

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE September 17, 2013	AGENDA ITEM NUMBER
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TO: Mayor Shoji and City Councilors

FROM: Rodger Craddock, City Manager

ISSUE: Adopting an Ordinance Regulating the Sale or Resale of Certain Used Merchandise and Licensed Secondhand Stores and Gem and Precious Metal Dealers and Repealing Ordinance Number 279.

BACKGROUND:

Over the course of the past five months, the Council and staff have been working through the process of updating CBMC 5.20 regulating secondhand stores and gem and precious metal dealers. Based on the outcome of the last review with the Council on August 6, 2013, the only issue left unresolved was the ability of the City to include and regulate the sale of firearms from firearm dealers.

Based on ORS 166.174 and 166.175, the City is prohibited from regulating the sale of firearms from a building in the City unless the seller is operating a pawnshop or second hand store. A second hand store is defined as a business whose primary source of revenue is through the sale of used merchandise. As such, the previously proposed draft ordinance has been revised to be in compliance with ORS 166.174 and 166.175 and has been approved as to form by City Attorney Nate McClintock.

ADVANTAGES:

Adopting the ordinances will provide police personnel additional tools to assist them in regulating certain businesses which can be used by criminals to dispose of stolen property.

DISADVANTAGES:

None identified.

RECOMMENDATION:

After holding a public hearing and if it pleases the Council, please enact the draft Ordinance and repeal Ordinance number 279.

ORDINANCE NO. ***

AN ORDINANCE REGULATING THE SALE OR RE SALE OF CERTAIN USED MERCHANDISE AND LICENSING SECONDHAND STORES AND GEM AND PRECIOUS METAL DEALERS, AND REPEALING ORDINANCE NUMBER 279.

The City of Coos Bay ordains as follows:

Section 1: Purpose. The Council's purpose in adopting this Chapter is to regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. The Council finds that this risk is present despite the best efforts of legitimate secondhand property dealer businesses because these businesses process large volumes of goods and materials that are frequently the subject of theft. This Chapter is intended to reduce this type of criminal activity by providing timely police awareness of such property transactions and by regulating the conduct of persons engaged in this business activity. The Council finds that these regulations are necessary and the need for the regulations outweighs any anti-competitive effect that may result from their adoption.

Section 2: Definitions.

Gem and precious metal dealer. Any person who owns, manages or operates a business, including transient merchants, for the purpose of buying, receiving, selling, or in any way exchanging precious metals or gems including, but not limited to gold, silver, zirconium, platinum, diamonds, rubies, sapphires, emeralds, and turquoise, but such items do not include the raw materials or items which have not been previously sold at wholesale or retail

Licensee. A gem or precious metal dealer or secondhand property dealer which has a license pursuant to this ordinance.

Person. An individual, corporation, partnership, or other legal entity or entity-in-fact.

Acceptable Identification. Means either a current driver's license, a state issued Identification Card issued by the Department of Motor Vehicles, or two current United States, state, or local government issued identification cards, one of which has a photograph of the seller. The second identification card is not required if the photo identification is accompanied by a scanned fingerprint.

Police Department. The City of Coos Bay Police Department.

Public Safety Officer. A police officer or any designee of the City of Coos Bay Police Chief.

Secondhand Property Dealer. Any place in which items of used personal property, other than motor vehicles, are purchased, bartered, pawned or consigned and placed on sale or resale as part of a regular course of business, but excluding yard sales held less than three times in one year period and for no more than a 72 hour period, moving sales, and other similar one-time sales occurring at a residence.

Used. Items which have been previously placed into service or sold at retail.

Engage in business. Shall include any principal owning, managing, or operating a business which receives, buys, sells, or in any way exchanges tangible personal property subject to this chapter, but it does not include purchases of new or secondhand items from licensed manufacturers or wholesalers, with established places of business, and sales of secondhand items by those engaging primarily in the business of selling new merchandise, or dealers in secondhand motor vehicles, or sales on the premises where the goods have been used by the owner (such as garage sales), or rummage sales of donated goods, nor shall it apply to judicial sales or other sales by public officials in the exercise of their official duties.

Trade Show. An event open to the public, held in a venue other than a Dealer's business location, at which vendors of a specific type of merchandise may exhibit, buy, sell, or trade items that may include regulated property. Events commonly known as flea markets or swap meets, in which goods of many types are exhibited, sold or traded, are not considered trade shows for the purpose of this Chapter.

Purchase. The buying, exchanging, transferring, collecting, consigning, or otherwise acquiring of regulated property from another person not a used merchandise dealer, for resale, exchange or transfer by the purchaser. This includes taking possession of regulated property with an expressed or implied agreement or understanding to return regulated property at a subsequent time at a stipulated price or for the payment of a storage or handling fee.

Regulated property.

(a) Except for property excluded in paragraph (b),(1), and (2) below, any property specified in a list maintained and published by the Chief of Police , including, but not limited to, precious metals and gems; watches, jewelry, and household items containing precious metals or precious gems; audio and video equipment; photographic and optical equipment; electrical office equipment; power equipment and tools; hand tools; telephones or telephone equipment; musical instruments; firearms; sporting equipment; and computer and related equipment.

(b) The term "regulated property" does not include any of the following property: vehicles required to be registered with the state Motor Vehicles division; boats required to be certified by the state Marine Board; books, glassware, furniture, clothes, refrigerators, stoves, washers, dryers, window air conditioner units, and other similar major household appliances; clothing; or property that is purchased for investment purposes, limited to the following:

- (1)** Gold bullion bars or rounds (0.995 fine or better).
- (2)** Silver bullion bars or rounds (0.995 fine or better).

New. Any property not previously put into service.

Section 3: License Required.

No person shall conduct, keep, manage, operate, or assist in the conducting, keeping, managing, or operating any gem and precious metals dealership or secondhand store,

as owner, officer, principal, agent, employee or otherwise, unless a basic business license is first obtained from the City. Reference Coos Bay Municipal Code 5.05.080

Section 4: License Application.

(a) Written application for a business license shall be filed with the City of Coos Bay Community Development Department. Applications for licenses by or on behalf of a corporation, partnership or other business entity shall be made by an agent properly authorized by that entity.

(b) Each business license application for Secondhand Property Dealers shall be accompanied by an irrevocable consent to inspect and examine the licensed premises and business records of the licensee applicant at any time during the term of the license by any officer of the Police Department.

(c) The Police Department shall examine and investigate the background and qualifications of all Secondhand Property Dealer business applicants for licenses and shall make a recommendation whether or not to issue the license.

(d) The license shall not be granted if:

- (1) The applicant's activity will not comply with any city ordinance or state or federal law;
- (2) The applicant does not have the knowledge or skill required to engage in the licensed activity;
- (3) The applicant's activity would endanger property, public health or public safety; or
- (4) The applicant's past or present violations of laws or ordinances presents a reasonable question about his or her ability to perform the licensed activity without danger to property, public health or public safety.

(e) Approval or denial of the license shall be based on consideration of all available evidence indicating whether the applicant meets the requirements of this ordinance.

Section 5: License Fee.

The license fee shall be set by Council resolution. License fees shall be payable at the time of application. Licenses shall commence on the day issued and shall expire on the 31st day of December of the calendar year in which the license is issued. License fees shall not be prorated for any portion of any calendar year.

Section 6: License Display.

Every licensee must display the license in a conspicuous manner in the licensee's business premises.

Section 7: Transferability.

Licenses may not be assigned or otherwise transferred.

Section 8: Record of Purchases; Restrictions on Resale.

(a) At the time of a transaction every licensee under the terms of this chapter shall be subject to the following record making and record keeping requirements in the manner specified by the Chief of Police for the City of Coos Bay:

(1) The date and time of the transaction

(2) A description of the regulated property purchased in sufficient detail to distinguish the item from similar items in the dealer's possession and the notation 'New' if an item appears to be New.

(3) Obtain an image of the approved identification of the person from whom the regulated property was purchased as defined in Section 2 "Acceptable Identification" or an image of the person.

(4) An image of the thumbprint of the person from whom the regulated property was purchased.

(b) A digital image shall be taken and retained with the records of any regulated property not bearing a serial number or other identifying marks i.e. jewelry, coins, stamps, or other collectibles.

(c) Before taking possession of any article of property subject to this chapter, the licensee shall obtain from the person having custody of such property a signed statement which indicates the person selling the property has the legal authority to transfer ownership by completing a form to be provided or approved by the Chief of Police.

(d) No licensee shall resell property subject to this chapter for a period of 14 days after the report form has been delivered to the police department, provided, that for good cause shown, the Chief or a designee may waive all or any part of such 14 day period.

(e) There shall be maintained at or electronically available from the licensee's place of business daily records containing a true account of all acquisitions and sales of property. All records of purchases shall be kept in an orderly manner on the used merchandise dealer's business premises and open for reasonable inspection by peace officers upon their request. Any paper records shall be kept for at least one year following the date of the receipt of the article of property.

(f) Dealers shall, by the end of the business day when a transaction occurs, transmit the recorded information required under subsection "a," items (1) and (2) of this Section, using the automated electronic reporting system approved by the city.

(1) Only reports containing complete information shall be deemed to comply with this section.

(2) In the event that the automated electronic reporting system becomes inoperable or a secondhand dealer's computer system becomes inoperable or other event that makes reporting within the time allowed by this subsection impossible, the secondhand dealer shall maintain paper copies of all the reporting requirements and immediately report the occurrence of such event to the Chief of Police. Once reporting can resume, the secondhand dealers must, within 12 hours, input and transmit the information required under subsection (1) and (2) for all transactions occurring during any period reporting was suspended, using the approved automated electronic reporting system.

(g) Dealers having three (3) or less transactions in a week may choose to use the electronic reporting system specified by the Chief of Police or record their transactions in paper form as approved by the Chief and deliver or mail the paper forms to the Chief of Police at the end of the business day when the transaction occurred.

Section 9: Limitations on Purchases

(a) A Secondhand dealer shall not:

(1) Purchase regulated property with serial numbers, personalized inscriptions or initials, or other identifying marks, which are or have been altered, obliterated, removed, or otherwise rendered illegible unless such removal is the result of obvious normal wear;

(2) Purchase regulated property from a person under the age of 18 years;

(3) Purchase regulated property from a person who is obviously under the influence of drugs or intoxicating liquor; or

(4) Knowingly purchase regulated property from a person who is not the owner of the regulated property or parent or guardian of the owner of the regulated property.

(5) Purchase any of the following items:

(a) Gift cards, in-store credit cards or activated phone cards;

(b) Medications.

(b) A secondhand dealer shall comply with all applicable federal, state and local laws and regulations.

Section 10: Limitations on the Sale of Regulated Property

(a) Regulated property purchased by any secondhand dealer shall not be sold for a period of 14 full days after the date the report required is received by the city. The secondhand dealer shall maintain the purchased property in substantially the same form as purchased and shall not commingle the property in a manner that precludes identification during this 14 day holding period. The purchased property shall be located on the business premises and available for inspection during normal business hours

during this holding period as provided herein.

(b) Upon reasonable belief that the purchased property is the subject of theft, the Chief of Police may provide notice to any used merchandise dealer not to dispose of any specifically described property purchased. The used merchandise dealer shall retain the property in substantially the same form as purchased. Upon receipt of notice pursuant to this subsection, the used merchandise dealer shall not sell, exchange, dismantle or otherwise dispose of the property for a period of time, as determined and stated in the notice by the chief of police, not to exceed 180 days from the date of purchase.

Section 11: Tagging Regulated Property for Identification.

Dealers shall affix a tag to every item of regulated property, which must contain a unique, legible number. That unique number must either be the same as the transaction item number for that item or be referenced to the transaction report required by the Coos Bay Police Department. After the holding period has expired, the transaction item number must remain identifiable on the property until the sale or disposition of the property.

(a) After the applicable holding period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.

Section 12: Inspection of Property and Records.

Upon presentation of official identification, any peace officer may enter onto the business premises of any secondhand dealer to ensure compliance with the provision of subsections of this code. The inspection shall be for the limited purpose of inspecting any regulated property purchased by the dealer, held by the dealer pursuant to subsection (7), or the records incident thereto. Any inspection pursuant to this subsection shall only be authorized to occur during normal business hours.

Section 13: Revocation.

(a) The city manager may revoke any license if the licensee, licensee's employees or agents have permitted the licensee's business premises to be used in violation of this or any ordinance of the city, or any state or federal law.

(b) The licensee shall be notified, in writing, of the effective date of revocation, the reasons for revocation, and the licensee's right to appeal. Notice may be given either by mailing the notice of revocation by first class mail to the business address of the licensee or by leaving the notice at the licensed premises.

Section 14: Appeal.

(a) Any person whose application for a license has been denied, or a licensee whose license has been denied renewal or revoked, may, within seven business days after the notice of denial or revocation is mailed, appeal such action. The notice of appeal shall be in writing and filed with the city recorder.

(b) The notice of appeal shall contain the following information:

- (1) The name and address of the appellant;
- (2) The nature of the action being appeal;
- (3) The reason the action is incorrect;
- (4) A statement of facts establishing the contentions of the appellant.

(c) A licensee who fails to file a notice of appeal within the time permitted waives all rights to an appeal. If the action appealed is revocation, revocation does not take effect until final decision on the appeal. At the hearing, the appellant may present evidence, testimony and oral argument.

Section 15: Penalties.

Violation of any provision of this ordinance is punishable upon conviction by a penalty not to exceed \$750.00 per violation, and each day that the violation persists shall be a separate and distinct violation.

Section 16: Repeal.

Ordinance No. 279 is repealed.

Section 17: Severability.

Each provision of this ordinance is severable, and if any provision of this ordinance shall be declared invalid by a court of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect.

Section 18: Savings Clause.

All licenses in effect at the time this ordinance is enacted shall remain in full force and effect until the expiration of the term of the license.

Section 19: Emergency Declared.

The City Council of the City of Coos Bay finds that the health, safety and welfare of the City of Coos Bay requires this ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this _____ day of September 2013 by the following vote:

Yes:

No:

Absent:

Crystal Shoji
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST:

Susanne Baker,
City Recorder of the City of Coos Bay
Coos County, Oregon

ORDINANCE NO. 279

AN ORDINANCE REGULATING THE SALE OR RESALE OF CERTAIN USED OR CERTAIN MERCHANDISE AND LICENSING SECONDHAND STORES AND GEM AND PRECIOUS METAL DEALERS; AND REPEALING ORDINANCE NO. 101, AS AMENDED

The City of Coos Bay ordains as follows:

Section 1: Purpose. The purpose of this ordinance is to provide a means to monitor the sale and resale of valuable used merchandise and gems and precious metals in the City of Coos Bay to deter trafficking in stolen merchandise and to provide revenue to pay expenses incurred therein.

Section 2: Definitions.

Gem and precious metal dealer. Any person who owns, manages or operates a business, including transient merchants, for the purpose of buying, receiving, selling, or in any way exchanging precious metals or gems including, but not limited to gold, silver, zirconium, platinum, diamonds, rubies, sapphires, emeralds, and turquoise.

Licensee. A gem or precious metal dealer or secondhand which has a license pursuant to this ordinance.

Person. An individual, corporation, partnership, or other legal entity or entity-in-fact.

Police Department. The City of Coos Bay Police Department.

Public Safety Officer. A police officer or any designee of the City of Coos Bay Police Chief.

Secondhand stores. Any place in which items of used personal property, other than motor vehicles, are purchased, bartered, pawned or consigned and placed on sale or resale as part of a regular course of business, but excluding yard sales, moving sales, and other similar one-time sales occurring at a residence.

Section 3: License Required. No person shall conduct, keep, manage, operate, or assist in the conducting, keeping, managing, or operating any gem and precious metals dealership or secondhand store, as owner, officer, principal, agent, employee or otherwise, unless a license is first obtained from the City.

Section 4: License Application.

(a) Written application for a license shall be filed with the City of Coos Bay Finance Department. Applications for licenses by or on behalf of a corporation, partnership or other business entity shall be made by an agent properly authorized by that entity.

(b) Each application shall be accompanied by an irrevocable consent to inspect and examine the licensed premises and business records of the licensee applicant at any time during the term of the license by any officer of the Police Department.

(c) The Police Department shall examine and investigate the background and qualifications of all applicants for licenses and shall make a recommendation whether or not to issue the license.

(d) The license shall not be granted if:

(1) The applicant's activity will not comply with any city ordinance or state or federal law;

(2) The applicant does not have the knowledge or skill required to engage in the licensed activity;

(3) The applicant's activity would endanger property, public health or public safety;
or

(4) The applicant's past or present violations of laws or ordinances presents a reasonable question about his or her ability to perform the licensed activity without danger to property, public health or public safety.

(e) Approval or denial of the license shall be based on consideration of all available evidence indicating whether the applicant meets the requirements of this ordinance.

(f) The license required by this ordinance shall be in addition to, and not in lieu of any business licenses required by other city ordinances or state or federal laws.

Section 5: License Fee. The license fee shall be set by Council resolution. License fees shall be payable at the time of application. Licenses shall commence on the day issued and shall expire on the 31st day of December of the calendar year in which the license is issued. License fees shall not be prorated for any portion of any calendar year.

Section 6: License Display. Every licensee must display the license in a conspicuous manner in the licensee's business premises.

Section 7: Transferability. Licenses may not be assigned or otherwise transferred.

Section 8: Record of Purchases; Restrictions on Resale; Prohibited Transactions.

- (a) Every licensee shall keep a permanent record of all items purchased, traded, pledged or consigned from private persons with a resale value of \$50.00 or more.
- (b) (1) Records of such transactions may be a permanent bound volume or prenumbered forms. Entries shall be handwritten in ink or typed so that removal of an entry will be obvious.
 - (2) Records shall contain the following information:
 - (A) A complete description of the property received in the transaction;
 - (B) Date of receipt of the property;
 - (C) Price or consideration paid for property or value of property consigned, pledged or traded;
 - (D) Name, address, telephone number, date of birth, social security number, and other identifying information as to the person selling, consigning, pledging or trading the property;
 - (E) Signature of the seller; and
 - (F) Notation of the type of identification shown by the seller, consignor, pledger or trader.
- (c) The record of purchases shall be available during regular business hours to the inspection of any public safety officer of the City. Records shall be maintained for not less than three years.
- (d) All property purchased from any person shall be retained by the licensee for a period of not less than ten (10) days from the date of purchase or receipt, provided each business day the licensee forwards to the police department a copy of the record of purchases made that day. If daily reports are not provided to the police department, then all property purchased or received must be held for a period of thirty (30) days from the date of purchase.
- (e) No licensee shall buy or receive any article from persons under the influence of alcohol or drugs or from any person under the age of eighteen (18) years.

Section 9: Revocation.

(a) The city manager may revoke any license if the licensee, licensee's employees or agents have permitted the licensee's business premises to be used in violation of of this or any ordinance of the city, or any state or federal law.

(b) The licensee shall be notified, in writing, of the effective date of revocation, the reasons for revocation, and the licensee's right to appeal. Notice may be given either by mailing the notice of revocation by first class mail to the business address of the licensee or by leaving the notice at the licensed premises.

Section 10: Appeal.

(a) Any person whose application for a license has been denied, or a licensee whose license has been denied renewal or revoked, may, within seven business days after the notice of denial or revocation is mailed, appeal such action. The notice of appeal shall be in writing and filed with the city recorder.

(b) The notice of appeal shall contain the following information:

- (1) The name and address of the appellant;
- (2) The nature of the action being appeal;
- (3) The reason the action is incorrect;
- (4) A statement of facts establishing the contentions of the appellant.

(c) A licensee who fails to file a notice of appeal within the time permitted waives all rights to an appeal. If the action appealed is revocation, revocation does not take effect until final decision on the appeal. At the hearing, the appellant may present evidence, testimony and oral argument.

Section 11: Penalties. Violation of any provision of this ordinance is punishable upon conviction by a penalty not to exceed \$750.00 per violation, and each day that the violation persists shall be a separate and distinct violation.

Section 12: Repeal. Ordinance No. 101, as amended by Ordinances No. 196 and 204, is repealed.


Section 13: Severability. Each provision of this ordinance is severable, and if any provision of this ordinance shall be declared invalid by a court of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect.

Section 14: Savings Clause. All licenses in effect at the time this ordinance is enacted shall remain in full force and effect until the expiration of the term of the license.


Section 15: Emergency Declared. The City Council of the City of Coos Bay finds that the health, safety and welfare of the City of Coos Bay requires this ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay this 7th day of September, 1999, by the following vote:

Yes:	Mayor Verger and Councilors Joe Benetti, Jeff McKeown, Cindi Miller, Don Spangler and Kevin Stufflebean
No:	None
Absent:	Councilor Judy Weeks



Joanne Verger
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST: 

Joyce Jansen
Deputy Recorder of the City of Coos Bay
Coos County, Oregon

STATE OF OREGON)
COUNTY OF COOS) ss
CITY OF COOS BAY)

I, Joyce Jansen, do hereby swear that I am the duly appointed, qualified and acting Deputy Recorder of the City of Coos Bay, Coos County, Oregon, and say: that I did have placed a copy of the foregoing Ordinance No. 279 in a sealed wrapper and delivered to the following City Council members:

Joe Benetti	260 South Broadway
Jeff McKeown	834 South 12th Street
Cindi Miller	1076 South 4 th Street
Don Spangler	496 Newmark Avenue
Kevin Stufflebean	690 South 10 th Street
Joanne Verger	2285 North 13th Court
Judy Weeks	1320 Oregon Avenue


to all at least one week prior to the council meeting at which the ordinance was enacted.

I further swear that three (3) copies of the aforesaid ordinance would be available for public inspection in the office of the Deputy Recorder as of one week before the council meeting at which the ordinance was enacted.


Joyce Jansen

Subscribed and sworn to before me this 9th of September, 1999

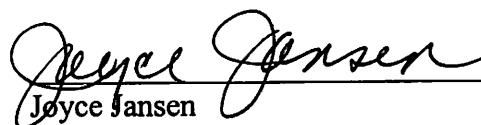



Notary Public for Oregon
My Commission expires 6/30/2000

STATE OF OREGON)
COUNTY OF COOS) ss
CITY OF COOS BAY)

I, Joyce Jansen, do hereby certify that I am the duly appointed, qualified and acting Deputy Recorder of the City of Coos Bay, Oregon, and say: that any section in which terms differed from those as mailed was read in full.

Signed this 9th day of September, 1999


Joyce Jansen