Exchanging Old Gold, Old Silver, Platinum Or Articles Of Platinum, Silverware, Secondhand Jewelry Or Other Precious Metals Or Stones (Secondhand Jewelry Dealers) Through March 20, 2012 or Whenever Permanent Regulations Are Adopted, Whichever Occurs First

WHEREAS, the City of Oakland has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods; and

WHEREAS, without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental and economic values; and

WHEREAS, the recent proliferation of activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry, has particularly impacted some business districts in the City, may adversely affect the City's ability to attract and retain businesses and shoppers to the City, and may adversely affect the City's economic vitality; and

WHEREAS, permitting the over-concentration of activities, facilities, or establishments buying, exchanging and/or selling secondhand jewelry may promote the illegal purchase and/or sales of stolen goods, may contribute to an increase in crime such as theft, robbery, or assault for the purpose of stealing jewelry and/or precious metals with the intent of then selling such stolen goods at a Secondhand jewelry dealer and thus, may result in a threat to public health, safety and welfare. Further, this over-concentration may not be compatible with existing and potential uses of similarly zoned businesses; and

WHEREAS, it is the City's intent, in consideration of other existing and potential uses within the City, to assure a degree of compatibility between other types of businesses and the locations of activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry; and

WHEREAS, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the Land Use and Transportation Element and the Estuary Policy Plan contain goals, objectives, and policies that promote: maintaining and enhancing the vitality of existing neighborhood commercial areas - Objective I/C1.1 Attracting New Business; Policy N1.6 Reviewing Potential Nuisance Activities; Policy 5.1 Environmental Justice; and

WHEREAS, the continued establishment and/or expansion of activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry may result in potential conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, the City Council hereby requests that the City Administrator's Office continue to work with CEDA on the review of the regulatory mechanisms available to regulate activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry with the goal of adopting needed changes to the current regulations, including providing recommendations on changes to the Municipal and/or Planning Codes to protect the public health, safety, and welfare from the negative effects of activities, facilities, or establishments buying and/or selling second hand jewelry. During the period of time that it undertakes this task, the City is concerned that absent the adoption of an emergency moratorium, activities and facilities that conflict with contemplated changes to the City's regulatory schemes could be established in the City thereby frustrating the realization of the goals of that study; and

WHEREAS, until such time that the City concludes its review and adopts new regulatory controls over such activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry, the community is in jeopardy that such businesses could be instituted, modified, or expanded prior to the imposition of new controls necessary for the protection of public health and welfare; and

WHEREAS, issuance or approval of any building, planning or other permit for activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety or welfare; and

WHEREAS, pursuant to Government Code Section 65858 a city, including a charter city, may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the

“Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15060 (c)(3), 15061(b)(3), 15301, 15303, and 15307 of the State CEQA Guidelines.

SECTION 3. Until such time as the City concludes the review described above, and adopts permanent regulatory controls pertaining to activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry, the City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded "Secondhand jewelry dealer" as defined in section 4 below.

SECTION 4. For purposes of this Ordinance, the following definitions shall apply:

"Secondhand jewelry dealer" means every person, business and/or entity that engages in and/or conducts buying, selling and/or exchanging old gold, old silver, platinum or articles of platinum, silverware, secondhand jewelry or other precious metals or stones.

SECTION 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect until March 20, 2011 from the date of its adoption or whenever permanent regulations are adopted, whichever occurs first. This period may be extended by the City Council in accordance with the provisions of California Government Code § 65858.

SECTION 6. During the term of this ordinance as set forth in Section 5 hereof, no use permit, building, zoning or other permit that has been issued for a Secondhand jewelry dealer as set forth in section 4 above for which rights to proceed with the permit have not vested pursuant to the provisions of State law shall proceed, and no use permit, building, zoning or other permit shall be issued by any department, agency, employee or agent of the City of Oakland to allow for a Secondhand jewelry dealer as set forth in section 4 above.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

SECTION 8. For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

SECTION 10. Petition for Relief from Moratorium ("Petition").

- (a) Any person who has applied, or who wants to apply, to construct, modify, expand or establish an activity, facility, or establishment buying, exchanging and/or selling second hand jewelry, which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation, must submit a Petition to the City requesting relief from the Moratorium. Petitions must be on the Appeal Form provided by the Planning and Zoning Division of the Community and Economic Agency (Agency) for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under and/or in conflict with Federal, State, or local law or regulation, and shall include payment of fees in an amount of \$1,353.00. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within thirty calendar days of receipt of the completed Petition, the City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the Petition.
- (b) If a Petitioner seeks to challenge the written determination of the City Administrator, the Petitioner must appeal to the City Council and such appeal must be filed within ten (10) calendar days of the date from which the City Administrator's written determination was issued and by 4:00p.m. Appeals must be on the form provided by the Planning and Zoning Division of the Community and Economic Agency (Agency) for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. The Appeal must state specifically wherein it is claimed there was error or abuse of discretion by the City Administrator or wherein the decision is not supported by substantial evidence. The Appeal also must include payment of \$1,353.00. Failure to make a timely appeal will

preclude you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the Petition to the City Administrator.

SECTION 11. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

In Council, Oakland, California, _____, 2011,

Passed By The Following Vote:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN,
 KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

Attest: _____

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NOTICE AND DIGEST

By this ordinance, the Oakland City Council extends the interim moratorium on the permitting or approval of any new, modified, or expanded Secondhand Jewelry Dealer that engages in and/or conducts buying, selling and/or exchanging old gold, old silver, platinum or articles of platinum, silverware, secondhand jewelry or other precious metals or stones (Secondhand Jewelry Dealers), until March 12 2012, or whenever permanent regulations are adopted, whichever occurs first.