MIAMIBEACH

**City of Miami Beach,** 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

# COMMITTEE MEMORANDUM

TO: Land Use and Development Committee for KGB

FROM: Kathie G. Brooks, Interim City Manager

DATE: December 19, 2012

SUBJECT: **DISCUSSION REGARDING THE STATUS OF THE SECOND HAND STORE ORDINANCES**

## BACKGROUND

A discussion to tighten the City ordinance involving conditional use procedure for second hand stores was referred to the Land Use and Development Committee by the City Commission on November 17, 2010, at the request of Commissioner Góngora. On December 13, 2010, the Land Use Committee referred the matter to the Planning Board as an Ordinance Amendment.

## ANALYSIS

Currently the City Code specifies that in those commercial zoning districts that permit them, pawnshops are a Conditional Use, requiring review and approval by the Planning Board. Pawnshops are specifically defined in the City Code.

Another type of business, which is related to pawnshops, are second hand goods. The City has two types of second hand goods licenses, either apparel, i.e. used clothing, or non-apparel. Second hand goods non-apparel can be any type of hard good, used furniture and the like, but most often is characterized by the buying and sometimes selling of gold and jewelry items. This use is very similar to pawnshops, except they do not deal in "pawns" or loans for a specific amount of time secured by the goods pawned, but rather engage in a straight purchase of the proffered goods.

In 1994 the City enacted restrictions on pawnbroking, requiring Conditional Use approval. Originally, staff believes that this was intended to extend to second hand goods dealers as well; however, changes to State law split pawnbroking from second hand goods, and the City ordinance requiring Conditional Use was not applied to second hand goods. The proposed ordinance would extend the same Conditional Use requirement and district prohibitions to Second Hand Goods.

On June 28, 2011, the Planning Board considered a comprehensive Ordinance amendment drafted by staff, which included numerous references to applicable State Law and set forth more comprehensive procedures and requirements for second hand good stores. This comprehensive version of the ordinance included dealers in precious metals, as well as used furniture shops and "thrift" shops, as currently defined in the State statute as second hand goods.

The Planning Board, however, expressed concern about the broad nature of the proposed ordinance, and recommended that the Ordinance be reduced in scope and include the Conditional Use requirement only for second hand precious metals.

Since the most recent action of the Planning Board, staff has reviewed the recommended Ordinance with the City Attorney's Office and the Police Department, and has drafted a new Ordinance for discussion and policy direction by the Land Use Committee (see attached). This ordinance is more limited in scope, as per the Planning Board's recommendation. During a recent discussion of the matter at a City Commission discussion, Mayor Bower expressed a similar preference for a more limited approach, rather than increasing regulations on all types of used goods sellers.

Note that the ordinance as proposed also deletes the entirety of those portions of Chapters 18 and 102 (outside the Land Development Regulations) that deal with pawnbrokers and second hand goods, and replaces them with references to the applicable State statutes, F.S. 538 and 539. This amendment is at the request of the City Attorney's Office staff, who believe that this would be more preferable than continuing to delineate the state requirements through text in the City Code.

In summary, the proposed ordinance attached would require Second Hand Precious Metals dealers to obtain Conditional Use approval, restricts them from those districts which pawnbrokers are currently restricted, and replaces regulations in Chapters 18 and 102 with references to the applicable state statutes.

If this is not the desired policy direction, the Committee could direct staff to go back to the Planning Board with the more comprehensive approach. Another alternative would be to require a mandatory distance separation for all or some of the license categories for second hand dealers.

**RECOMMENDATION**

The Administration recommends that the Land Use Committee provide policy direction to staff, and refer the Ordinance back to the Planning Board, with any amendments.

RL

KGB/JGG/RGL/TRM
Attachments

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ORDINANCE NO. _____

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, AMENDING THE CITY CODE, BY DELETING CHAPTER 18, "BUSINESSES", ARTICLE XII, "SECONDHAND GOODS", DIVISION 3, "PAWNSHOPS"; AND DIVISION 4, "SECONDHAND DEALERS"; AND BY AMENDING CHAPTER 102, "TAXATION", ARTICLE V, "LOCAL BUSINESS TAX", SECTION 102-356, "CONSTRUCTION OF ARTICLE; DEFINITIONS"; IN ORDER TO CONFORM CITY CODE PROVISIONS ON PAWNSHOPS AND SECONDHAND GOODS WITH APPLICABLE FLORIDA STATUTES; AND BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II "DISTRICT REGULATIONS," DIVISION 4 "CD-1 COMMERCIAL, LOW INTENSITY DISTRICT," SECTION 142-273, "CONDITIONAL USES" AND DIVISION 5 "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-303 "CONDITIONAL USES" BY INCLUDING SECOND HAND DEALERS OF PRECIOUS METALS AS A CONDITIONAL USE IN THE CD-1 AND CD-2 ZONING DISTRICTS; AND DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," SECTION 142-335 "PROHIBITED USES" AND DIVISION 18 "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693(C) "PERMITTED USES," BY INCLUDING SECOND HAND DEALERS OF PRECIOUS METALS AS PROHIBITED USES IN THE CD-3 AND PS DISTRICTS, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach continually seeks to update and clearly define the requirements of the Land Development Regulations of the Code of the City of Miami Beach as they pertain to zoning districts and regulation; and

**WHEREAS**, currently the City Code specifies that in those commercial zoning districts that permit them, pawnshops are a Conditional Use, requiring review and approval by the Planning Board. Pawnshops are specifically defined in the City Code; and,

**WHEREAS**, secondhand dealers are a similar use to pawnshops, but are not specified enumerated in the list of permitted, conditional and prohibited uses for the various zoning districts; and,

**WHEREAS**, the City of Miami Beach desires to require review and approval of secondhand dealers similar to that which is required of pawnshops; and,

**WHEREAS**, the amendments set forth below throughout the City Code are necessary to accomplish the above objective;

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.**

**SECTION 1.** Chapter 18, "Businesses", Article XII, "Secondhand Goods", Division 3, "Pawnbrokers" of the City Code is hereby deleted and replaced with the following reference to Florida Statutes:

**DIVISION 3. - PAWNBROKERS**

**Sec. 18-721. – Sec. 18-737**

Replaced by F.S. § 539.003 as may be amended from time to time.

* * *

**SECTION 2.** Chapter 18, "Businesses", Article XII, "Secondhand Goods", Division 4, "Secondhand Dealers" of the City Code is hereby deleted and replaced with the following reference to Florida Statutes:

**DIVISION 4. - SECONDHAND DEALERS**

**Sec. 18-761 - Sec. 18-770**

Replaced by F.S. § 538.03 – 538.17 as may be amended from time to time.

**SECTION 3.** Chapter 102, "Taxation", Article V, "Local Business Tax", Section 102-356, "Construction of Article; Definitions" of the City Code is hereby amended as follows:

**Sec. 102-356. - Construction of article; definitions.**

* * *

*Secondhand dealer is as defined in F.S. § 538.03.* ~~means any person not solely a secondary metals recycler subject to F.S. ch. 538, pt. II, engaged in the business of purchasing, consigning, pawning, selling, bartering, exchanging in any manner at retail or wholesale, or otherwise dealing for profit in secondhand goods. The term shall include pawnbrokers and all dealers who buy, trade or sell or who make loans of money upon the deposit or pledge of secondhand goods.~~

*Secondhand goods is as defined in F.S. § 538.03.* ~~means personal property previously owned or used, which is not regulated metals property regulated under F.S. ch. 538, pt. II, and which is purchased, sold, bartered, exchanged, consigned or pawned as used property. The term includes but is not limited to:~~

~~(1) Watches;~~

~~(2) Items containing gold, silver, platinum or other precious metal;~~

~~(3) Jewelry, diamonds, gems, and other precious stones, excluding costume jewelry;~~

~~(4) Fishing rods and tackle;~~

~~(5) Audio and video equipment, including but not limited to television sets, radios, amplifiers, receivers, turntables, tape recorders, videotape recorders, speakers, and citizens' band radios, and compact disc players;~~

~~(6) Computer equipment;~~

~~(7) Radar detectors;~~

~~(8) Depth finders;~~

~~(9) Trolling motors and outboard motors;~~

~~(10) Photographic equipment, including but not limited to cameras, lenses, electronic flashes, tripods and developing equipment;~~

~~(11) Machinery, tools, electric motors, calculators, tires, hubcaps, musical instruments, typewriters;~~

~~(12) Weapons, including knives, swords, and air guns;~~

~~(13) Telephones, including cellular and portable;~~

~~(14) Microwave ovens;~~

~~(15) Animal fur coats;~~

~~(16) Video games;~~

~~(17) Office equipment such as copiers, fax machines and postage machines;~~

~~(18) Sports equipment;~~

~~(19) Lawnmowers, bicycles and motor vehicles.~~

* * *

**SECTION 4.** Chapter 142, Entitled "Zoning Districts and Regulations", Article II "District Regulations," Division 4 "CD-1 Commercial, Low Intensity District," Section 142-273, "Conditional Uses" of the City Code is hereby amended as follows:

**Sec. 142-273. - Conditional uses.**
The conditional uses in the CD-1 commercial, low intensity district are adult congregate living facilities; nursing homes; religious institution; public and private institutions; schools; day care facility; pawnshops; secondhand dealers of precious metals; video game arcades; warehouses; any use selling gasoline; new construction of structures

50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; neighborhood impact establishment; and storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103.

**SECTION 5.** Chapter 142, "Zoning Districts and Regulations", Article II "District Regulations," Division 5 "CD-2 Commercial, Medium Intensity District," Section 142-303 "Conditional Uses" of the City Code is hereby amended as follows:

**Sec. 142-303. - Conditional uses.**

The conditional uses in the CD-2 commercial, medium intensity district are adult congregate living facilities; funeral home; nursing homes; religious institution; pawnshops; secondhand dealers of precious metals; video game arcades; public and private institutions; schools; any use selling gasoline; new construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; outdoor entertainment establishment; neighborhood impact establishment; open air entertainment establishment; and storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103.

**SECTION 6.** Chapter 142, "Zoning Districts and Regulations", Article II "District Regulations," Division 6, "CD-3 Commercial, High Intensity District," Section 142-335 "Prohibited Uses" of the City Code is hereby amended as follows:

**Sec. 142-335. - Prohibited uses.**

The prohibited uses in the CD-3 commercial, high intensity district are pawnshops; secondhand dealers of precious metals; and accessory outdoor bar counter, except as provided in this division.

**SECTION 7.** Chapter 142, "Zoning Districts and Regulations", Article II "District Regulations," Division 18 "PS Performance Standard District," Section 142-693(C) "Permitted Uses," of the City Code is hereby amended as follows:

**Sec. 142-693. - Permitted uses.**

* * *

**(c)** For purposes of this section, pawnshops, secondhand dealers of precious metals and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street; however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a hotel of 250 rooms or more with access to the dance hall or entertainment establishment only from the interior lobby and not from the

street.

**SECTION 8. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

**SECTION 9. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 10. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 11. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this _____ day of _____, 2011.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ _____
City Attorney Date

First Reading:
Second Reading:

Verified by: _____
Richard G. Lorber, AICP, LEED AP
Acting Planning Director

**Underscore** denotes new language
12/06/2012

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