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OFFICE OF THE CITY CLERK
OAKLAND

2012 MAR -8 PM 1:04

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Arturo M. Sanchez

SUBJECT: Chapter 5.46 Moratorium
Extension to 9/04/2012

DATE: March 7, 2012

City Administrator

Approval

Date

3/8/12

COUNCIL DISTRICT: CITY-WIDE

RECOMMENDATION

Staff recommends that the City Council extend Ordinance No. 13103 C.M.S., An Interim Ordinance, Adopted As An Urgency Measure Pursuant To California Government Code Section 65858, On The Establishment Or Expansion Of Businesses Engaged In And/ Or Conducting Buying, Selling, And/Or Exchanging Old Gold, Old Silver, Platinum Or Articles Of Platinum, Silverware, Secondhand Jewelry Or Other Precious Metals Or Stones (Secondhand Jewelry Dealers) Through September 4, 2012 Or Whenever Permanent Regulations Are Adopted, Whichever Occurs First.

EXECUTIVE SUMMARY

On Tuesday February 28, 2012 the Public Safety Committee determined to separate the Master Fee Schedule amendment for Mobile Food Vending from the proposed modifications to Chapter 5.46. The Committee determined that it was best to hold the Chapter 5.46 amendments "Establishing New Permitting for Secondhand Jewelry Dealers" in Committee until such time as several significant conflicts and regulatory questions could be addressed. Additionally, the committee directed staff to prepare a moratorium extension in order to provide the City with adequate time to respond and research regulatory problems identified at the Committee level.

OUTCOME

If adopted, the action of the City Council will extend the moratorium on Secondhand Jewelry Dealer permits until September 4, 2012. No existing facilities would be able to expand and no new permhs could be issued for businesses intending to conduct Secondhand Jewelry activity.

Item: _____
City Council
March 20, 2012

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 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, 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.

On Tuesday February 28, 2012 the Public Safety Committee determined to sever the Master Fee Schedule amendment for Mobile Food Vending from the proposed modifications to Chapter 5.46. The Committee determined that it was best to hold the Chapter 5.46 amendments "Establishing New Permitting for Secondhand Jewelry Dealers" in Committee until such time as several significant issues and regulatory questions could be addressed. To that end, the committee directed staff to prepare a moratorium extension in order to provide the City with adequate time to respond and research regulatory items problems identified at the Committee level including a state preemption issue and questions about the geographic and distance restrictions proposed in the amendments relating to where Secondhand Jewelry Dealers can be located and how close they can be to one another.

ANALYSIS

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 compatibility 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.

Unfortunately the pace and timeline under which the ordinance has been developed by staff and the deadline by which the ordinance needed to be adopted in order to meet the moratorium deadline led to a proposed ordinance that had yet to be fully vetted and approved by the City

¹ See Ordinance No. 13103 C.M.S.

Attorney's Office for conflicts with State law. Further, at the February 28, 2012 Public Safety Committee meeting, an issue was raised about a possible conflict with state law and Committee Members had specific concerns and recommendations about the proposed geographic and distance requirements for new Secondhand Jewelry Dealers. Specifically, Committee Members made recommendations to increase the distance requirements between Secondhand Jewelry Dealers, remove the reference to "residential areas" in the distance requirements, and limit the total number of Secondhand Jewelry Dealers permits issued within a Business Improvement District at two instead of three.

Staff is asking that the Secondhand Jewelry Moratorium ordinance be extended for the same reasons as stated in the previous extension. Staff will need to work closely with the City Attorney's Office over the next several months, as well as the Pawnbrokers and Secondhand Dealer industry, and counsel representing these businesses, to perform further research into issues raised at the February 28, 2012 Public Safety meeting and to obtain further public input.

Staff will also continue to review the amendments to Chapter 5.46, and other sections of the OMC, along with the City Attorney's Office, to close gaps and eliminate remaining issues in any proposed modifications. Extending the moratorium until September 4, 2012 would afford staff adequate time and space in which to make sure sufficient review, editing, and outreach to stakeholders is completed.

In addition to the issues and recommendations raised at the February 28, 2012 Public Safety Committee Meeting, any revisions will include the following requirements as directed by the City Council:

- 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. Clarify (and make stricter) the grounds for permit revocation;
- h. Require a correlation between gold sales/purchase activity and main business type;
- i. Enforce distance requirements between permitted locations;
- j. Regulate advertisements and signage;
- k. Require that they are located only in commercial districts with buffer zones from residential and other 2nd hand Jewelers to address over concentration;
- l. Restrict licenses to only businesses that operate as a 2nd hand dealer/jeweler, (i.e. not in furniture and/or unrelated business activity);

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

Staff believes adopting the proposed extension through September 4, 2012 will afford them sufficient time to address the concerns expressed by the public safety committee while continuing to develop regulations intended to address the items above.

PUBLIC OUTREACH/INTEREST

On February 22, 2012 staff met with Pawnbrokers and Secondhand Dealers to discuss the proposed modifications to Chapter 5.46. As a result of this meeting the stakeholders came forward to the public safety committee and identified regulatory and enforcement concerns. As a whole the entire industry, both pawnbrokers and secondhand dealers, have the same overarching concern which is the lack of enforcement and prosecution of the unpermitted and unregulated facilities in the City of Oakland. An issue that would not and could not be addressed in the regulations which now must be revisited in light of conflicts identified.

COORDINATION

Modifications and review of proposed regulations will occur with the advice of the City Attorney's Office, and will incorporate input from stakeholders and council offices made at the Public Safety Committee.

COST SUMMARY/IMPLICATIONS

Staff had proposed 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 will also be revisited and potentially adjusted in light of the public comments and comments of the committee members. Aside from this there are minimal costs associated with posting the notice and digest, and the cost of staff time to revisit and continue to develop appropriate regulations.

SUSTAINABLE OPPORTUNITIES

Economic: Adopting moratorium will provide staff sufficient time to further develop 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.

Item: _____
City Council
March 20, 2012

Environmental: There are no environmental opportunities associated with extending the moratorium to reform the secondhand jewelry business market in Oakland.

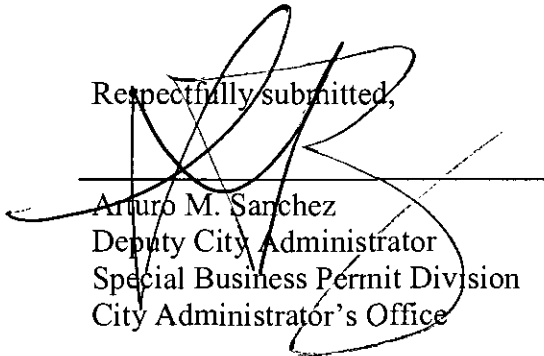
Social Equity: Extending the moratorium will afford the City an opportunity to assure that under banked and underserved populations are not victimized by unpermitted, unregulated, or offending violators of the Municipal code who might prey on these communities for precious metals and their economic gain.

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

Attachments (3):

- A. Draft Ordinance Extension of Ordinance No. 13103 C.M.S., An Interim Ordinance, Adopted As An Urgency Measure Pursuant To California Government Code Section 65858, On The Establishment Or Expansion Of Businesses Engaged In And/ Or Conducting Buying, Selling, And/Or Exchanging Old Gold, Old Silver, Platinum Or Articles Of Platinum, Silverware, Secondhand Jewelry Or Other Precious Metals Or Stones (Secondhand Jewelry Dealers) Through September 4, 2012 Or Whenever Permanent Regulations Are Adopted, Whichever Occurs First.
- B. Agenda Report Extending Moratorium Dated December 20, 2011
- C. Ordinance No. 13103 Moratorium Extension through March 20, 2012

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAR -8 PM 1:03

7 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER _____

Amadis Solelo

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

EXTENSION OF ORDINANCE NO. 13095 C.M.S., AN INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF BUSINESSES ENGAGED IN AND/OR CONDUCTING BUYING, SELLING, AND/OR EXCHANGING OLD GOLD, OLD SILVER, PLATINUM OR ARTICLES OF PLATINUM, SILVERWARE, SECONDHAND JEWELRY OR OTHER PRECIOUS METALS OR STONES (SECONDHAND JEWELRY DEALERS), THROUGH SEPTEMBER 4, 2012 OR WHENEVER PERMANENT REGULATIONS ARE ADOPTED, WHICHEVER OCCURS FIRST

WHEREAS, the City Council adopted Ordinance No. 13095 C.M.S. on November 15, 2011, which enacted a interim 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); and

WHEREAS, pursuant to State law, first passage of an interim moratorium ordinance is only permitted for a period of 45 days; and

WHEREAS, on December 20, 2011, pursuant to State law, the City Council extended the interim moratorium ordinance until March 20, 2012 via Ordinance No. 13103 C.M.S.; and

WHEREAS, an extension of the interim moratorium ordinance through September 4, 2012 is necessary because the current extension period does not provide staff with sufficient time to address legal concerns and drafting recommendations identified at the February 28, 2012 Public Safety Committee meeting, as well as conduct further meetings with stakeholders, and process any revisions regarding Secondhand Jewelry Dealer regulations; and

WHEREAS, for the reasons set forth above and in Ordinance No. 13095 C.M.S., this ordinance is declared by the Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency; now, therefore

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

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

Section 2. The City Council finds and determines, for the reasons stated in the recitals, and in Ordinance No. 13095 C.M.S., the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15301, 15302, 15303, 15307, 15308 and 15311 of the State CEQA Guidelines.

Section 3. Ordinance No. 13095 C.M.S. is hereby extended by the City Council through September 4, 2012, or whenever permanent regulations are adopted, whichever occurs first, and all its term and provisions shall remain in full force and effect.

Section 4. The City Clerk shall certify as to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

Section 5. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

Section 6. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

EXTENSION OF ORDINANCE NO. 13095 C.M.S., AN INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF BUSINESSES ENGAGED IN AND/OR CONDUCTING BUYING, SELLING, AND/OR EXCHANGING OLD GOLD, OLD SILVER, PLATINUM OR ARTICLES OF PLATINUM, SILVERWARE, SECONDHAND JEWELRY OR OTHER PRECIOUS METALS OR STONES (SECONDHAND JEWELRY DEALERS), THROUGH SEPTEMBER 4, 2012 OR WHENEVER PERMANENT REGULATIONS ARE ADOPTED, WHICHEVER OCCURS FIRST

Adoption of this ordinance will result in the extension of Ordinance No. 13095 C.M.S., an interim ordinance On The Establishment Or Expansion Of Businesses Engaged In And/ Or Conducting Buying, Selling, And/Or Exchanging Old Gold, Old Silver, Platinum Or Articles Of Platinum, Silverware, Secondhand Jewelry Or Other Precious Metals Or Stones (Secondhand Jewelry Dealers) Through September 4, 2012, or Whenever Permanent Regulations Are Adopted, Whichever Occurs First.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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.

Item: _____
City Council
December 20, 2011

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

Item: _____
City Council
December 20, 2011

- 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

Item: _____
City Council
December 20, 2011

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 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.

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.

Item: _____
City Council
December 20, 2011


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

Item: _____
City Council
December 20, 2011

7 VOTES REQUIRED FOR PASSAGE

Approved as to form and legality

INTRODUCED BY COUNCIL MEMBER DE LA FUENTE


CITY ATTORNEY

Ordinance No. **13103** : ■
C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In Council, Oakland, California, DEC 20 2011, 2011,

Passed By The Following Vote:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN,
KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID - 8
NOES- 0
ABSENT- 0
ABSTENTION- 0

Attest:

Alonda Simmons
Alonda Simmons
City Clerk and
Clerk of the
Council

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

NOTICE AND DIGEST

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