

CITY OF OAKLAND

AGENDA REPORT

2011 DEC -8 PM 7: 01

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Arturo M. Sanchez, Assistant to the City Administrator
DATE: December 20, 2011

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

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.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 platinum, silverware, secondhand jewelry or other precious metals or stones (Oakland Municipal Code, Chapter 5.46).

As authorized by California Government Code Section 65858, Cities may adopt such moratoriums, and may extend them, which is the action of this report and ordinance. This action, if adopted by the City Council, will: 1) continue the temporary moratorium for three months, until March 20, 2012, or until permanent regulations have been adopted; and 2) direct the Community and Economic Development Agency 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.

FISCAL IMPACT

There is a negligible fiscal impact in the reduced number of potential applications and their fees that could be taken in by the Special Business Permit Division. These fees are intended to recover costs of reviewing and processing applications. At present the current fee structure does not cover the costs of staff time, oversight, and enforcement. Without new applications staff will have more time to address other pending matters.

¹ See Ordinance No. 13095 C.M.S.

BACKGROUND

In the month since the adoption of the first moratorium, staff has 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 compatibility between the locations of activities, facilities, or establishments buying and/or selling second hand jewelry; and...this intent will be effectuated by a comprehensive study, possibly resulting in additional revisions to the Planning Code and/or Municipal Codes.” The attached extension of the moratorium is required in order to allow staff to prepare amendments drafted pursuant to the recommendation below.

The meetings with staff resulted in two options for discussion: strengthen the program of regulation in Chapter 5.46 of the Municipal Code (O.M.C.); or, create a conditional use permit process for secondhand jewelry dealers in the Planning Code. Both options, and staff’s recommendation, are below.

Option One:

Amend Chapter 5.46, and other sections of the Municipal Code, as necessary. Modify the current permitting process for secondhand jewelry dealers, which, before the moratorium, had been done through a permit issued by the City Administrator’s office. Some of the potential new regulations or ideas being considered are:

- 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
- o. Determine if additional funding, via increased application and renewal fees, is needed for adequate and appropriate Police Department personnel to assist with oversight

At the November 15, 2011 Council hearing, one Councilmember suggested a photograph of both the seller and the item(s) sold be required by the new regulations. Of concern to another Councilmember was enforcement of the current and the new regulations, and one Councilmember suggested that perhaps OPD's alcohol beverage action team ("ABAT") perform an enforcement role. As part of the review of regulations, these ideas from the Councilmembers are being considered by the staff.

The adoption process for Option One (amending the Municipal Code—specifically Chapter 5, and the permitting function with the City Administrator's Special Activities staff) may be accomplished before the expiration date of March 20, 2012 — because the adoption process will not require a hearing before the Planning Commission.

The staff recommends Option One.

Option Two:

Amend 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 which would be required before a zoning clearance can be issued for that activity. This option would require each new business to apply for, and be granted, a conditional use permit, where the planning staff, or the Planning Commission (depending on whether the permit is created as a "minor" or "major" Conditional use permit) puts 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, response to the proposed change from other City agencies (such as OPD); consideration of the Planning Commission at a public hearing; and finally a series of public hearings at Committee and full Council meetings.

As established by California case law, conditional use permits "run with the land"; that is, once they are adopted for a particular use at a specific location, they stay in effect, regardless of the individual owner of a business—as long as the business type doesn't 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

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have a tenant which is a secondhand jewelry dealer, even after the initial business leaves. Because of this permanence associated with Conditional Use Permit.

Staff does not recommend this option.

KEY ISSUES AND IMPACTS

The issues from the 11/15/11 staff report to the original moratorium remain of concern: overconcentration of secondhand jewelry dealers; enforcement and legalization of unpermitted dealers; an increase in street crime and robberies of jewelry; correcting the fee schedule to allow cost recovery.

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.

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 under banked 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.

DISABILITY AND SENIOR CITIZEN ACCESS

Reforming the regulations for secondhand jewelry dealers will not affect access for the disabled or for senior citizens.

RECOMMENDATION(S) AND RATIONALE

Staff recommends amending the current program of regulation, through Chapter 5 of the Municipal Code, and with permits issued (and revoked) by the City Administrator's office. Staff predicts this will be heard for adoption faster than an amendment to the Planning Code.

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ALTERNATIVE RECOMMENDATION(S)

Direct staff to amend the Planning Code, to create a new conditional use permit and activity type to regulate secondhand jewelry dealers. Staff does not recommend this option, believing it will take at least six months before hearings for adoption.

ACTION REQUESTED OF THE CITY COUNCIL

1. Direct the City Administrator's staff, OPD and CEDA staff to continue their collaboration on a comprehensive package of Municipal Code amendments and program changes to regulate new, renewed and expanded secondhand jewelry dealerships; direct staff to pursue amendments to Chapter 5 of the Municipal Code and the City Administrator's Special Activities office so as to address all outstanding issues with this business activity;
2. Adopt the ordinance which continues the established moratorium on secondhand jewelry dealers, until March 20, 2012 or a date when permanent new regulations are adopted, whichever comes first.

Respectfully submitted,



Arturo M. Sanchez
Assistant to the City Administrator

**APPROVED AND FORWARDED TO
CITY COUNCIL/ORA:**



Office of the City Administrator

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