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CITY OF OAKLAND
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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Arturo M. Sanchez

SUBJECT: Amendments to OMC and
Master Fee Schedule

DATE: February 15, 2012

City Administrator
Approval

Date

2-16-12

COUNCIL DISTRICT: CITY-WIDE

RECOMMENDATION

Staff recommends that the City Council adopt an Ordinance amending Oakland Municipal Code (OMC) Chapter 5.46 to:

- (1) Establish new permitting and operating standards for "Secondhand Jewelry Dealers;
- (2) Revise operating standards for "Secondhand Dealers" and "Pawnbrokers; and,
- (3) An Ordinance Amending Ordinance No. 13078 C.M.S., The Master Fee Schedule, As Amended, To Establish Or Modify Fees Assessed By The Office Of The City Administrator To:
 - 1) Businesses Conducting Secondhand Jewelry Dealers, Secondhand Dealers, And Pawnbrokers Activities Pursuant to Chapter 5.46; And
 - 2) To Establish An Interim Mobile Food Vending Parking Use Fee For Permits Issued Pursuant To Chapter 5.51

In addition to recommending adopting modifications to Chapter 5.46 of the OMC, staff also recommends keeping the permitting function within the City Administrator's Special Business Permits Division/Department. These proposed changes can be accomplished prior to the expiration of the moratorium, on March 20, 2012. It should be noted that the proposed changes and adoption process will not require a hearing before the Planning Commission. Staff has chosen to recommend the adoption of amendments to Chapter 5.46 given that the modifications can achieve the desired regulatory effects, e.g. more control and oversight, within allotted time period of the moratorium.

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The proposed changes include a fee increase in the Secondhand Dealer and Pawnbroker Permitting Fee, which were intended to be cost recovery in nature. Staff is also recommending the establishment of a Mobile Food Vending Parking Fee that was inadvertently excluded during the Mobile Food Vending Permitting process that occurred in December 2011.

EXECUTIVE SUMMARY

On November 15, 2011, the City Council voted unanimously to adopt a temporary (45 day) moratorium on the permitting or approval of any new, modified, or expanded establishments buying and/or selling second hand jewelry. On December 20, 2011 the City Council extended the moratorium until March 20, 2012. The moratorium prevents anyone from applying, opening, establishing or operating any new "Secondhand Jewelry Dealer" activities. "Secondhand Jewelry Dealer" means and includes every person who engages in or conducts the business of buying, selling or exchanging old gold, old silver, platinum or articles of platinum, silverware, and secondhand jewelry or other precious metals or stones (OMC, Chapter 5.46). Additionally, the City Council directed staff to conduct a study on the methods and changes to the Oakland Municipal Code and/or planning code necessary to protect neighborhoods from an overconcentration of such businesses.

OUTCOME

If adopted, the action of the City Council will create new regulations that will provide further criteria and requirements for operators who wish to conduct a second hand jewelry business in the City of Oakland; as well as increase the regulatory fee to provide a cost recovering permitting process. The provisions will also restrict any future operators to a limited area of the City comprised of the downtown, central business district, the Chinatown, and Jack London areas of the City (map attached). However, the proposed changes will not affect existing secondhand jewelry dealer permittees that are operating outside of the proposed new areas (outside of Chinatown and downtown that is), which will be "grandfathered" in.

Additionally, adopting the attached ordinances will add fees to the Master Fee Schedule that are intended to make Chapter 5.46 permits and the Mobile Food Vending permits cost recovery in nature. Without these fee increases, the two programs will not be cost recovery and thus will be operating at a deficit that would in turn cause the City to subsidize the operator's permits.

BACKGROUND/LEGISLATIVE HISTORY

On November 15, 2011, the City Council voted unanimously to adopt a temporary (45 day) moratorium on the permitting or approval of any new, modified, or expanded establishments

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buying and/or selling second hand jewelry.¹ "Secondhand jewelry dealer" means and includes every person who engages in or conducts the business of buying, selling or exchanging old gold, old silver, platinum or articles of plafinum, silverware, and secondhand jewelry or other precious metals or stones (Oakland Municipal Code, Chapter 5.46).

On December 20, 2011 the City Council, pursuant to California Government Code Section 65858, extended the moratorium until March 20, 2012, and directed staff to conduct a study on the methods and changes to the Oakland Municipal Code and/or planning code necessary to protect neighborhoods from an overconcentration of such businesses.

In the months since the adoption of the moratoriums, staff from the City Administrator's Office, Planning Department and Oakland Police Department initiated a review process, as directed by the Ordinance, of the "regulatory mechanisms available to regulate activities, facilities, or establishments buying, exchanging and/or selling second hand jewelry" in Oakland. As noted in the original ordinance, it continues to be the City's "intent, in consideration of other existing and potential uses within the City, to assure a degree of compatibly between the locations of activities, facilities, or establishments buying and/or selling second hand jewelry." Internal staff meetings resulted in recommending the strengthening of regulation in Chapter 5.46 of the Municipal Code (O.M.C.) and modifying the Master Fee Schedule to make the program fully cost recovery in nature.

ANALYSIS

Amending Chapter 17 of the O.M.C.—the Planning Code, to create new definitions of the specific secondhand jewelry dealer activity type, and create a new conditional use permit process would be required if the Council's desire was for a zoning clearance to be issued for this type of activity. This option would require each new business to apply for, and if approved, be granted, a conditional use permit, where the plaming staff, or the Planning Commission (depending on whether the permit is created as a "minor" or "major" Conditional use permit) places specific conditions on the business activity. Approval of this type of regulation, amending the Planning Code, would require at least a six month process of community outreach, input of the proposed change from other City agencies (such as OPD); consideration of the Planning Commission at a public hearing; and, a series of public hearings at Committee and City Council meetings.

Additionally, staff considered another factor that conditional use permits "run with the land." That is, once these permits are adopted for a particular use at a specific location, the permits stay in effect in perpetuity, unless revoked by the planning commission, regardless of ownership changes of a business. This is as long as the business type does not change or the conditions are still applicable. For example, an owner of a building on a commercial street who has a hypothetical conditional use permit for a secondhand jewelry dealer will always be entitled to

¹ See Ordinance No. 13095 C.M.S.

have a tenant which is a secondhand jewelry dealer, even after the original business leaves. Because of this permanence associated with Conditional Use Permit, Staff did not feel that this option would achieve the desired effect sought by the City Council and therefore did not recommend this option.

Instead, staff recommends amending Chapter 5.46, and other sections of the OMC, as identified in the attached ordinance. The draft ordinance includes regulations and ideas discussed by the City Council at the November 15 and December 20, 2011 meetings and in subsequent staff meetings. The proposed regulations include:

- a. Require cameras in both the interior and exterior of the businesses;
- b. Require specific lighting levels on the exterior of the premises;
- c. Increase visibility into stores—e.g. transparency of street fronting glass;
- d. Increase penalties for inaccurate/inappropriate reporting and other violations of ordinance;
- e. Increase permit fees across all Chapter 5.46 sufficient to provide adequate staff oversight;
- f. Require two forms of ID from sellers;
- g. Require that additional documentation be recorded if the item being sold has a broken lock;
- h. Clarify (and make stricter) the grounds for permit revocation;
- i. Require a correlation between gold sales/purchase activity and main business type;
- j. Enforce distance requirements between permitted locations;
- k. Regulate advertisements and signage;
- l. Require that they are located only in commercial districts with buffer zones from residential and other 2nd hand Jewelers to address over concentration;
- m. Restrict licenses to only businesses that operate as a 2nd hand dealer/jeweler, (i.e. not in furniture and/or unrelated business activity);
- n. Require computerized reporting online via reporting system such as LEADS online. Leads online is the nation's largest online investigation system for law enforcement eliminating paper reports; and,
- o. Determine if additional funding, via increased application and renewal fees, is needed for adequate and appropriate Police Department personnel to assist with oversight.

The proposed regulations include distance requirements from current operators and residential areas. The purpose of these regulations is to remove these businesses which are believed to attract gold and jewelry thieves into residential areas, where residents of Oakland have been prey to robberies, as well as to prevent the clustering of these businesses in areas which have seen an increase in gold jewelry believed to be connected to these crimes. The effect of the proposed ordinance modifications is that any new/future operators will be regulated into the downtown business district, Chinatown, and Jack London areas of the City. These areas are more

appropriate for these types of operations due to their commercial orientation. However, the proposed changes will not affect existing secondhand jewelry dealer permittees that are operating outside of the proposed new areas (outside of Chinatown and downtown), which will be “grandfathered” in.

Enforcement will occur and be led by the Nuisance Abatement Division (NAD) of the City Administrator’s Office. Whenever practical and as allowed by their responsibilities, Oakland Police Departments Problem Solving Officer’s may be asked to conduct investigations and or issue citations to unlawful and/or unpermitted Secondhand Jewelry Dealers. However these instances will be conducted only as practically allowed by the need to address other beat priorities.

In light of staffing and conflicting priorities of the Oakland Police Department, the NAD will issue a 30 Day Notice To Abate and assess monetary penalties on property owners who allow their commercial tenants to conduct unpermitted and illegal activity in violation of the proposed regulations. Such notices include the assessment of a \$3,500 nuisance fee and the potential for up to \$1,000 a day penalties for continued violations of the City’s Ordinance.

At the November 15, 2011 Council hearing, it was suggested that enforcement of the current and the new regulations could be handled by OPD, specifically OPD’s Alcohol Beverage Action Team (“ABAT”). This is not practical or possible with the current staffing available to OPD and without making the permit too cost prohibitive to the business operators. As such, Staff is proposing that this permit be fully cost recovery in nature through the annual permitting fee. In order to assign this to the ABAT unit, the fee would need to cover the time for new staff within the ABAT unit. Given that the current ABAT unit team is comprised of one Sergeant, two officers, and two Police Service Technicians, existing staff resources in this unit is not sufficient to meet the staffing requirements to conduct this activity in addition to the oversight they are required to provide for all alcohol and tobacco related activities in the City of Oakland. Adding the cost of increasing OPD staff to handle this additional work would make the permit too cost prohibitive to all operators.

PUBLIC OUTREACH/INTEREST

Staff informed the five pending Secondhand Jewelry Dealer applicants about the moratorium after its passage and in advance of the extension. In December 2011 staff met with Applicants and Operators to discuss moratorium’s impact and possible outcomes. A follow up meeting has also been scheduled with all impacted operators and other interested community members during the week of February 20, 2012 to explain the proposed new requirements, restrictions, and public hearing elements for Secondhand Jewelry Dealers modifications, and to invite their input and comments during the open Public hearing on the proposed amendments.

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COORDINATION

The proposed amendments and master fee schedule fee modifications were developed in coordination with the City Attorney’s Office, the Oakland Police Department’s Alcohol Beverage Action Team, the Planning Division, and the Office of City Council District 5.

COST SUMMARY/IMPLICATIONS

Staff is proposing to increase the cost of annual permits for Pawnbroker and Secondhand Jewelry Dealers in order to make the additional reporting and oversight required cost covering. The fees being proposed are intended to recover costs of reviewing and processing applications. At this time, the current fee structure does not cover the costs of staff time, oversight, and enforcement. Staff is proposing several changes to the Master Fee schedule intended to allow for the recovery of actual time spent processing and conducting the necessary review of the applications and issuance of Secondhand Jewelry and Pawnbroker permits. Staff recommends this increase for these two specific types of activities because of the nature of their business and the level of oversight required to ensure that they are operating pursuant to OMC requirements.

Secondhand Jewelry Dealers and Pawnbrokers require additional reporting and monitoring due to the potential for stolen goods or items to be sold at these locations. Staff will need to regularly receive and review reports to ensure that all items being sold or purchased by the permittees are lawfully acquired. Additionally, staff must monitor the online reporting program “leads online” to make sure operators are conforming to reporting requirements.

In order to make sure that Staff’s time is covered by the cost of the respective permits, staff is recommending the following permit fees be adopted in the Master Fee Schedule:

Pawn Broker Permit	<u>3,200.00</u>	Permit/Year
Second Hand Jewelry Dealer Permit	<u>3,200.00</u>	Permit/Year
Second Hand Dealer, Exchange Dealer Permit	<u>310.00</u>	Permit/Year

Currently, Operators are required to pay \$381 upon initial application for a permit and then pay a renewal fee of \$60 every two years. These fees do not adequately reflect the level of staff oversight required of the operators as reflected in the level of reporting required by State and Local law. It must be noted that staff is recommending that Secondhand Dealers of books, games, records, or other goods which have not been associated with criminal activity remain at \$310 annually. These fees are intended to create a cost neutral program whereby the fees recovered will mean that the City is fully cost-recovery in nature for the level of oversight, regulation, and review required by the proposed modifications.

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The cost of staff resources necessary to oversee the program total approximately \$97,697 and we currently have approximately 31 businesses operating with either a pawnbroker or secondhand jewelry permit. Based on estimates of the staff and time required for oversight on a regular basis, staff has proposed a fee increase designed to make the program cost neutral to the City. Costs and projected time required are estimates and will be impacted by the number of permits and businesses conducting this activity.

Staff's assessment in developing the fee structure included the level of work that is typically involved with reviewing applications, conducting background checks, receiving regular reporting requirements and other general oversight required of these permits. This level of review has necessitated the proposed fee increase which will cause the program to be operated in a cost recovery manner.

In addition, staff is proposing to add a fee that was inadvertently left off the Master Fee Schedule when Staff created the Mobile Food Vending Program. The proposed fee will allow for the City to recover the parking revenues that would otherwise be lost if a food vending pod permit was issued for metered spaces without assessing the proposed fee. This lost revenue would negatively affect the City general fund as a result staff has proposed the attached Master Fee Schedule Ordinance Amendments.

SUSTAINABLE OPPORTUNITIES

Economic: Adopting new regulations and fees for permitting secondhand jewelry dealers to set appropriate fee and penalty levels designed to recover staffing costs for administering and monitoring permit compliance will ensure that we have operators operating lawfully and complying with appropriate reporting and monitoring processes.

Environmental: There are no environmental opportunities associated with reforming the secondhand jewelry business market in Oakland.

Social Equity: Adopting new regulations will afford the City an opportunity to assure that underbanked and underserved populations are not victimized by unpermitted, unregulated, or offending violators of the Municipal code who might prey on these communities for precious metals and their economic gain. In addition, the large proliferation of these entities in certain areas of the City is believed to be connected with an increase in robberies of residents in these areas.

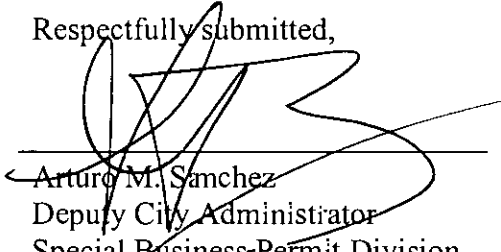
CEQA

The adoption of these ordinance amendments is exempt from further environmental review for the following reasons, each of which applies on a separate and independent basis. Specifically,

these ordinance amendments are exempt (without limitation) under the following CEQA Guidelines: Section 15183 because they are in conformance with the adopted Land Use and Transportation Element (LUTE) of the General Plan of the City of Oakland. They are also exempt under Section 15301 as the uses are in existing facilities; Section 15303 because construction of new facilities for these uses are generally under 10,000 square feet in an urbanized area; and/or Section 15061(b) (3), because there is no possibility of a significant effect on the environment.

For questions regarding this report, please contact Arturo M. Sanchez, Deputy City Administrator, at (510) 238-7542.

Respectfully submitted,



Arturo M. Sanchez
Deputy City Administrator
Special Business-Permit Division
City Administrator's Office

Prepared by:
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Deputy City Administrator
Special Business Permit Division
City Administrator's Office

Attachments (3):

- Draft Ordinance Amending Oakland Municipal Code (OMC) Chapter 5.46, To (1) Establish new permitting and operating standards for "Secondhand Jewelry Dealers; and, (2) Revise operating standards for "Secondhand Dealers" and "Pawnbrokers."
- An Ordinance Amending Ordinance No. 13078 C.M.S., The Master Fee Schedule, As Amended, To Establish Or Modify Fees Assessed By The Office Of The City Administrator To:
 - 1) Businesses Conducting Secondhand Jewelry Dealers, Secondhand Dealers, And Pawnbrokers Activities Pursuant to Chapter 5.46; And
 - 2) To Establish an Interim Mobile Food Vending Parking Use Fee for Permits Issued Pursuant To Chapter 5.51
- A Map Detailing Areas Where Future Operators May Operate

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INTRODUCED BY COUNCIL MEMBER _____

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.46 TO: (1) ESTABLISH NEW PERMITTING AND OPERATING STANDARDS FOR "SECONDHAND JEWELRY DEALERS; AND TO (2) REVISE OPERATING STANDARDS FOR "SECONDHAND DEALERS" AND "PAWNBROKERS"

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.

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

SECTION 1.

5.46.010 - Definitions.

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

"Applicant" shall mean a person, business, or corporation who has submitted an application for consideration to operate as a Secondhand Jewelry Dealer in the City of Oakland.

"Automobile wrecking establishment" means and includes any establishment, building or other place where the business is carried on of wrecking old or used automobiles or other motor vehicles, and adding or employing the accessories and parts thereof in equipping, repairing, or rebuilding motor vehicles, or storing, selling, or otherwise disposing of, such accessories or parts.

"Broken Lock" shall mean a locking mechanism, such as a clasp, latch, or other which is intended to keep a piece of jewelry on the person who is wearing it and which has been disabled or is in a state of disrepair such that it can no longer serve to function as a locking mechanism.

"City Administrator" as used in this chapter shall mean the City Administrator for the City of Oakland.

"Crime involving Moral Turpitude" means a violation of law that involves any of the following: an intent to defraud; intentional dishonesty for personal gain; intentionally causing a serious injury to another; the sale of narcotics or possession of narcotics with intent to sell; or a sexual offense.

"Commercial zone" is defined as that term is used in the Oakland Planning Code 17.09.040.

"Deceptive practices" shall mean concealment of the actual facts, operations, business practices, records, or failure to keep and document required records that relate to the sale and purchase of used jewelry or the procurement thereof

"Drug paraphernalia" as used in this chapter shall have the same definition set forth under California Health and Safety Code section 11364.5, as amended from time to time.

"Exchange dealer" means and includes every person who engages in or conducts the business of accepting secondhand articles in full or partial payment for any other article or articles carried as stock in trade by such person, and shall include the acceptance of any article in full or partial payment for any rebuilt or remanufactured article of similar or different nature. This definition shall not apply to dealers whose principal or primary business is retailing or wholesaling new merchandise.

"Industrial zone" is defined as that term is used in the Oakland Planning Code 17.09.040.

"Moral Turpitude" shall mean conduct that is considered contrary to community standards of justice, honesty or good morals.

"Pawnbroker" means and includes every person, firm or corporation, other than banks, trust companies or bond brokers who may otherwise be regulated by law and authorized to deal in commercial papers, shares of stock, bonds and other certificates of value, who keeps a loan or pawn office or engages in or carries on the business of receiving jewelry, precious stones, valuables, firearms, clothing, or personal property, or any other article or articles in pledge for loans or as security, or in pawn for the repayment of moneys, and exacts an interest for such loans.

"Permittee" shall mean an Applicant who has been granted a license, permit, or other document by the City of Oakland to allow the Applicant to conduct, operate, or otherwise conduct the business activity of a Secondhand Jewelry Dealer in the City of Oakland.

"Person" as used in this chapter shall mean any natural person, partnership, cooperative association, corporation, Limited Liability Company, personal representative, receiver, trustee, assignee, or any other legal entity.

"Precious metals" means gold, platinum, silver and their alloys.

"Precious metals store" means and includes any person operating, maintaining or carrying on the business of buying and selling or exchanging gold, platinum, silver and their alloys.

"Principal" means for the purposes of this chapter shall be the business Applicant/owner/operator/Permittee who has applied for and is being considered for permit pursuant to this Chapter.

"Proprietor" as used in this chapter shall mean a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

"Residential zone" is defined as that term is used in the Oakland Planning Code 17.09.040.

"Scrap collector" means and includes any person who goes from place to place for the purpose of engaging in or carrying on the business of collecting, buying or selling, either at wholesale or retail, any old rags, bottles, sacks, cans, papers, metals, or any other worn out or discarded material. All such materials are hereinafter referred to as "scrap."

"Scrap dealer" means and includes any person having a fixed place of business and who is engaged in carrying on the business of buying or selling, either at wholesale or retail, any old rags, bottles, sacks, cans, papers, metals, or any other worn out or discarded material. All such materials are hereinafter referred to as "scrap."

"Secondhand automobile or aircraft parts dealer" means and includes any person operating, maintaining or carrying on the business of buying and selling or exchanging secondhand, used, government surplus, salvaged, reclaimed, or renewed automobile, or aircraft parts or accessories.

"Secondhand dealer" means and includes every person who engages in, or conducts the business of buying, selling or exchanging, whether as a separate business or in connection with other businesses, secondhand or

rebuilt typewriters, adding and calculating machines, secondhand bicycles, bicycle accessories, motorcycles, motorcycle accessories, scales, clothing, tools, harnesses, surgical, dental or drawing instruments, firearms, pianos or other musical instruments, furniture, household furnishings, books, used and reclaimed army goods, merchandise, or any other secondhand article or articles or things, excepting, however, secondhand jewelry dealers, secondhand automobile or aircraft parts dealers, scrap collectors and secondhand automobile or aircraft parts dealers, scrap collectors and scrap dealers as herein defined, nor shall it pertain to automobile wrecking establishments as herein defined; and provided, further, that nothing in this chapter shall be understood to include as secondhand dealers persons who engage in the business of selling no other secondhand goods or articles than those used and reclaimed, rebuilt or remanufactured, articles or goods which are purchased by such dealer direct from bona fide wholesale dealers, jobbers or manufacturers, or from distributing agents of the United States Army or Navy.

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

"Suitability" means a determination that the person/entity has met the requirements of this chapter and is qualified to operate a permit issued pursuant to this chapter.

(Prior code §§ 5-9.01, 5-9.01(a)—5-9.01(f), 5-9.01(i), 5-9.01(j))

5.46.020 - Pawnbrokers—Permits.

It is unlawful for any person to engage in, or carry on, or conduct, or to permit to be carried on, engaged in or conducted, within the city, the business of any pawnbroker, whether as a separate business or in connection with any other business, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. Both the application for such a permit and the issued permit shall set forth the exact nature of the business to be carried on. In addition, the application shall set forth the requirements specified in Section 5.02.020, and such application shall be accompanied by the signatures of three resident freeholders, certifying to the good moral character and reputation of the person or persons making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating pawnbrokers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had, in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

(Prior code § 5-9.02)

5.46.030 - ~~Secondhand jewelry-dealers,~~s Secondhand dealers, exchange dealers—Permits.

It is unlawful for any person to engage in, or carry on or conduct, or to permit to be carried on, engaged in

or conducted, within the city, the business of any ~~secondhand jewelry dealer~~, secondhand dealer, or exchange dealer, whether as a separate business or in connection with any other business, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars, or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. Both the application for such a permit and the issued permit shall set forth the exact nature of the business to be carried on. In addition, the application shall set forth the requirements specified in Section 5.02.020, and such application shall be accompanied by the signatures of three resident freeholders, certifying to the good moral character and reputation of the person or persons making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating secondhand dealers, ~~secondhand jewelry dealers~~, and exchange dealers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

(Prior code § 5-9.021)

5.46.031 – Secondhand Jewelry Dealers—Permit required and Application for permit.

A. It is unlawful for any person to engage in, or carry on or conduct, or to permit to be carried on, engaged in or conducted, within the city, the business of any secondhand jewelry dealer whether as a separate business or in connection with any business other than a jewelry or precious metals store, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars, or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter. Such permitted business must still comply with all requirements of the Business and Professions Code Article 4 – Tangible Property.

B. This Chapter, and the requirement to obtain a business permit, does not apply to a business operating solely as a stand alone Jewelry store that sells only new jewelry, or a jewelry store within a larger department store, that does not conduct or engage in the business of buying and selling used or previously owned precious metals from members of the public. Except as otherwise specified in Section 5.46.031 C, this ordinance shall apply to all Secondhand Jewelry Dealers.

C. The City Administrator shall issue no more than three (3) valid permits for the operation of a Second-Hand Jewelry Dealer for each commercial zone in the City. Further, within each commercial zone, each secondhand jewelry dealer must be at least 1000 feet away from one another and from residential areas. The geographic and separation restrictions provided in this section (Section 5.46.031 C) do not apply to Secondhand Jewelry Dealers operating lawfully pursuant to a properly issued permit as of the effective date of this ordinance.

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a secondhand jewelry dealer shall set forth the following information:

1. That the proposed secondhand jewelry dealer must be located in a commercial zone or industrial zone or its equivalent as may be amended, of the City.

2. The business name, address, telephone number and business hours of the single fixed location for which a permit is sought.

3. A single name and mailing address authorized by each permittee and proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each permittee and proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (2) above.

4. If the single fixed location is leased, a copy of the lease and the name of the owner of the single fixed location.

5. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the business operations comply with local regulations as enumerated in this Chapter and state law.

6. The applicant's prior business activities, financial history and business associations covering at least the ten-year period immediately preceding the year of filing the application;

7. The name, address and job description of each person who is to be actively engaged in the administration or supervision of the business to be permitted.

8. The applicant shall agree in writing that, if a permit is granted, the applicant will accept the permit subject to all of the terms and provisions of this Chapter and that the permit is a privilege and does not extend or confer upon the person to whom is the permit is granted any rights or privileges in perpetuity or which run with the land.

9. The application shall also set forth the City of Oakland's general business permitting requirements as specified in Oakland Municipal Code Section 5.02.020.

10. The application shall be accompanied by the signatures of three residents of the City of Oakland vouching for the good moral character and reputation of the person or persons making such application.

11. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating secondhand dealers, secondhand jewelry dealers, and exchange dealers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the

grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

12. The applicant shall authorize the City in writing to obtain information from criminal justice agencies, financial institutions, Federal, State and local governments and agencies, and other persons and entities and shall consent in writing to the release of such information to the City for use in connection with the application for the permit and other City business regulations. The applicant shall also sign a release of claims and hold-harmless agreement to the City for its use of the information provided by the applicant or discovered during any investigation thereof

13. A plan of operations that will describe how the secondhand dealer will comply with the following operating standards:

a. The method and manner in which they will record the transactions and abide by the requirements of OMC sections 5.46.050, 5.46.060, 5.46.070, and 5.46.090 respectively.

b. The Owner shall install internal and external surveillance cameras. The Owners or Operators will confer with O.P.D. in regards to camera placement prior to installation of the external camera. The owners or operators will make camera recordings available to O.P.D. upon request. The Owner or Operator will confer with OPD regarding the number, type, and location of security cameras that will be installed. At a minimum the external cameras shall:

1. monitor the entrance, interior, and exterior of the commercial activity
2. record to a "DVR" or hard drive device that will record a 30 day time period

c. Owner or Operator shall install signs with block lettering at least two inches tall shall be posted outside the premises stating "YOUR ACTIVITIES ARE BEING RECORDED."

d. Improve visibility and lighting of the commercial tenant site, such that lighting shall adequately illuminate the exterior of building so that individuals loitering on or about the premises will be easily identifiable.

e. Exterior of business Façade shall include large windows which provide for a reasonably clear view from the public right of way of all interior activities that are open to the public

f. Provide rendering of signage and identify placement of signs on the facade. Signage shall be limited to one wall sign not to exceed ten (10) square feet in area, and one (1) identifying sign not to exceed two (2) square feet in area. Such signs shall not be directly illuminated or made of neon lighting.

g. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Public notice of the hearing on the permit application shall be given as provided under Oakland Municipal Code Chapter 5.02 The Chief of Police shall be the investigating official referred to in Section 5.02.030 to whom the permit application shall be referred. Based on the findings of the Chief of Police's

investigation, the City Administrator shall recommend the grant or denial of the permit application. In recommending the granting or denying of such permit application, the City Administrator shall give particular consideration to the complaint history of the applicant and other relevant factors that in the City Administrator's discretion he/she deems necessary to the protect the peace, order and welfare of the public.

F. At the time of submission of permit application, all applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process. These fee amounts shall be set by City Council resolution.

G. Relief from Permit Application Requirements and Operating Standards. Any person who owns or operates, or who has applied to expand, modify or establish a facility or business 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 of stone, which would be affected by the required application permit requirements and performance standards, and who contends that the permit application requirements and operating standards as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the City Administrator requesting relief from the Permit Requirements and Operating Standards within 10 (ten) days of being initially notified of the Permit Application Requirements and Operating Standards. For purposes of this section, notice to a predecessor in interest shall constitute such initial notice to subsequent owners/operators. The written request for relief from these Permit Application Requirements and Operating Standards must (a) identify the name and address of the applicant and business; (b) the affected application number; (c) specifically state how the permit application and/or performance standards as applied to him or her would be unlawful under Federal, State, or local law or regulation; and (d) include all appropriate legal and factual support for the request for relief. Within thirty (30) days of receipt of the completed request for relief, the City Administrator, or his/her designee, shall mail to the applicant a written determination. The applicant may appeal such determination pursuant to the appeals process outlined in Oakland Municipal Code section 5.02.100.

H. Indemnification.

1) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect), causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a Secondhand Jewelry Dealer permit application or subdivision or (2) implementation of an approved Secondhand Jewelry Dealer permit. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

2) Within ten (10) calendar days of the filing of any Action as specified in subsection 1 above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

5.46.032 - Application—Confidentiality.

Information showing the applicant's finances, net worth, earnings or revenues which is submitted as a part of the application for a permit shall be treated as confidential except as follows:

(A) In the ordinary course of the administration of this Chapter;

(B) Pursuant to a subpoena or other order of a court of competent jurisdiction;

(C) Release to a duly authorized agent of any governmental agency acting pursuant to the agency's authority and function.

5.46.033 - Changes—Approval required when.

A. Prior approval must be obtained for a secondhand jewelry dealer permittee approved for suitability to do any of the following acts:

1. Convey, give, or otherwise transfer the permit from one person to another person, business, or entity or to establish the permit in the name of or in the form of a different business entity for the purposes of allowing the other person, business, or entity to conduct, operate or otherwise act as a business operating as a Secondhand Jewelry Dealer.

2. Transfer any ownership interest or voting control to a person who, because of the transfer, would be required to be approved for suitability;

3. Expand the permitted business operations in terms of inventory or physical space of premises by more than twenty percent;

4. Change the location of a permit from one premises to another premises within the City limits;

5. Change the name of the business operating under a permit.

B. Such prior approval may be granted by the City Administrator or his or her designee, based on the record of the permittee's performance in meeting the operating standards and other relevant factors.

5.46.034 - Changes—Denial of approval.

The City Administrator or their designee may deny approval of any act for which approval is required by this Chapter for good cause, which includes those causes set forth in Sections 5.46.036, 5.46.070 and 5.46.240 through 5.46.290.

5.46.035 - Transfer of ownership or control—Financial encumbrance.

Each permittee must notify the City Administrator or her/his designee at least thirty days prior to transferring or recognizing the transfer of any ownership interest or voting control which results in a person acquiring an ownership interest or voting control equal to or greater than ten percent of the entire ownership in or voting control of the permittee or prior to subjecting any of its assets, income or revenue to any security interest or other encumbrance.

5.46.036 - Disciplinary action—Grounds.

(A) A permittee may be subject to disciplinary action as set forth in Sections 5.46.036, 5.46.070 and 5.46.240 through 5.46.280.

(B) A principal approved for suitability may be subject to disciplinary action by the City for good cause, which may include, but is not limited to:

(1) The application is incomplete or contains false, misleading or fraudulent statements with respect to any information required in the application;

(2) The principal fails to satisfy any qualification or requirement imposed by this Code, or other local, State or Federal law or regulation pertaining to the particular approval for suitability sought or held;

(3) The principal is or has engaged in a business, trade or profession without a valid permit, permit, approval for suitability when he knew that one was required or under such circumstances that he reasonably should have known one was required;

(4) The principal has been subject, in any jurisdiction, to disciplinary action of any kind against a permit, permit, approval for suitability or work card to the extent that such disciplinary action reflects on the qualification, acceptability or fitness to be approved for suitability;

(5) The principal has committed acts which would constitute a crime involving moral turpitude or involving any Federal, State or local law or regulation relating to the same or a similar business. For purposes of this Paragraph, a crime involving moral turpitude is one that necessarily involves any of the following: an intent to defraud; intentional dishonesty for personal gain; intentional causing of serious injury to another person; the sale of narcotics or possession of narcotics with intent to sell; or a sexual offense;

(7) When substantial information exists which tends to show that the principal is dishonest or corrupt;

(8) The principal lacks sufficient financial, technical or educational ability or experience to conduct or perform the activity for which approval for suitability is sought;

(9) The principal, or his or her employees or those acting on their behalf, violates any condition upon which approval for suitability was granted;

(10) The principal has engaged in deceptive practices upon the public; or

(11) The principal suffers from a legal disability under the laws of the State.

5.46.037 - Disciplinary action—Alternatives.

(A) Upon a showing of good cause and in the discretion of the City disciplinary action against a principal approved for suitability may take the form of cancellation, revocation, suspension, imposition of conditions or restrictions, or civil fines (or any combination thereof) as the particular situation may require.

(B) The City may also impose against the principal the administrative and legal costs incurred in the matter such as attorneys' fees, expert witness or consultant fees, City Attorney time, staff time, expenses or costs

(C) The disciplinary actions available in this section shall be in addition to, and not exclusive of any other civil or criminal remedy which otherwise might be available.

5.46.038 - Emergency orders—Grounds & Contents—Effective Date

(A) The Chief of Police may issue an emergency order which suspends or conditions a permit upon a determination that:

- (1) There has been a violation of the provisions of this Chapter; and
- (2) Such order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare within the City.

(B) Any emergency order issued pursuant to Section 5.46.038 shall:

- (1) Set forth the grounds upon which it is issued, including a statement of facts constituting the emergency which necessitates such order;
- (2) Be effective immediately upon the issuance and service thereof on the permittee or its representative or upon the posting thereof upon the permitted premises; and
- (3) Indicate the period of time for which it is effective, which shall be based upon the severity of the violation and the nature of the emergency as determined by the Chief of Police.

5.46.039 - Emergency orders—Appeal.

A permittee who is affected by an emergency order issued under Section 5.46.038 may appeal the order by filing an appropriate action in the City Administrator's Office to challenge or seek review of the order. Such action to appeal must be filed no later than 10 days following receipt of emergency order or the right to appeal is deemed waived. The decision of the City Administrator pursuant to this appeal is final and conclusive.

5.46.040 - No permit to minor.

No permit shall be issued for any business enumerated in Section 5.46.020 or 5.46.030 if the applicant therefore is under eighteen (18) years of age, nor if the applicant is a firm, partnership or corporation, if any member of such firm or partnership is under eighteen (18) years of age.

(Prior code § 5-9.022)

5.46.050 - Record of transactions.

Every person managing, maintaining or conducting the business of any pawnbroker, ~~secondhand jewelry dealer,~~ secondhand dealer or exchange dealer, in the city shall keep, or cause to be kept, at the store or place of business, a well-bound book containing a record in which shall be legibly entered in the English language, in ink, at the time of every purchase, sale, exchange, pledge, pawn, or other transfer of possession of any article, or loan thereon, a description of such article received or delivered in such transaction sufficient to identify the same including serial number and all particular or prominent marks of identification that may be found on such property, the signature, address, age, sex and description of the person receiving, delivering or transferring the property or who is otherwise dealt with, the amount of money paid or received in such transaction, and the rate of interest, if any, and the date and hour of the transaction.

(A) Every secondhand jewelry dealer or pawnbroker shall maintain in his place of business a book or other

permanent record in which must be legibly written in the English language, at the time of each purchase, a record thereof containing:

(1) The date and time of each transaction;

(2) Require two forms of identification one of which must be a government issued identification card that shows the name, age, identification/license number, house number and street and a general description of the complexion, color of hair and facial appearance of the person with whom the transaction is had;

(3) A description of the property bought; and

(a) In the case of watches, the description must contain the name of the watchmaker, manufacturer, and the number of the works, or serial number, or the case; and

(b) In the case of jewelry, the description must contain all letters and marks inscribed on the jewelry; and

(c) In the case of jewelry in which in the item being sold has a broken lock, clasp, or latch on a piece of jewelry being sold, operator must ask for receipt of purchase or hold payment for gold for 30 days or until such time as verification is received from the Oakland Police Department that the item has not been reported stolen.

(4) Pictures of the item purchased that matches the description required in subdivision (3) above. Such pictures must together represent a 360 degree view of each and every item purchased separately. Items cannot be pictured in a pile and or in a manner that would not allow for easy identification. Pieces of a single piece of jewelry (such as a torn bracelet) may be pictured together so long as each piece can be distinctly identified and every angle of the object is pictured through a series of pictures.

(5) The price paid;

(6) The name or other identification of the person or employee conducting the transaction, who shall legibly print or type his or her full name and write his or her signature on the transcript. Each transcript must include a certificate, signed by the person selling the property to the secondhand dealer, stating that he has the legal right to sell the property.

(E) The provisions of this Section do not apply to any transaction which involves buying, selling or trading used sound recordings, used clothing, or used furniture and household furnishings

5.46.060 - Inspections and reports.

The record of transactions required by the provisions contained within Section 5.46.050 shall be open for inspection by the Police Department at any time during business hours, and the Police Department shall also have the right to thoroughly inspect the premises, store or place where the business so recorded is being conducted at any time in search of any lost or stolen property, or to compare the entries kept in such records with the articles located on such premises or place of business. All persons in charge of such business, and the agents and employees thereof, shall render to the Police Department such assistance as may be reasonably necessary to enable it in such inspection or search. ~~The person in charge of such business shall provide the Chief of Police, or his or her designated representative, each day excepting holidays, a copy of said record of transactions.~~

(A) Every secondhand dealer, secondhand jewelry dealer, and pawnbroker shall, on an electronic reporting system, approved by the City administrator, and before the hour of twelve noon of each day, furnish or enter a full, true and correct transcript of the record of all transactions had on the preceding day.

(i) At minimum such electronic reporting system must allow for the upload of information required by OMC section 5.46.050, including but not limited to pictures of the items providing true and correct images of the item which matches the description, copies of the identification of the individual selling the items, and a picture of the individual taken on the day of sale.

(B) Every secondhand jewelry dealer having good cause to believe that any property in her/his possession has been previously lost or stolen shall forthwith report that fact to the Oakland Police Department, together with the name of the owner if known, and the date when the name of the person from whom she/he received the property.

(C) Any alteration of any copies of transaction as set out in Section 5.46.050 shall be unlawful.

(D) It is unlawful for any pawnbroker, secondhand dealer, jewelry dealer, or exchange dealer in the city to make any purchase, exchange, pledge, pawn or other transfer of possession of any article unless the same is recorded as set out in Section 5.46.050.

(Prior code § 5-9.04)

5.46.070 - Identification of customers in certain establishments.

It is unlawful for any person in the city to pledge, pawn, sell, exchange or otherwise transfer property to a pawnbroker, secondhand dealer under any fictitious or assumed name or address or under any name other than his or her true name and address.

(Prior code § 5-9.041)

5.46.080 - Suspension or revocation of permit for violation of Section 5.46.070.

In addition to the grounds set forth elsewhere in this Chapter, the City Manager Administrator, upon the written recommendation therefore by the Chief of Police, may, under the provisions of Chapter 5.02, suspend or revoke a pawnbroker's, secondhand jewelry dealer's, secondhand dealer's or exchange dealer's permit upon conviction of said permittee of violating the provisions of Section 5.46.070, 5.46.036, 5.46.070 and 5.46.240 through 5.46.290.

(Prior code § 5-9.042)

5.46.090 - Merchandise to be held.

All articles purchased, received, exchanged, pledged, pawned, or otherwise taken into possession by any person maintaining or operating the business of pawnbroker, secondhand jewelry dealer, secondhand dealer or exchange dealer, or the agent thereof, the retention of which is not otherwise provided for by law, shall, except as hereinafter otherwise provided, be held for a period of thirty (30) days before being placed on exhibition, sold, exchanged, removed from the place of business where it was received, or delivered to any person, or otherwise disposed of, provided, however, that any such article may be delivered or returned at any time to the true owner thereof or his or her authorized agent; provided, further, any furniture, household furnishings, tiles, desks, chairs, safes, or other office equipment, excluding computers and other electronic

devices, need not be held for more than five days pursuant to the provisions of this section.

(Prior code § 5-9.05)

5.46.100 - Hold-order.

The Police Department may place a hold-order upon property acquired by a pawnbroker, secondhand jewelry dealer, secondhand dealer or exchange dealer in the course of his or her business for a period of ninety (90) days and, upon release of such property, may require the dealer to keep a record of the disposition of such property. It is unlawful for any such dealer to dispose of any property contrary to any hold-order issued by a member of the Police Department.

(Prior code § 5-9.051)

5.46.110 - Purchase from minors ~~and servants.~~

It is unlawful for any person maintaining or conducting the business of any pawnbroker, or secondhand jewelry dealer, or exchange dealer, or any agent or employee thereof, to purchase or take goods or articles or things offered to him or her by any minor, ~~or knowingly purchase or take such goods, articles or things from any servant or apprentice without~~ first ascertaining that such article or thing is the property of the person delivering the same, or that such servant or apprentice has the authority from the owner to deliver or sell such property. The word "minor" shall mean any person described in Section 6500 of the Family Code who is not an emancipated minor as provided for in Section 7002 of the Family Code.

(Ord. 11931 § 1, 1996: prior code § 5-9.06)

5.46.120 - Declaration of legal status.

It is unlawful for any person maintaining or conducting the business of pawnbroker, secondhand jewelry dealer or exchange dealer or any agent or employee thereof to purchase or take any goods or articles or things offered to him or her by any person under the age of eighteen (18) years who claims legal status as an emancipated minor pursuant to Family Code Section 7002, unless such person shall have executed and delivered to said pawnbroker, secondhand dealer, exchange dealer or any agent or employee thereof a certificate substantially as follows:

Declaration of Legal Status

I hereby declare under penalty of perjury that the following is true and correct: (1) I have entered into a valid marriage, whether or not the marriage has been dissolved; (2) I am on active duty with the armed forces of the United States; or (3) I have received a declaration of emancipation pursuant to Family Code Section 7122.

Executed at Oakland, California

Dated: _____

Signed: _____

(Ord. 11931 § 2, 1996: prior code § 5-9.061)

5.46.130 - Hours.

It is unlawful for any person conducting or maintaining the business of pawnbroker, secondhand dealer, secondhand jewelry dealer, or exchange dealer, or any agent or employee thereof, to keep or cause to be kept, such place of business open on the first day of January, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, of each year, or on any other day except between the hours of seven a.m. and seven p.m.; provided, however, that on Saturdays and days preceding the aforesaid holidays, such business may be kept open until eleven p.m.

Any person engaged in conducting any business other than those hereinabove mentioned on the same premises as such business, or in conjunction with the same, shall notwithstanding close the place of such other business at the same time and in the same manner as herein provided. No person shall be engaged in any occupation at such place of business or businesses, or remain therein, during any such time such place of business or businesses is by this section required to be closed.

(Prior code § 5-9.07)

5.46.140 - Secondhand automobile dealers, secondhand automobile parts dealers and automobile wreckers and wrecking establishments—Records and reports.

Every person operating, maintaining or carrying on, the business of a secondhand automobile dealer, secondhand automobile parts dealer, or an automobile wrecking establishment shall keep, or cause to be kept, a record of the purchase, sale, exchange or storage of any automobile, or part thereof or accessory thereto, which record shall at all times be open to the inspection of the Chief of Police, or any officer detailed by him or her, and such person shall, as often as the Chief of Police shall direct, make out and deliver to him or her, on a blank form to be furnished by the Chief of Police, a full and complete report of the purpose, sale, exchange, storage or other transaction of such property. The said report shall contain the name of the person from whom purchased, the make, state license number, motor number, body number, style and seating capacity of all secondhand automobiles purchased, sold, exchanged or placed in storage; the make, size and number of secondhand automobile tires; and the make and number of every secondhand automobile part or accessory so purchased, sold, exchanged or otherwise dealt with, together with such other information concerning said property as may be necessary to prove ownership or identity of such second-hand automobiles or automobile parts and accessories. A violation of any provision of this section shall be a misdemeanor, and it shall further be unlawful for any such person engaged in any such business to dispose of any secondhand automobile or part thereof or accessory thereto, until a report has been made concerning the purchase, sale or exchange of said property to the Chief of Police and he or she, or an officer detailed by him or her, shall have had an opportunity of inspecting the same.

Provided, the foregoing provisions of this section are not intended to require the keeping of records and the making of reports of parts of any vehicle acquired for the purpose of wrecking or dismantling the acquisition of which must be reported to the Department of Motor Vehicles and to the local Police Department under the provisions of Section 11520 of the Vehicle Code of the state of California.

Provided further, every automobile wrecker permitted as such who obtains actual possession of a vehicle subject to registration pursuant to the California Vehicle Code for the purpose of wrecking or dismantling the same, shall within twenty-four (24) hours after the acquisition of such vehicle notify the Chief of Police of such acquisition. Said notice shall be a copy of the form prescribed for such purpose by the Division of Registration of the Department of Motor Vehicles of the state of California, and shall contain information

required by said Department and as authorized by Section 11520 of the Vehicle Code of the state of California.

(Prior code § 5-9.09)

5.46.150 - Storage of secondhand building material—Permit.

It is unlawful for any person to establish or maintain, or to cause or be established or maintained, any yard, place or premises for the storage of secondhand building material unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Fire Marshal.

(Prior code § 5-9.11)

5.46.160 - Storage of secondhand building material—Regulation.

It is unlawful for any person to establish or maintain, or cause to be established or maintained, any yard, place or premises for the storage of secondhand building material unless the same be continuously equipped with one and one-half inch hose reel and one two and one-half gallon tire extinguisher, both in working condition, for each eight thousand (8,000) square feet of area of such premises or fraction thereof. All building material in such yards and premises shall be placed in piles, with aisles at least three feet in width between such piles.

(Prior code § 5-9.12)

5.46.170 - Scrap dealers and scrap collectors—Permits.

It is unlawful for any person to engage in or carry on or conduct, or to permit to be carried on, engaged in, or conducted, within the city, the business of a scrap collector or a scrap dealer as defined in Section 5.46.010 unless there exists a valid permit therefore, granting and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. This section shall not apply to the collecting, buying, or selling of aluminum cans for the sole purpose of recycling.

(Prior code § 5-9.13)

5.46.180 - Scrap dealers and scrap collector's application.

No permit shall be granted to a scrap dealer or to a scrap collector, as provided in Section 5.46.170, unless the application for a permit is accompanied by the signatures and addresses of three resident freeholders certifying to the good moral character and reputation of the person making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the business if the permit is granted, shall be fingerprinted at the request of the Oakland Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter, or any law regulating scrap or secondhand personal property, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints.

(Prior code § 5-9.131)

5.46.190 - Scrap dealers and scrap collectors—Records.

Every person engaged in, carrying on, or conducting, the business of scrap dealer or scrap collector referred to in Section 5.46.170 shall keep, or cause to be kept, at such place of business a substantial well-bound book, and shall promptly enter therein an exact description of all personal property purchased by him or her, the date of purchase, the name and residence or place of business of the person from whom purchased, and all particular and prominent marks of identification that may be found on such property; said book shall be kept neat and clean, and all notes made therein shall be neatly and legibly written in ink and in the English language, and such book shall at all times during the ordinary hours of business, be open to the inspection of the Chief of Police or any officer designated by the Chief of Police.

(Prior code § 5-9.14)

5.46.200 - Scrap dealer's records.

In addition to the records required in Section 5.46.190, a scrap dealer shall require, and it shall be the duty of the person selling any article to such dealer to sign his or her true name in the book required to be kept by the above-mentioned section, opposite the description of the property sold by such person to such dealer. If the person selling such personal property is a permitted scrap collector in the city, such person shall, and it shall be the duty of such dealer to require such person to, affix after his or her signature the number of his or her scrap collector's permit. The person selling any personal property to a scrap dealer shall affix after his or her signature, as herein required, the number of the current permit plates issued by the Department of Motor Vehicles of the state of California for the vehicle operated by such person, in which the property sold was transported, and it shall be the duty of the scrap dealer to verify the truthfulness of the number entered.

(Prior code § 5-9.141)

5.46.210 - Scrap dealers and scrap collectors—Regulations.

It is unlawful for any scrap dealer to dispose of any scrap until at least five days have elapsed since he or she took possession of same; or to receive any personal property by way of a pledge or pawn, or to engage in the business of a pawnbroker on the same premises wherein the business of such scrap dealer is located; or for any scrap collector or scrap dealer to purchase, collect or acquire any property, or to keep, or cause to be kept, such place of business open on any Sunday or on the first day of January, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, or upon any day appointed by the President of the United States or by the Governor of this state for a public fast, thanksgiving or holiday, or at any time except between the hours of eight-thirty a.m. and six p.m.

It is unlawful to store or keep any bones, or refuse food stuff, or any scrap intermingled with food materials or particles thereof, which may attract rats, mice or like rodents or serve as food for them, or to permit such materials to accumulate on the premises of any scrap dealer or scrap collector, or in any scrap yard, junk yard or junk shop whatsoever, except such bones or other materials may be stored in a covered bin of metal, concrete, tile or other solid or impervious substance so constructed as to be entirely rat proof

(Prior code § 5-9.15)

5.46.220 - Pawnbroker's receipt books.

Every person managing, maintaining or conducting the business of a pawnbroker in the city shall keep or

cause to be kept, at the store or place of business, receipt books as hereinafter described. Such books shall be kept in addition to the record of transactions required by Section 5.46.050, and shall consist of duplicate sheets of white paper not less than four by seven inches in size and bearing consecutive numbers. One of each of said duplicate pages shall be so perforated as to enable its removal. One of the aforesaid books shall be kept for the recording of, and the receipting for, sales, and there shall be printed at the top of the perforated sheet, in colored type, not less than three-eighths of an inch in height, the following words: "This is a sale and not a pledge." One of the aforesaid books shall be kept for the recording of, and the receipting for, pledges, and there shall be printed at the top of the perforated sheet, in colored type, not less than three-eighths of an inch in height, the following words: "This is a pledge and not a sale."

(Prior code § 5-9.27)

5.46.230 - Pawnbrokers' customer receipts.

It is unlawful for pawnbrokers to make any purchase, exchange, pledge, pawn or other transfer of possession of any article, unless the same is recorded in one of the record and receipt books required by the provisions of Section 5.46.220, setting forth the name and address of the pawnbroker, a description in the English language of the article involved in such transaction, the date of the sale, the name of the customer with whom such transaction is made, the rate of interest charged, if any, the term of redemption, if any, and the same shall be signed by the pawnbroker or his or her agent making such transaction. The perforated sheet, which shall be the original duplicate, shall, after being tilted out as herein provided, be delivered to the person with whom the transaction is made. The duplicate thereof shall be kept by the pawnbroker for a period of at least two years next following the date of the transaction, and shall, during such time, be available at all times during business hours for inspection by the Oakland Police Department. Any alteration of such duplicate sheet shall constitute a misdemeanor.

(Prior code § 5-9.28)

5.46.240 - Disciplinary action—Good cause designated.

A Permittee issued a permit pursuant to this Chapter may be subject to disciplinary action by the City for good cause, which may, without limitation, include the following grounds:

(A) The permittee or any of its principals is engaged, or has commenced, instituted, advertised, aided, carried on, continued or engaged, in a business, trade or profession without having obtained a valid permit, an approval for suitability, or a permit when such a person knew that one was required or under such circumstances that they reasonably should have known one was required, or has solicited, encouraged, caused or procured another to do so;

(B) The permittee or any of its principals has been subject, in any jurisdiction, to disciplinary action of any kind with respect to a permit, an approval for suitability, a permit or a work card to the extent that such disciplinary action reflects upon the qualification, acceptability or fitness of such permittee or principal;

(C) The permittee or any of its principals has been convicted of an act which constitutes a crime which involves moral turpitude or involves any local, state or federal law or regulation which relates to the same or a similar business, or has been convicted of having solicited, encouraged, caused or procured another to commit such a violation;

(D) The permittee or any of its principals, or their employees or those acting on their behalf has or have violated a condition which is imposed upon the permit;

(E) The permittee or any of its principals has or have been convicted of having perpetrated, or has solicited, encouraged, caused or procured another to perpetrate, in deceptive practices upon the public;

(F) The premises on which the business is conducted do not satisfy local, state or federal law or regulations which pertain to the activity which is actually engaged in;

(G) The business activity constitutes, promotes, causes, allows, fosters, aids, or otherwise enables a private nuisance, public nuisance or chronic nuisance, or has been or is being conducted in an unlawful, illegal or impermissible manner, including but not limited to causing, allowing, promoting, fostering, aiding, enabling, exercising deliberate ignorance towards or failing to abate a private nuisance, public nuisance or chronic nuisance; or

(H) The permittee, any of its principals, their employees or those acting on their behalf failed to cooperate with the City's efforts to enforce the provisions of this Code.

5.46.250 - Disciplinary action—required or prohibited act violations.

Whenever this Chapter requires any act to be done or prohibits or makes unlawful the doing of any act, the failure to do any such required act or the doing of any such prohibited or unlawful act shall subject the person who commits such violation to disciplinary action.

5.46.260 - Disciplinary action—Acts of principals and subordinates.

A permittee under this Chapter shall be subject to disciplinary action not only for acts or omissions done by such permittee but also for acts and omissions done by the principals, managers, agents, representatives, servants or employees of such permittee.

5.46.270 - Disciplinary action—Forms.

Upon a showing of good cause and in the discretion of the City Administrator or her/his designee, disciplinary action against a holder may take the form of cancellation, revocation, refusal to renew, suspension, imposition of conditions or restrictions or civil fine in an amount not to exceed one thousand dollars for each day that the violation which forms the subject matter of the complaint that recommends such disciplinary action is demonstrated to have been in existence, or any combination of such actions, as the particular situation may require. The City Administrator may also impose against the permittee the actual costs incurred including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs. The disciplinary actions available in this Section shall be in addition to, and not exclusive of any other civil or criminal remedy which otherwise might be available.

5.46.280 - Settlement in lieu of Disciplinary Actions

For a first or second alleged violation of this chapter within any sixty (60) month period, the City Administrator or authorized designee may seek to negotiate a resolution of the administrative claim and may enter into a agreement to settle and administrative claim with a permittee alleged to have violated this chapter without approval. Notice of any agreement to settle such administrative claim shall be provided to the Oakland Police Department and no hearing shall be held. A permit issued pursuant to this Chapter shall be suspended until settlement agreement is adopted. After the settlement agreement has been adopted, the

permit shall continue under the same terms prior to the agreement to settle the administrative claim, unless otherwise stated. Agreements to settle administrative claims shall not be confidential and shall contain the following minimum terms:

A. After a first alleged violation of this chapter at a location within any sixty (60) month period:

1. An agreement to stop acting as a permitted pawnbrokers or secondhand jewelry dealers for at least one day;
2. An administrative claim settlement payment to the city of at least one thousand dollars (\$1,000.00); and
3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

B. After a second alleged violation of this chapter any sixty (60) month period:

1. An agreement to stop acting as a permitted pawnbrokers or secondhand jewelry dealers for at least ten (10) days;
2. An administrative claim settlement payment to the city of at least five thousand dollars (\$5,000.00); and
3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

5.46.280 - Emergency orders—Grounds —Content—Effective date.

(A) Except as provided in Subsection (B), and independent of any other action, the Chief of Police may issue an emergency order which suspends or conditions a permit upon a determination that:

- (1) There has been a violation of the provisions of this Chapter; and
- (2) Such order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare within the City.

(B) Any emergency order issued pursuant to Section 6.02.363 shall:

- (A) Set forth the grounds upon which it is issued, including a statement of facts constituting the emergency which necessitates such order;
- (B) Be effective immediately upon the issuance and service thereof on the permittee or its representative or upon the permitted premises; and
- (C) Indicate the period of time for which it is effective, which shall be based upon the severity of the violation and the nature of the emergency as determined by the Chief of Police.

5.46.290 – Pawnbrokers and Secondhand Jewelry Dealers Permits renewal and expiration.

A. Renewal of Permits. A permit issued pursuant to this Chapter is invalid unless the appropriate fee has

been paid in full and the term of the permit has not expired. The permit issued pursuant to this Chapter shall be for one year. Each Permittee shall apply for the renewal of his or her permit and submit the permit fees no later than thirty (30) days prior to expiration of the permit term.

B. Expiration of Permit. A permit issued pursuant to this Chapter that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed pursuant to subsection (A), the proprietor must:

1. Submit the permit fee plus a reinstatement fee of ten percent (10%) of the permit fee.
2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any merchandise covered by this Chapter after the permit expiration date and before the permit is renewed.

5.46.300 - Fees for Permits.

A. In addition to any application or processing fees that may be required by the State of California or the City of Oakland, the permittees shall pay an annual permit fee as established in the City's Master Fee Schedule, and as may be amended by Council. The permittee shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the permit issued pursuant to this chapter and Section 5.02.020, in a conspicuous place in the premises approved for this activity at all times. The fees shall be calculated so as to recover the total cost of both permit administration and permit enforcement, including, for example, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees shall be used exclusively to fund the program, and shall be separately accounted for. Fees are nonrefundable except as may be required by law.

B. Fees Due and Payable. The application fee is due and payable at the time the application is submitted to the city. All licensing and renewal fees shall be due and payable to the city as determined by the City Administrator's Office. The amount of fees shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent fees. An action to collect the fee must be commenced within three years of the date the fee becomes due. An action to collect the penalty for nonpayment of the fee must be commenced within three years of the date the penalty accrues.

C. Fees Assessed Against the Business Property. The amount of fee, penalty and interest imposed under the provisions of this chapter may be assessed against the real property on which the business property on which the fee is imposed in those instances where the proprietor of the business and the business property are one and the same. If the fees are not paid when due, such fee, penalty and interest shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest, are paid or until it is discharged of record.

D. The fees referenced herein shall be set by Council resolution, as may be modified by future action of the Council.

5.46.310 - Compliance monitoring.

A. Compliance with this chapter shall be monitored by the Oakland Police Department. Any peace officer

may enforce the penal provisions of this chapter.

B. Nothing in this chapter shall create a right of action in any permittee or other person against the city or its agents.

C. Compliance checks shall determine, at a minimum, if the permittee is conducting business in a manner that complies with state and local laws.

5.46.320 - Enforcement.

All officials, departments, and employees of the city vested with the authority to issue permits, certificates, or permits shall adhere to, and require conformance with, this Ordinance.

A. Violations and Penalties.

1. Infractions. Any person who violates, causes, or permits another person to violate any provision of this chapter is guilty of an infraction unless otherwise provided.

2. Separate offenses for each day. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.

3. Any violation a public nuisance. In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared to be a public nuisance and may be summarily abated as such by the city.

4. Injunction as additional remedy. Any violation of any provision of this chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief

5. Penalties. Any person convicted of an infraction under the provisions of this section shall be punishable by a fine to the maximum permitted under Oakland Municipal Code Chapter 1.28. Any violation beyond the second conviction within a one-year period may be charged by the District Attorney as a misdemeanor, and the penalty for conviction shall be punishable by a fine or imprisonment to the maximum permitted under Oakland Municipal Code Chapter 1.28

6. Liability for expenses. In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city or any of its contractors in correction, abatement, and prosecution of the violation.

B. Enforcement. The city designates the Oakland Police Department to enforce the provisions of this chapter. The City Administrator shall have power to adopt rules of procedure and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out the provisions of this chapter; and a copy of such rules of procedure and regulations shall be on file and available for public examination at the Oakland Police Department.

C. Inspection and Right of Entry. The Police Department, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner, whenever they have cause to suspect a violation of any provision of this chapter. An owner or occupant or agent thereof who refuses to permit such entry and investigation shall be

guilty of infringing upon the violations and penalties as out- lined in Section 5.91.140(A) and subject to related penalties thereof

D. Remedies are Cumulative. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION 2.

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.

SECTION 3.

This ordinance shall be effective upon approval by the Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012
PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 FEB 16 PM 5:26

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.46 TO: (1) ESTABLISH NEW REGULATIONS FOR "SECONDHAND JEWELRY DEALERS; AND (2) REVISE REGULATIONS FOR "SECONDHAND DEALERS" AND "PAWNBROKERS."

NOTICE AND DIGEST

This Ordinance authorizes an amendment to Chapter 5.46, as amended, to establish, modify and delete regulations pertaining to the administration of Special Business Permits Associated with the operations of Secondhand Jewelry Dealers by the City Administrator's Office. These amended regulations would become effective March 6, 2012 and would remain in effect until further notice. A public hearing has been scheduled to review the proposed fee changes. The meeting will take place at the time of the first reading of the proposed ordinance by the City Council, on March 6, 2012, at 7:00 pm or as soon as practically possible thereafter.

INTRODUCED BY COUNCIL MEMBER _____

2012 FEB 16 PM 5:25

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.46 TO: (1) ESTABLISH NEW PERMITTING AND OPERATING STANDARDS FOR “SECONDHAND JEWELRY DEALERS; AND TO (2) REVISE OPERATING STANDARDS FOR “SECONDHAND DEALERS” AND “PAWNBROKERS”

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 1/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.

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

SECTION 1.

5.46.010 - Definitions.

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

"Applicant" shall mean a person, business, or corporation who has submitted an application for consideration to operate as a Secondhand Jewelry Dealer in the City of Oakland.

"Automobile wrecking establishment" means and includes any establishment, building or other place where the business is carried on of wrecking old or used automobiles or other motor vehicles, and adding or employing the accessories and parts thereof in equipping, repairing, or rebuilding motor vehicles, or storing, selling, or otherwise disposing of, such accessories or parts.

"Broken Lock" shall mean a locking mechanism, such as a clasp, latch, or other which is intended to keep a piece of jewelry on the person who is wearing it and which has been disabled or is in a state of disrepair such that it can no longer serve to function as a locking mechanism.

"City Administrator" as used in this chapter shall mean the City Administrator for the City of Oakland.

"Crime involving Moral Turpitude" means a violation of law that involves any of the following: an intent to defraud; intentional dishonesty for personal gain; intentionally causing a serious injury to another; the sale of narcotics or possession of narcotics with intent to sell; or a sexual offense.

"Commercial zone" is defined as that term is used in the Oakland Planning Code 17.09.040.

"Deceptive practices" shall mean concealment of the actual facts, operations, business practices, records, or failure to keep and document required records that relate to the sale and purchase of used jewelry or the procurement thereof

"Drug paraphernalia" as used in this chapter shall have the same definition set forth under California Health and Safety Code section 11364.5, as amended from time to time.

"Exchange dealer" means and includes every person who engages in or conducts the business of accepting secondhand articles in full or partial payment for any other article or articles carried as stock in trade by such person, and shall include the acceptance of any article in full or partial payment for any rebuilt or remanufactured article of similar or different nature. This definition shall not apply to dealers whose principal or primary business is retailing or wholesaling new merchandise.

"Industrial zone" is defined as that term is used in the Oakland Planning Code 17.09.040.

"Moral Turpitude" shall mean conduct that is considered contrary to community standards of justice, honesty or good morals.

"Pawnbroker" means and includes every person, firm or corporation, other than banks, trust companies or bond brokers who may otherwise be regulated by law and authorized to deal in commercial papers, shares of stock, bonds and other certificates of value, who keeps a loan or pawn office or engages in or carries on the business of receiving jewelry, precious stones, valuables, firearms, clothing, or personal property, or any other article or articles in pledge for loans or as security, or in pawn for the repayment of moneys, and exacts an interest for such loans.

"Permittee" shall mean an Applicant who has been granted a license, permit, or other document by the City of Oakland to allow the Applicant to conduct, operate, or otherwise conduct the business activity of a Secondhand Jewelry Dealer in the City of Oakland.

"Person" as used in this chapter shall mean any natural person, partnership, cooperative association, corporation, Limited Liability Company, personal representative, receiver, trustee, assignee, or any other legal entity.

"Precious metals" means gold, platinum, silver and their alloys.

"Precious metals store" means and includes any person operating, maintaining or carrying on the business of buying and selling or exchanging gold, platinum, silver and their alloys.

"Principal" means for the purposes of this chapter shall be the business Applicant/owner/operator/Permittee who has applied for and is being considered for permit pursuant to this Chapter.

"Proprietor" as used in this chapter shall mean a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

"Residential zone" is defined as that term is used in the Oakland Planning Code 17.09.040.

"Scrap collector" means and includes any person who goes from place to place for the purpose of engaging in or carrying on the business of collecting, buying or selling, either at wholesale or retail, any old rags, bottles, sacks, cans, papers, metals, or any other worn out or discarded material. All such materials are hereinafter referred to as "scrap."

"Scrap dealer" means and includes any person having a fixed place of business and who is engaged in carrying on the business of buying or selling, either at wholesale or retail, any old rags, bottles, sacks, cans, papers, metals, or any other worn out or discarded material. All such materials are hereinafter referred to as "scrap."

"Secondhand automobile or aircraft parts dealer" means and includes any person operating, maintaining or carrying on the business of buying and selling or exchanging secondhand, used, government surplus, salvaged, reclaimed, or renewed automobile, or aircraft parts or accessories.

"Secondhand dealer" means and includes every person who engages in, or conducts the business of buying, selling or exchanging, whether as a separate business or in connection with other businesses, secondhand or

rebuilt typewriters, adding and calculating machines, secondhand bicycles, bicycle accessories, motorcycles, motorcycle accessories, scales, clothing, tools, harnesses, surgical, dental or drawing instruments, firearms, pianos or other musical instruments, furniture, household furnishings, books, used and reclaimed army goods, merchandise, or any other secondhand article or articles or things, excepting, however, secondhand jewelry dealers, secondhand automobile or aircraft parts dealers, scrap collectors and secondhand automobile or aircraft parts dealers, scrap collectors and scrap dealers as herein defined, nor shall it pertain to automobile wrecking establishments as herein defined; and provided, further, that nothing in this chapter shall be understood to include as secondhand dealers persons who engage in the business of selling no other secondhand goods or articles than those used and reclaimed, rebuilt or remanufactured, articles or goods which are purchased by such dealer direct from bona fide wholesale dealers, jobbers or manufacturers, or from distributing agents of the United States Army or Navy.

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

"Suitability" means a determination that the person/entity has met the requirements of this chapter and is qualified to operate a permit issued pursuant to this chapter.

(Prior code §§ 5-9.01, 5-9.01(a)—5-9.01(f), 5-9.01(i), 5-9.01(j))

5.46.020 - Pawnbrokers—Permits.

It is unlawful for any person to engage in, or carry on, or conduct, or to permit to be carried on, engaged in or conducted, within the city, the business of any pawnbroker, whether as a separate business or in connection with any other business, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. Both the application for such a permit and the issued permit shall set forth the exact nature of the business to be carried on. In addition, the application shall set forth the requirements specified in Section 5.02.020, and such application shall be accompanied by the signatures of three resident freeholders, certifying to the good moral character and reputation of the person or persons making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating pawnbrokers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had, in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

(Prior code § 5-9.02)

5.46.030 - Secondhand dealers, exchange dealers—Permits.

It is unlawful for any person to engage in, or carry on or conduct, or to permit to be carried on, engaged in

or conducted, within the city, the business of any secondhand dealer, or exchange dealer, whether as a separate business or in connection with any other business, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars, or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. Both the application for such a permit and the issued permit shall set forth the exact nature of the business to be carried on. In addition, the application shall set forth the requirements specified in Section 5.02.020, and such application shall be accompanied by the signatures of three resident freeholders, certifying to the good moral character and reputation of the person or persons making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating secondhand dealers, and exchange dealers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

(Prior code § 5-9.021)

5.46.031 – Secondhand Jewelry Dealers—Permit required and Application for permit.

A. It is unlawful for any person to engage in, or carry on or conduct, or to permit to be carried on, engaged in or conducted, within the city, the business of any secondhand jewelry dealer whether as a separate business or in connection with any business other than a jewelry or precious metals store, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars, or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter. Such permitted business must still comply with all requirements of the Business and Professions Code Article 4 – Tangible Property.

B. This Chapter, and the requirement to obtain a business permit, does not apply to a business operating solely as a stand alone Jewelry store that sells only new jewelry, or a jewelry store within a larger department store, that does not conduct or engage in the business of buying and selling used or previously owned precious metals from members of the public. Except as otherwise specified in Section 5.46.031C, this ordinance shall apply to all Secondhand Jewelry Dealers.

C. The City Administrator shall issue no more than three (3) valid permits for the operation of a Second-Hand Jewelry Dealer for each commercial zone in the City. Further, within each commercial zone, each secondhand jewelry dealer must be at least 1000 feet away from one another and from residential areas. The geographic and separation restrictions provided in this section (Section 5.46.031 C) do not apply to Secondhand Jewelry Dealers operating lawfully pursuant to a properly issued permit as of the effective date of this ordinance.

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a secondhand jewelry dealer shall set forth the following information:

1. That the proposed secondhand jewelry dealer must be located in a commercial zone or industrial zone or its equivalent as may be amended, of the City.
2. The business name, address, telephone number and business hours of the single fixed location for which a permit is sought.
3. A single name and mailing address authorized by each permittee and proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each permittee and proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (2) above.
4. If the single fixed location is leased, a copy of the lease and the name of the owner of the single fixed location.
5. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the business operations comply with local regulations as enumerated in this Chapter and state law.
6. The applicant's prior business activities, financial history and business associations covering at least the ten-year period immediately preceding the year of filing the application;
7. The name, address and job description of each person who is to be actively engaged in the administration or supervision of the business to be permitted.
8. The applicant shall agree in writing that, if a permit is granted, the applicant will accept the permit subject to all of the terms and provisions of this Chapter and that the permit is a privilege and does not extend or confer upon the person to whom is the permit is granted any rights or privileges in perpetuity or which run with the land.
9. The application shall also set forth the City of Oakland's general business permitting requirements as specified in Oakland Municipal Code Section 5.02.020.
10. The application shall be accompanied by the signatures of three residents of the City of Oakland vouching for the good moral character and reputation of the person or persons making such application.
11. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating secondhand dealers, secondhand jewelry dealers, and exchange dealers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the

grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

12. The applicant shall authorize the City in writing to obtain information from criminal justice agencies, financial institutions, Federal, State and local governments and agencies, and other persons and entities and shall consent in writing to the release of such information to the City for use in connection with the application for the permit and other City business regulations. The applicant shall also sign a release of claims and hold-harmless agreement to the City for its use of the information provided by the applicant or discovered during any investigation thereof

13. A plan of operations that will describe how the secondhand dealer will comply with the following operating standards:

a. The method and manner in which they will record the transactions and abide by the requirements of OMC sections 5.46.050, 5.46.060, 5.46.070, and 5.46.090 respectively.

b. The Owner shall install internal and external surveillance cameras: The Owners or Operators will confer with O.P.D. in regards to camera placement prior to installation of the external camera. The owners or operators will make camera recordings available to O.P.D. upon request. The Owner or Operator will confer with OPD regarding the number, type, and location of security cameras that will be installed. At a minimum the external cameras shall:

1. monitor the entrance, interior, and exterior of the commercial activity
2. record to a "DVR" or hard drive device that will record a 30 day time period

c. Owner or Operator shall install signs with block lettering at least two inches tall shall be posted outside the premises stating "YOUR ACTIVITIES ARE BEING RECORDED."

d. Improve visibility and lighting of the commercial tenant site, such that lighting shall adequately illuminate the exterior of building so that individuals loitering on or about the premises will be easily identifiable.

e. Exterior of business Façade shall include large windows which provide for a reasonably clear view from the public right of way of all interior activities that are open to the public

f Provide rendering of signage and identify placement of signs on the façade. Signage shall be limited to one wall sign not to exceed ten (10) square feet in area, and one (1) identifying sign not to exceed two (2) square feet in area. Such signs shall not be directly illuminated or made of neon lighting.

g. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Public notice of the hearing on the permit application shall be given as provided under Oakland Municipal Code Chapter 5.02 The Chief of Police shall be the investigating official referred to in Section 5.02.030 to whom the permit application shall be referred. Based on the findings of the Chief of Police's

investigation, the City Administrator shall recommend the grant or denial of the permit application. In recommending the granting or denying of such permit application, the City Administrator shall give particular consideration to the complaint history of the applicant and other relevant factors that in the City Administrator's discretion he/she deems necessary to protect the peace, order and welfare of the public.

F. At the time of submission of permit application, all applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process. These fee amounts shall be set by City Council resolution.

G. Relief from Permit Application Requirements and Operating Standards. Any person who owns or operates, or who has applied to expand, modify or establish a facility or business 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 of stone, which would be affected by the required application permit requirements and performance standards, and who contends that the permit application requirements and operating standards as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the City Administrator requesting relief from the Permit Requirements and Operating Standards within 10 (ten) days of being initially notified of the Permit Application Requirements and Operating Standards. For purposes of this section, notice to a predecessor in interest shall constitute such initial notice to subsequent owners/operators. The written request for relief from these Permit Application Requirements and Operating Standards must (a) identify the name and address of the applicant and business; (b) the affected application number; (c) specifically state how the permit application and/or performance standards as applied to him or her would be unlawful under Federal, State, or local law or regulation; and (d) include all appropriate legal and factual support for the request for relief. Within thirty (30) days of receipt of the completed request for relief, the City Administrator, or his/her designee, shall mail to the applicant a written determination. The applicant may appeal such determination pursuant to the appeals process outlined in Oakland Municipal Code section 5.02.100.

H. Indemnification.

1) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a Secondhand Jewelry Dealer permit application or subdivision or (2) implementation of an approved Secondhand Jewelry Dealer permit. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

2) Within ten (10) calendar days of the filing of any Action as specified in subsection 1 above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

5.46.032 - Application—Confidentiality.

Information showing the applicant's finances, net worth, earnings or revenues which is submitted as a part of the application for a permit shall be treated as confidential except as follows:

- (A) In the ordinary course of the administration of this Chapter;
- (B) Pursuant to a subpoena or other order of a court of competent jurisdiction;
- (C) Release to a duly authorized agent of any governmental agency acting pursuant to the agency's authority and function.

5.46.033 - Changes—Approval required when.

A. Prior approval must be obtained for a secondhand jewelry dealer permittee approved for suitability to do any of the following acts:

1. Convey, give, or otherwise transfer the permit from one person to another person, business, or entity or to establish the permit in the name of or in the form of a different business entity for the purposes of allowing the other person, business, or entity to conduct, operate or otherwise act as a business operating as a Secondhand Jewelry Dealer.
2. Transfer any ownership interest or voting control to a person who, because of the transfer, would be required to be approved for suitability;
3. Expand the permitted business operations in terms of inventory or physical space of premises by more than twenty percent;
4. Change the location of a permit from one premises to another premises within the City limits;
5. Change the name of the business operating under a permit.

B. Such prior approval may be granted by the City Administrator or his or her designee, based on the record of the permittee's performance in meeting the operating standards and other relevant factors.

5.46.034 - Changes—Denial of approval.

The City Administrator or their designee may deny approval of any act for which approval is required by this Chapter for good cause, which includes those causes set forth in Sections 5.46.036, 5.46.070 and 5.46.240 through 5.46.290.

5.46.035 - Transfer of ownership or control—Financial encumbrance.

Each permittee must notify the City Administrator or her/his designee at least thirty days prior to transferring or recognizing the transfer of any ownership interest or voting control which results in a person acquiring an ownership interest or voting control equal to or greater than ten percent of the entire ownership in or voting control of the permittee or prior to subjecting any of its assets, income or revenue to any security interest or other encumbrance.

5.46.036 - Disciplinary action—Grounds.

(A) A permittee may be subject to disciplinary action as set forth in Sections 5.46.036, 5.46.070 and 5.46.240 through 5.46.280.

(B) A principal approved for suitability may be subject to disciplinary action by the City for good cause, which may include, but is not limited to:

- (1) The application is incomplete or contains false, misleading or fraudulent statements with respect to any information required in the application;
- (2) The principal fails to satisfy any qualification or requirement imposed by this Code, or other local, State or Federal law or regulation pertaining to the particular approval for suitability sought or held;
- (3) The principal is or has engaged in a business, trade or profession without a valid permit, permit, approval for suitability when he knew that one was required or under such circumstances that he reasonably should have known one was required;
- (4) The principal has been subject, in any jurisdiction, to disciplinary action of any kind against a permit, permit, and approval for suitability or work card to the extent that such disciplinary action reflects on the qualification, acceptability or fitness to be approved for suitability;
- (5) The principal has committed acts which would constitute a crime involving moral turpitude or involving any Federal, State or local law or regulation relating to the same or a similar business. For purposes of this Paragraph, a crime involving moral turpitude is one that necessarily involves any of the following: an intent to defraud; intentional dishonesty for personal gain; intentional causing of serious injury to another person; the sale of narcotics or possession of narcotics with intent to sell; or a sexual offense;
- (7) When substantial information exists which tends to show that the principal is dishonest or corrupt;
- (8) The principal lacks sufficient financial, technical or educational ability or experience to conduct or perform the activity for which approval for suitability is sought;
- (9) The principal, or his or her employees or those acting on their behalf, violates any condition upon which approval for suitability was granted;
- (10) The principal has engaged in deceptive practices upon the public; or
- (11) The principal suffers from a legal disability under the laws of the State.

5.46.037 - Disciplinary action—Alternatives.

(A) Upon a showing of good cause and in the discretion of the City disciplinary action against a principal approved for suitability may take the form of cancellation, revocation, suspension, imposition of conditions or restrictions, or civil fines (or any combination thereof) as the particular situation may require.

(B) The City may also impose against the principal the administrative and legal costs incurred in the matter such as attorneys' fees, expert witness or consultant fees, City Attorney time, staff time, expenses or costs

(C) The disciplinary actions available in this section shall be in addition to, and not exclusive of, any other civil or criminal remedy which otherwise might be available.

5.46.038 - Emergency orders—Grounds & Contents—Effective Date

(A) The Chief of Police may issue an emergency order which suspends or conditions a permit upon a determination that:

- (1) There has been a violation of the provisions of this Chapter; and
- (2) Such order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare within the City.

(B) Any emergency order issued pursuant to Section 5.46.038 shall:

- (1) Set forth the grounds upon which it is issued, including a statement of facts constituting the emergency which necessitates such order;
- (2) Be effective immediately upon the issuance and service thereof on the permittee or its representative or upon the posting thereof upon the permitted premises; and
- (3) Indicate the period of time for which it is effective, which shall be based upon the severity of the violation and the nature of the emergency as determined by the Chief of Police.

5.46.039 - Emergency orders—Appeal.

A permittee who is affected by an emergency order issued under Section 5.46.038 may appeal the order by filing an appropriate action in the City Administrator's Office to challenge or seek review of the order. Such action to appeal must be filed no later than 10 days following receipt of emergency order or the right to appeal is deemed waived. The decision of the City Administrator pursuant to this appeal is final and conclusive.

5.46.040 - No permit to minor.

No permit shall be issued for any business enumerated in Section 5.46.020 or 5.46.030 if the applicant therefore is under eighteen (18) years of age, nor if the applicant is a firm, partnership or corporation, if any member of such firm or partnership is under eighteen (18) years of age.

(Prior code § 5-9.022)

5.46.050 - Record of transactions.

Every person managing, maintaining or conducting the business of any secondhand dealer or exchange dealer, in the city shall keep, or cause to be kept, at the store or place of business, a well-bound book containing a record in which shall be legibly entered in the English language, in ink, at the time of every purchase, sale, exchange, pledge, pawn, or other transfer of possession of any article, or loan thereon, a description of such article received or delivered in such transaction sufficient to identify the same including serial number and all particular or prominent marks of identification that may be found on such property, the signature, address, age, sex and description of the person receiving, delivering or transferring the property or who is otherwise dealt with, the amount of money paid or received in such transaction, and the rate of interest, if any, and the date and hour of the transaction.

(A) Every secondhand jewelry dealer or pawnbroker shall maintain in his place of business a book or other permanent record in which must be legibly written in the English language, at the time of each purchase, a

record thereof containing:

- (1) The date and time of each transaction;
- (2) Require two forms of identification one of which must be a government issued identification card that shows the name, age, identification/license number, house number and street and a general description of the complexion, color of hair and facial appearance of the person with whom the transaction is had;
- (3) A description of the property bought; and
 - (a) In the case of watches, the description must contain the name of the watchmaker, manufacturer, and the number of the works, or serial number, or the case; and
 - (b) In the case of jewelry, the description must contain all letters and marks inscribed on the jewelry; and
 - (c) In the case of jewelry in which in the item being sold has a broken lock, clasp, or latch on a piece of jewelry being sold, operator must ask for receipt of purchase or hold payment for gold for 30 days or until such time as verification is received from the Oakland Police Department that the item has not been reported stolen.
- (4) Pictures of the item purchased that matches the description required in subdivision (3) above. Such pictures must together represent a 360 degree view of each and every item purchased separately. Items cannot be pictured in a pile and or in a manner that would not allow for easy identification. Pieces of a single piece of jewelry (such as a torn bracelet) may be pictured together so long as each piece can be distinctly identified and every angle of the object is pictured through a series of pictures.
- (5) The price paid;
- (6) The name or other identification of the person or employee conducting the transaction, who shall legibly print or type his or her full name and write his or her signature on the transcript. Each transcript must include a certificate, signed by the person selling the property to the secondhand dealer, stating that he has the legal right to sell the property.

(C) The provisions of this Section do not apply to any transaction which involves buying, selling or trading used sound recordings, used clothing, or used furniture and household furnishings

5.46.060 - Inspections and reports.

The record of transactions required by the provisions contained within Section 5.46.050 shall be open for inspection by the Police Department at any time during business hours, and the Police Department shall also have the right to thoroughly inspect the premises, store or place where the business so recorded is being conducted at any time in search of any lost or stolen property, or to compare the entries kept in such records with the articles located on such premises or place of business. All persons in charge of such business, and the agents and employees thereof, shall render to the Police Department such assistance as may be reasonably necessary to enable it in such inspection or search.

(A) Every secondhand dealer, secondhand jewelry dealer, and pawnbroker shall, on an electronic reporting system, approved by the City administrator, and before the hour of twelve noon of each day, furnish or enter

a full, true and correct transcript of the record of all transactions had on the preceding day.

(i) At minimum such electronic reporting system must allow for the upload of information required by OMC section 5.46.050, including but not limited to pictures of the items providing true and correct images of the item which matches the description, copies of the identification of the individual selling the items, and a picture of the individual taken on the day of sale.

(B) Every secondhand jewelry dealer having good cause to believe that any property in her/his possession has been previously lost or stolen shall forthwith report that fact to the Oakland Police Department, together with the name of the owner if known, and the date when the name of the person from whom she/he received the property.

(C) Any alteration of any copies of transaction as set out in Section 5.46.050 shall be unlawful.

(D) It is unlawful for any pawnbroker, secondhand dealer, jewelry dealer, or exchange dealer in the city to make any purchase, exchange, pledge, pawn or other transfer of possession of any article unless the same is recorded as set out in Section 5.46.050.

(Prior code § 5-9.04)

5.46.070 - Identification of customers in certain establishments.

It is unlawful for any person in the city to pledge, pawn, sell, exchange or otherwise transfer property to a pawnbroker, secondhand dealer under any fictitious or assumed name or address or under any name other than his or her true name and address.

(Prior code § 5-9.041)

5.46.080 - Suspension or revocation of permit for violation of Section 5.46.070.

In addition to the grounds set forth elsewhere in this Chapter, the City Administrator, upon the written recommendation therefore by the Chief of Police, may, under the provisions of Chapter 5.02, suspend or revoke a pawnbroker's, secondhand jewelry dealer's, secondhand dealer's or exchange dealer's permit upon conviction of said permittee of violating the provisions of Section 5.46.070, 5.46.036, 5.46.070 and 5.46.240 through 5.46.290.

(Prior code § 5-9.042)

5.46.090 - Merchandise to be held.

All articles purchased, received, exchanged, pledged, pawned, or otherwise taken into possession by any person maintaining or operating the business of pawnbroker, secondhand jewelry dealer, secondhand dealer or exchange dealer, or the agent thereof, the retention of which is not otherwise provided for by law, shall, except as hereinafter otherwise provided, be held for a period of thirty (30) days before being placed on exhibition, sold, exchanged, removed from the place of business where it was received, or delivered to any person, or otherwise disposed of, provided, however, that any such article may be delivered or returned at any time to the true owner thereof or his or her authorized agent; provided, further, any furniture, household furnishings, tiles, desks, chairs, safes, or other office equipment, excluding computers and other electronic devices, need not be held for more than five days pursuant to the provisions of this section.

(Prior code § 5-9.05)

5.46.100 - Hold-order.

The Police Department may place a hold-order upon property acquired by a pawnbroker, secondhand jewelry dealer, secondhand dealer or exchange dealer in the course of his or her business for a period of ninety (90) days and, upon release of such property, may require the dealer to keep a record of the disposition of such property. It is unlawful for any such dealer to dispose of any property contrary to any hold-order issued by a member of the Police Department.

(Prior code § 5-9.051)

5.46.110 - Purchase from minors

It is unlawful for any person maintaining or conducting the business of any pawnbroker, or secondhand jewelry dealer, or exchange dealer, or any agent or employee thereof, to purchase or take goods or articles or things offered to him or her by any minor, or without first ascertaining that such article or thing is the property of the person delivering the same, or that such servant or apprentice has the authority from the owner to deliver or sell such property. The word "minor" shall mean any person described in Section 6500 of the Family Code who is not an emancipated minor as provided for in Section 7002 of the Family Code.

(Ord. 11931 § 1, 1996: prior code § 5-9.06)

5.46.120 - Declaration of legal status.

It is unlawful for any person maintaining or conducting the business of pawnbroker, secondhand jewelry dealer or exchange dealer or any agent or employee thereof to purchase or take any goods or articles or things offered to him or her by any person under the age of eighteen (18) years who claims legal status as an emancipated minor pursuant to Family Code Section 7002, unless such person shall have executed and delivered to said pawnbroker, secondhand dealer, exchange dealer or any agent or employee thereof a certificate substantially as follows:

Declaration of Legal Status

I hereby declare under penalty of perjury that the following is true and correct: (1) I have entered into a valid marriage, whether or not the marriage has been dissolved; (2) I am on active duty with the armed forces of the United States; or (3) I have received a declaration of emancipation pursuant to Family Code Section 7122.

Executed at Oakland, California

Dated: _____

Signed: _____

(Ord. 11931 § 2, 1996: prior code § 5-9.061)

5.46.130 - Hours.

It is unlawful for any person conducting or maintaining the business of pawnbroker, secondhand dealer, secondhand jewelry dealer, or exchange dealer, or any agent or employee thereof, to keep or cause to be

kept, such place of business open on the first day of January, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, of each year, or on any other day except between the hours of seven a.m. and seven p.m.; provided, however, that on Saturdays and days preceding the aforesaid holidays, such business may be kept open until eleven p.m.

Any person engaged in conducting any business other than those hereinabove mentioned on the same premises as such business, or in conjunction with the same, shall notwithstanding close the place of such other business at the same time and in the same manner as herein provided. No person shall be engaged in any occupation at such place of business or businesses, or remain therein, during any such time such place of business or businesses is by this section required to be closed.

(Prior code § 5-9.07)

5.46.140 - Secondhand automobile dealers, secondhand automobile parts dealers and automobile wreckers and wrecking establishments—Records and reports.

Every person operating, maintaining or carrying on, the business of a secondhand automobile dealer, secondhand automobile parts dealer, or an automobile wrecking establishment shall keep, or cause to be kept, a record of the purchase, sale, exchange or storage of any automobile, or part thereof or accessory thereto, which record shall at all times be open to the inspection of the Chief of Police, or any officer detailed by him or her, and such person shall, as often as the Chief of Police shall direct, make out and deliver to him or her, on a blank form to be furnished by the Chief of Police, a full and complete report of the purchase, sale, exchange, storage or other transaction of such property. The said report shall contain the name of the person from whom purchased, the make, state license number, motor number, body number, style and seating capacity of all secondhand automobiles purchased, sold, exchanged or placed in storage; the make, size and number of secondhand automobile tires; and the make and number of every secondhand automobile part or accessory so purchased, sold, exchanged or otherwise dealt with, together with such other information concerning said property as may be necessary to prove ownership or identity of such second-hand automobiles or automobile parts and accessories. A violation of any provision of this section shall be a misdemeanor, and it shall further be unlawful for any such person engaged in any such business to dispose of any secondhand automobile or part thereof or accessory thereto, until a report has been made concerning the purchase, sale or exchange of said property to the Chief of Police and he or she, or an officer detailed by him or her, shall have had an opportunity of inspecting the same.

Provided, the foregoing provisions of this section are not intended to require the keeping of records and the making of reports of parts of any vehicle acquired for the purpose of wrecking or dismantling the acquisition of which must be reported to the Department of Motor Vehicles and to the local Police Department under the provisions of Section 11520 of the Vehicle Code of the state of California.

Provided further, every automobile wrecker permitted as such who obtains actual possession of a vehicle subject to registration pursuant to the California Vehicle Code for the purpose of wrecking or dismantling the same, shall within twenty-four (24) hours after the acquisition of such vehicle notify the Chief of Police of such acquisition. Said notice shall be a copy of the form prescribed for such purpose by the Division of Registration of the Department of Motor Vehicles of the state of California, and shall contain information required by said Department and as authorized by Section 11520 of the Vehicle Code of the state of California.

(Prior code § 5-9.09)

5.46.150 - Storage of secondhand building material—Permit.

It is unlawful for any person to establish or maintain, or to cause or be established or maintained, any yard, place or premises for the storage of secondhand building material unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Fire Marshal.

(Prior code § 5-9.11)

5.46.160 - Storage of secondhand building material—Regulation.

It is unlawful for any person to establish or maintain, or cause to be established or maintained, any yard, place or premises for the storage of secondhand building material unless the same be continuously equipped with one and one-half inch hose reel and one two and one-half gallon tire extinguisher, both in working condition, for each eight thousand (8,000) square feet of area of such premises or fraction thereof. All building material in such yards and premises shall be placed in piles, with aisles at least three feet in width between such piles.

(Prior code § 5-9.12)

5.46.170 - Scrap dealers and scrap collectors—Permits.

It is unlawful for any person to engage in or carry on or conduct, or to permit to be carried on, engaged in, or conducted, within the city, the business of a scrap collector or a scrap dealer as defined in Section 5.46.010 unless there exists a valid permit therefore, granting and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. This section shall not apply to the collecting, buying, or selling of aluminum cans for the sole purpose of recycling.

(Prior code § 5-9.13)

5.46.180 - Scrap dealers and scrap collector's application.

No permit shall be granted to a scrap dealer or to a scrap collector, as provided in Section 5.46.170, unless the application for a permit is accompanied by the signatures and addresses of three resident freeholders certifying to the good moral character and reputation of the person making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the business if the permit is granted, shall be fingerprinted at the request of the Oakland Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter, or any law regulating scrap or secondhand personal property, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints.

(Prior code § 5-9.131)

5.46.190 - Scrap dealers and scrap collectors—Records.

Every person engaged in, carrying on, or conducting, the business of scrap dealer or scrap collector referred to in Section 5.46.170 shall keep, or cause to be kept, at such place of business a substantial well-bound

book, and shall promptly enter therein an exact description of all personal property purchased by him or her, the date of purchase, the name and residence or place of business of the person from whom purchased, and all particular and prominent marks of identification that may be found on such property; said book shall be kept neat and clean, and all notes made therein shall be neatly and legibly written in ink and in the English language, and such book shall at all times during the ordinary hours of business, be open to the inspection of the Chief of Police or any officer designated by the Chief of Potice.

(Prior code § 5-9.14)

5.46.200 - Scrap dealer's records.

In addition to the records required in Section 5.46.190, a scrap dealer shall require, and it shall be the duty of the person selling any article to such dealer to sign his or her true name in the book required to be kept by the above-mentioned section, opposite the description of the property sold by such person to such dealer. If the person selling such personal property is a permitted scrap collector in the city, such person shall, and it shall be the duty of such dealer to require such person to, affix after his or her signature the number of his or her scrap collector's permit. The person selling any personal property to a scrap dealer shall aftix after his or her signature, as herein required, the number of the current permit plates issued by the Department of Motor Vehicles of the state of California for the vehicle operated by such person, in which the property sold was transported, and it shall be the duty of the scrap dealer to verify the truthfulness of the number entered.

(Prior code § 5-9.141)

5.46.210 - Scrap dealers and scrap collectors—Regulations.

It is unlawful for any scrap dealer to dispose of any scrap until at least five days have elapsed since he or she took possession of same; or to receive any personal property by way of a pledge or pawn, or to engage in the business of a pawnbroker on the same premises wherein the business of such scrap dealer is located; or for any scrap collector or scrap dealer to purchase, collect or acquire any property, or to keep, or cause to be kept, such place of business open on any Sunday or on the first day of January, the thirtieth day of May, the fourth day of July, or the twenty-tifth day of December, or upon any day appointed by the President of the United States or by the Governor of this state for a public fast, thanksgiving or holiday, or at any time except between the hours of eight-thirty a.m. and six p.m.

It is unlawful to store or keep any bones, or refuse food stuff, or any scrap intermingled with food materials or particles thereof, which may attract rats, mice or like rodents or serve as food for them, or to permit such materials to accumulate on the premises of any scrap dealer or scrap collector, or in any scrap yard, junk yard or junk shop whatsoever, except such bones or other materials may be stored in a covered bin of metal, concrete, tile or other solid or impervious substance so constructed as to be entirely rat proof

(Prior code § 5-9.15)

5.46.220 - Pawnbroker's receipt books.

Every person managing, maintaining or conducting the business of a pawnbroker in the city shall keep or cause to be kept, at the store or place of business, receipt books as hereinafter described. Such books shall be kept in addition to the record of transactions required by Section 5.46.050, and shall consist of duplicate sheets of white paper not less than four by seven inches in size and bearing consecutive numbers. One of each of said duplicate pages shall be so perforated as to enable its removal. One of the aforesaid books shall

be kept for the recording of, and the receipting for, sales, and there shall be printed at the top of the perforated sheet, in colored type, not less than three-eighths of an inch in height, the following words: "This is a sale and not a pledge." One of the aforesaid books shall be kept for the recording of, and the receipting for, pledges, and there shall be printed at the top of the perforated sheet, in colored type, not less than three-eighths of an inch in height, the following words: "This is a pledge and not a sale."

(Prior code § 5-9.27)

5.46.230 - Pawnbrokers' customer receipts.

It is unlawful for pawnbrokers to make any purchase, exchange, pledge, pawn or other transfer of possession of any article, unless the same is recorded in one of the record and receipt books required by the provisions of Section 5.46.220, setting forth the name and address of the pawnbroker, a description in the English language of the article involved in such transaction, the date of the sale, the name of the customer with whom such transaction is made, the rate of interest charged, if any, the term of redemption, if any, and the same shall be signed by the pawnbroker or his or her agent making such transaction. The perforated sheet, which shall be the original duplicate, shall, after being tilled out as herein provided, be delivered to the person with whom the transaction is made. The duplicate thereof shall be kept by the pawnbroker for a period of at least two years next following the date of the transaction, and shall, during such time, be available at all times during business hours for inspection by the Oakland Police Department. Any alteration of such duplicate sheet shall constitute a misdemeanor.

(Prior code § 5-9.28)

5.46.240 - Disciplinary action—Good cause designated.

A Permittee issued a permit pursuant to this Chapter may be subject to disciplinary action by the City for good cause, which may, without limitation, include the following grounds:

- (A) The permittee or any of its principals is engaged, or has commenced, instituted, advertised, aided, carried on, continued or engaged, in a business, trade or profession without having obtained a valid permit, an approval for suitability, or a permit when such a person knew that one was required or under such circumstances that they reasonably should have known one was required, or has solicited, encouraged, caused or procured another to do so;
- (B) The permittee or any of its principals has been subject, in any jurisdiction, to disciplinary action of any kind with respect to a permit, an approval for suitability, a permit or a work card to the extent that such disciplinary action reflects upon the qualification, acceptability or fitness of such permittee or principal;
- (C) The permittee or any of its principals has been convicted of an act which constitutes a crime which involves moral turpitude or involves any local, state or federal law or regulation which relates to the same or a similar business, or has been convicted of having solicited, encouraged, caused or procured another to commit such a violation;
- (D) The permittee or any of its principals, or their employees or those acting on their behalf, has or have violated a condition which is imposed upon the permit;
- (E) The permittee or any of its principals has or have been convicted of having perpetrated, or has

solicited, encouraged, caused or procured another to perpetrate, in deceptive practices upon the public;

(F) The premises on which the business is conducted do not satisfy local, state or federal law or regulations which pertain to the activity which is actually engaged in;

(G) The business activity constitutes, promotes, causes, allows, fosters, aids, or otherwise enables a private nuisance, public nuisance or chronic nuisance, or has been or is being conducted in an unlawful, illegal or impermissible manner, including but not limited to causing, allowing, promoting, fostering, aiding, enabling, exercising deliberate ignorance towards or failing to abate a private nuisance, public nuisance or chronic nuisance; or

(H) The permittee, any of its principals, their employees or those acting on their behalf failed to cooperate with the City's efforts to enforce the provisions of this Code.

5.46.250 - Disciplinary action—required or prohibited act violations.

Whenever this Chapter requires any act to be done or prohibits or makes unlawful the doing of any act, the failure to do any such required act or the doing of any such prohibited or unlawful act shall subject the person who commits such violation to disciplinary action.

5.46.260 - Disciplinary action—Acts of principals and subordinates.

A permittee under this Chapter shall be subject to disciplinary action not only for acts or omissions done by such permittee but also for acts and omissions done by the principals, managers, agents, representatives, servants or employees of such permittee.

5.46.270 - Disciplinary action—Forms.

Upon a showing of good cause and in the discretion of the City Administrator or her/his designee, disciplinary action against a holder may take the form of cancellation, revocation, refusal to renew, suspension, imposition of conditions or restrictions or civil fine in an amount not to exceed one thousand dollars for each day that the violation which forms the subject matter of the complaint that recommends such disciplinary action is demonstrated to have been in existence, or any combination of such actions, as the particular situation may require. The City Administrator may also impose against the permittee the actual costs incurred including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs. The disciplinary actions available in this Section shall be in addition to, and not exclusive of, any other civil or criminal remedy which otherwise might be available.

5.46.280 - Settlement in lieu of Disciplinary Actions

For a first or second alleged violation of this chapter within any sixty (60) month period, the City Administrator or authorized designee may seek to negotiate a resolution of the administrative claim and may enter into an agreement to settle an administrative claim with a permittee alleged to have violated this chapter without approval. Notice of any agreement to settle such administrative claim shall be provided to the Oakland Police Department and no hearing shall be held. A permit issued pursuant to this Chapter shall be suspended until settlement agreement is adopted. After the settlement agreement has been adopted, the permit shall continue under the same terms prior to the agreement to settle the administrative claim, unless otherwise stated. Agreements to settle administrative claims shall not be confidential and shall contain the following minimum terms:

- A. After a first alleged violation of this chapter at a location within any sixty (60) month period:
 - 1. An agreement to stop acting as a permitted pawnbrokers or secondhand jewelry dealers for at least one day;
 - 2. An administrative claim settlement payment to the city of at least one thousand dollars (\$1,000.00); and
 - 3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.
- B. After a second alleged violation of this chapter any sixty (60) month period:
 - 1. An agreement to stop acting as a permitted pawnbrokers or secondhand jewelry dealers for at least ten (10) days;
 - 2. An administrative claim settlement payment to the city of at least five thousand dollars (\$5,000.00); and
 - 3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

5.46.280 - Emergency orders—Grounds —Content—Effective date.

(A) Except as provided in Subsection (B), and independent of any other action, the Chief of Police may issue an emergency order which suspends or conditions a permit upon a determination that:

- (1) There has been a violation of the provisions of this Chapter; and
- (2) Such order is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare within the City.

(B) Any emergency order issued pursuant to Section 6.02.363 shall:

- (A) Set forth the grounds upon which it is issued, including a statement of facts constituting the emergency which necessitates such order;
- (B) Be effective immediately upon the issuance and service thereof on the permittee or its representative or upon the permitted premises; and
- (C) Indicate the period of time for which it is effective, which shall be based upon the severity of the violation and the nature of the emergency as determined by the Chief of Police.

5.46.290 – Pawnbrokers and Secondhand Jewelry Dealers Permits renewal and expiration.

A. **Renewal of Permits.** A permit issued pursuant to this Chapter is invalid unless the appropriate fee has been paid in full and the term of the permit has not expired. The permit issued pursuant to this Chapter shall be for one year. Each Permittee shall apply for the renewal of his or her permit and submit the permit fees no later than thirty (30) days prior to expiration of the permit term.

B. Expiration of Permit. A permit issued pursuant to this Chapter that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed pursuant to subsection (A), the proprietor must:

1. Submit the permit fee plus a reinstatement fee of ten percent (10%) of the permit fee.
2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any merchandise covered by this Chapter after the permit expiration date and before the permit is renewed.

5.46.300 - Fees for Permits.

A. In addition to any application or processing fees that may be required by the State of California or the City of Oakland, the permittees shall pay an annual permit fee as established in the City's Master Fee Schedule, and as may be amended by Council. The permittee shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the permit issued pursuant to this chapter and Section 5.02.020, in a conspicuous place in the premises approved for this activity at all times. The fees shall be calculated so as to recover the total cost of both permit administration and permit enforcement, including, for example, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees shall be used exclusively to fund the program, and shall be separately accounted for. Fees are nonrefundable except as may be required by law.

B. Fees Due and Payable. The application fee is due and payable at the time the application is submitted to the city. All licensing and renewal fees shall be due and payable to the city as determined by the City Administrator's Office. The amount of fees shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent fees. An action to collect the fee must be commenced within three years of the date the fee becomes due. An action to collect the penalty for nonpayment of the fee must be commenced within three years of the date the penalty accrues.

C. Fees Assessed Against the Business Property. The amount of fee, penalty and interest imposed under the provisions of this chapter may be assessed against the real property on which the business property on which the fee is imposed in those instances where the proprietor of the business and the business property are one and the same. If the fees are not paid when due, such fee, penalty and interest shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof, including all penalties and interest, are paid or until it is discharged of record.

D. The fees referenced herein shall be set by Council resolution, as may be modified by future action of the Council.

5.46.310 - Compliance monitoring.

A. Compliance with this chapter shall be monitored by the Oakland Police Department. Any peace officer may enforce the penal provisions of this chapter.

B. Nothing in this chapter shall create a right of action in any permittee or other person against the city or its agents.

C. Compliance checks shall determine, at a minimum, if the permittee is conducting business in a manner that complies with state and local laws.

5.46.320 - Enforcement.

All officials, departments, and employees of the city vested with the authority to issue permits, certificates, or permits shall adhere to, and require conformance with, this Ordinance.

A. Violations and Penalties.

1. **Infractions.** Any person who violates, causes, or permits another person to violate any provision of this chapter is guilty of an infraction unless otherwise provided.
2. **Separate offenses for each day.** Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.
3. **Any violation a public nuisance.** In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared to be a public nuisance and may be summarily abated as such by the city.
4. **Injunction as additional remedy.** Any violation of any provision of this chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief
5. **Penalties.** Any person convicted of an infraction under the provisions of this section shall be punishable by a fine to the maximum permitted under Oakland Municipal Code Chapter 1.28. Any violation beyond the second conviction within a one-year period may be charged by the District Attorney as a misdemeanor, and the penalty for conviction shall be punishable by a fine or imprisonment to the maximum permitted under Oakland Municipal Code Chapter 1.28
6. **Liability for expenses.** In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city or any of its contractors in correction, abatement, and prosecution of the violation.

B. **Enforcement.** The city designates the Oakland Police Department to enforce the provisions of this chapter. The City Administrator shall have power to adopt rules of procedure and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out the provisions of this chapter; and a copy of such rules of procedure and regulations shall be on file and available for public examination at the Oakland Police Department.

C. **Inspection and Right of Entry.** The Police Department, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner, whenever they have cause to suspect a violation of any provision of this chapter. An owner or occupant or agent thereof who refuses to permit such entry and investigation shall be guilty of infringing upon the violations and penalties as out-lined in Section 5.91.140(A) and subject to related penalties thereof

D. **Remedies are Cumulative.** The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION 2.

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.

SECTION 3.

This ordinance shall be effective upon approval by the Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND


2012 FEB 16 PM 5:25

AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.46 TO: (1) ESTABLISH NEW REGULATIONS FOR "SECONDHAND JEWELRY DEALERS; AND (2) REVISE REGULATIONS FOR "SECONDHAND DEALERS" AND "PAWNBROKERS."

NOTICE AND DIGEST

This Ordinance authorizes an amendment to Chapter 5.46, as amended, to establish, modify and delete regulations pertaining to the administration of Special Business Permits Associated with the operations of Secondhand Jewelry Dealers by the City Administrator's Office. These amended regulations would become effective March 6, 2012 and would remain in effect until further notice. A public hearing has been scheduled to review the proposed fee changes. The meeting will take place at the time of the first reading of the proposed ordinance by the City Council, on March 6, 2012, at 7:00 pm or as soon as practically possible thereafter.

2012 FEB 16 PM 5:25


City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 13078 C.M.S., THE MASTER FEE SCHEDULE, AS AMENDED, TO ESTABLISH OR MODIFY FEES ASSESSED BY THE OFFICE OF THE CITY ADMINISTRATOR TO:

- 1) BUSINESSES CONDUCTING SECONDHAND JEWELRY DEALERS, SECONDHAND DEALERS, AND PAWNBROKERS ACTIVITIES PURSUANT TO CHAPTER 5.46; AND**
- 2) TO ESTABLISH AN INTERIM MOBILE FOOD VENDING PARKING USE FEE FOR PERMITS ISSUED PURSUANT TO CHAPTER 5.51**

WHEREAS, the City of Oakland periodically updates its Master Fee Schedule to account for general cost of living increases and program changes and other costs; and

WHEREAS, City departments incur costs related to the implementation, regulation, and oversight of city programs and permitting activities; and

WHEREAS, the fee modifications and additions proposed herein have been justified by the respective agencies and are identified in an "Agenda Report" dated February 28, 2012 to Deanna J. Santana, City Administrator, entitled "An Ordinance Amending Ordinance No. 13078 C.M.S., The Master Fee Schedule, As Amended, To Establish Or Modify Fees Assessed By The Office Of The City Administrator To Businesses Conducting Activities Pursuant to OMC Chapter 5.46;" and

WHEREAS, the City Council finds and determines that the herein-referenced modifications and additions are necessary to reimburse the City for the costs of performing the various municipal and regulatory functions; and

WHEREAS, the City of Oakland has recognized a potential correlation between the operation of "Secondhand Jewelry Dealers" and the commission of robberies and violent crimes; and

WHEREAS, in the past three years, with the changes in the economy and the increase in value of gold the City has seen an influx in the number of permitted and unpermitted "Secondhand Jewelry Dealers"; and

WHEREAS, Such increase in both regulated and unregulated “Secondhand jewelry Dealers” has led staff to identify significant regulations and controls that are necessary to make sure that “Secondhand Jewelry Dealers” operate lawfully; and

WHEREAS, Appropriate monitoring and oversight required by the new regulations will significantly increase the amount of staff time and oversight required to adequately monitor “Secondhand Jewelry Dealers”; and

WHEREAS, such appropriate monitoring will significantly impact city resources and costs to the City to monitor;

WHEREAS, a Public Hearing was held on March 6, 2012 to review the proposed fee changes; now, therefore

WHEREAS, when the City of Oakland's existing Vehicular Food Vending program was originally implemented in 2001, Oakland was a leader in recognizing this small business format, and creating a legal mechanism for their participation in the local economy; and

WHEREAS, in the past three years, with the changes in the economy and the growing food market, entrepreneurs have taken mobile food vending into a whole new direction; and

WHEREAS, there is greater general public acceptance and demand for mobile food vendors, and

WHEREAS, Planning Staff are currently working on developing the permitting and operating standards for a new citywide mobile food vending program; and

WHEREAS, the interim regulations will remain in place and be effective only through January 1, 2013, or until the City Council adopts permanent mobile food vending regulations, whichever comes first; and

WHEREAS, the interim regulations limit the length and frequency of mobile food vending “Group Site” or “Food Pod” activities at a single site to no more than two (2) dates per week and up to forty (40) dates in any one 12-month period; and

WHEREAS, implementation of the interim regulations would result in a reduction of hourly revenue collected at metered spaces which are used for food vending pod sites; and

WHEREAS, for the reasons set forth above, the Council declares that this ordinance is necessary to establish interim hourly parking meter fee for mobile food vending program; and

WHEREAS, the Office of the City Administrator has analyzed the actual costs that will be incurred by City departments to implement the provisions of Oakland Municipal Code 5.46 and 8.09 dealing with program implementation, permitting and regulation of Secondhand Jewelry Dealer permits and pawnbrokers generally; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1: The Master Fee Schedule as set forth in Ordinance No. 13078, as amended, is hereby amended to modify and establish fees assessed by the Office of the City Administrator and as set forth in **Exhibit A**, attached hereto and made a part hereof

Section 2: This ordinance shall be effective on March 6, 2012 upon approval by the Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

AN ORDINANCE AMENDING ORDINANCE NO. 13078 C.M.S., THE MASTER FEE SCHEDULE, AS AMENDED, TO ESTABLISH OR MODIFY FEES ASSESSED BY THE OFFICE OF THE CITY ADMINISTRATOR TO:

- 1) BUSINESSES CONDUCTING SECONDHAND JEWELRY DEALERS, SECONDHAND DEALERS, AND PAWNBROKERS ACTIVITIES PURSUANT TO CHAPTER 5.46; AND**
- 2) TO ESTABLISH AN INTERIM MOBILE FOOD VENDING PARKING USE FEE FOR PERMITS ISSUED PURSUANT TO CHAPTER 5.51**

NOTICE AND DIGEST

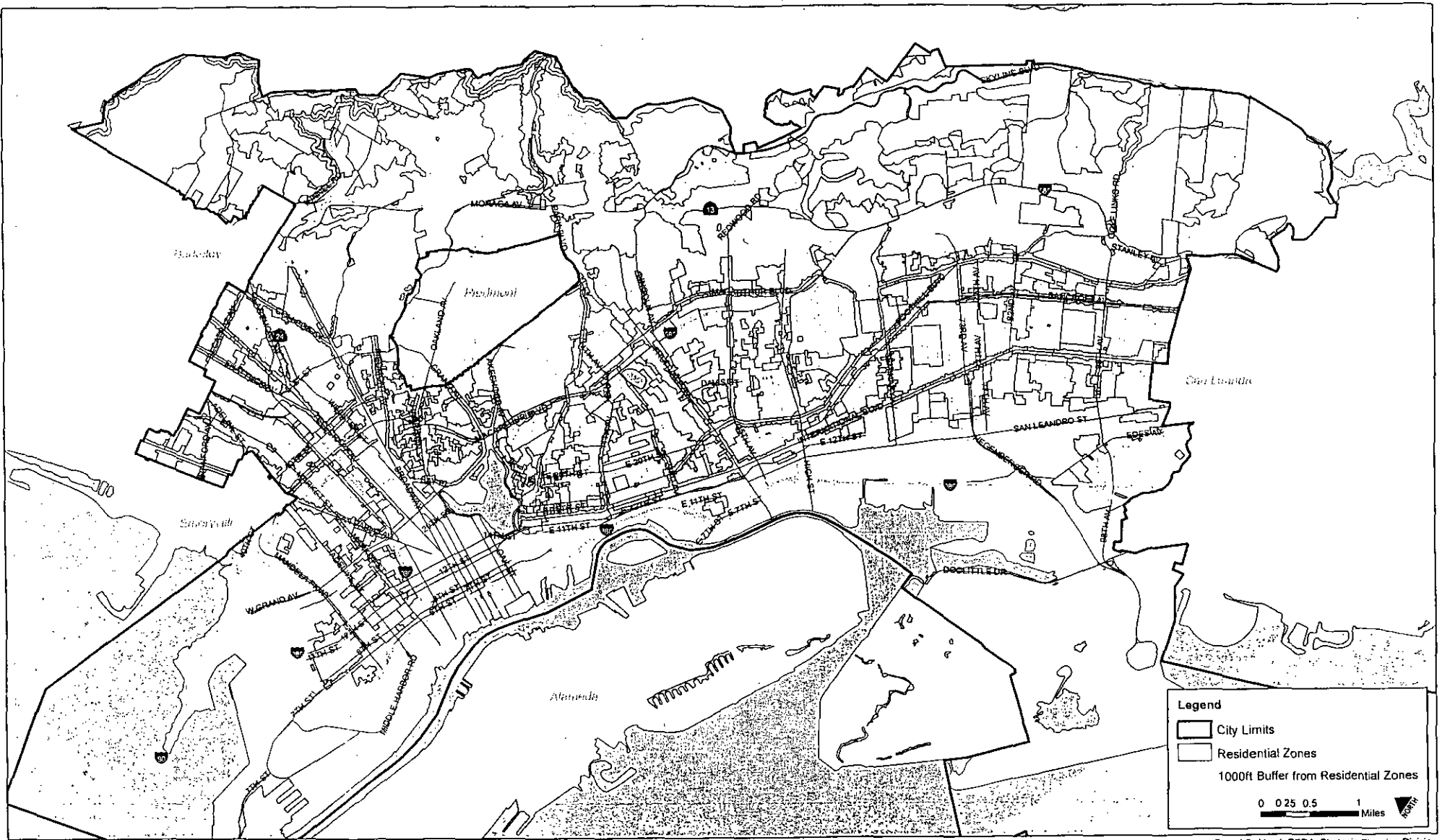
This Ordinance authorizes an amendment to Ordinance Number 13078 C.M.S. (Master Fee Schedule), as amended, to establish, modify and delete fees assessed by the Office of the City Administrator, City Administrator, Office of the City Attorney, Office of the City Clerk, Oakland Public Library, Police Services Agency, Fire Services Agency, Office of Parks and Recreation, Public Works Agency, and Community and Economic Development Agency. These amended fees would become effective March 6, 2012 and would remain in effect until further notice. A public hearing has been scheduled to review the proposed fee changes. The meeting will take place at the time of the first reading of the proposed ordinance by the City Council, on March 6, 2012, at 7:00 pm or as soon as practically possible thereafter.



City of Oakland
Master Fee Schedule
Effective July 19, 2011

CITY ADMINISTRATOR

FEE DESCRIPTION	FEE	UNIT	PROPOSED FEE (FY 2012-13)		% CHANGE
			FEE	UNIT	
SPECIAL ACTIVITIES					
A. APPLICATION FILING FEE FOR A SPECIAL ACTIVITY PERMIT AS REQUIRED BY OAKLAND MUNICIPAL CODE					
16 Pawn Broker Permit	310.00	Permit	<u>\$3,200.00</u>	Permit/Year	932.26%
17 Second Hand Jewelry Dealer Permit	310.00	Permit	<u>\$3,200.00</u>	Permit/Year	932.26%
<u>18</u> Second Hand Dealer, Exchange Dealer Permit		NEW	<u>\$310.00</u>	Permit/Year	
48. <u>19.</u> Storage of Second Hand Building Materials Permit	60.00	Permit	\$60.00	Permit	0.00%
49. <u>20.</u> Scrap Dealer Permit	310.00	Permit	\$310.00	Permit	0.00%
30. <u>21.</u> Scrap Collector Permit	310.00	Permit	\$310.00	Permit	0.00%
25 Food Vending Group Site Permit					
a. Application/Processing		NEW	\$421.66	per site (non-refundable application fee)	
b. Notification Fee		NEW	\$200.00	generate a list of property owners and businesses within 300 feet	
c. Permit Fee		NEW	\$100.00	Per Group Site operation date	
d. MFV Parking Space Use Fee (before 6pm)		NEW	<u>20.00</u>	Per Metered space/Per Group Site Operation Date	
e. MFV Parking Space Use Replacement Sign Fee		NEW	<u>\$3.10</u>	Per Replacement Sign	



City of Oakland, CEDA, Strategic Planning Division
January 10, 2012



CITY OF OAKLAND
1000ft Buffer from Residential Zones