

**ORDINANCE NO. 15-13 N.S.**

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF RICHMOND PURSUANT TO GOVERNMENT CODE SECTION 65858 (f) ESTABLISHING A TEMPORARY MORATORIUM ON SECONDHAND DEALERS, INCLUDING BUT NOT LIMITED TO “CASH FOR GOLD” BUSINESSES IN THE CITY OF RICHMOND PENDING ADOPTION OF APPROPRIATE REGULATIONS TO PROTECT THE COMMUNITY HEALTH, SAFETY AND GENERAL WELFARE**

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**THE CITY COUNCIL OF THE CITY OF RICHMOND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Declaration of Urgency**

A. Government Code §65858(a) authorizes the City Council to protect the public safety, health and welfare by adopting as an urgency measure an interim zoning ordinance prohibiting any uses which may be in conflict with general plan, specific plan and zoning proposals which the City is considering or studying or intends to study within a reasonable time. The public health, safety and welfare of the City of Richmond, its businesses, and its residents require the enactment of this Urgency Ordinance to apply to Secondhand Dealers (a) defined herein) including but not limited to Cash for Gold businesses in the City.

B. Pursuant to Government Code §65858, it is hereby declared that this Urgency Ordinance is necessary to preserve the public health, safety and welfare. Based on the findings set forth herein, the City Council finds that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of conditional use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

C. The City adopted an interim urgency ordinance on June 4, 2013 establishing a temporary moratorium on secondhand dealers which expired on July 19, 2013. Since adoption of the first urgency ordinance, staff has reviewed issues that have since arisen with the adoption of similar urgency ordinances, as well as the conditional use permit process for “Cash for Gold” businesses in surrounding cities. Staff has determined that some cities treat “Cash for Gold” businesses similar to pawn shops, check cashing stores and payday loan facilities. These type of businesses require approval of conditional use permit in commercial districts where permitted. Staff believes after discussions with cash for gold operators this practice may be appropriate for the City based on what other cities are doing.

D. The City is currently engaged in a comprehensive update of its zoning code, and is further contemplating zoning proposals which would specifically address Cash for Gold or other secondhand jewelry dealers offering money for gold. Cash for Gold businesses and other second hand jewelry dealers may therefore be in conflict with zoning regulations that the planning department is considering, studying or intends to study within a reasonable period of time. Without the imposition of this moratorium, properties in the City of Richmond could receive license, entitlements, or authorization to commence operation of such business operations. Although the City Council has adopted a new General Plan the City’s Zoning Ordinance is in need of an update to provide conformity with the new General Plan. The City Council has directed that the Zoning Ordinance be pursued as expeditiously as is practicable in the upcoming year. Staff is requesting a new urgency ordinance to establish a procedure whereby businesses would be required to obtain a second hand dealer license to operate these types of establishments and apply for a conditional use permit.

E. In order to prevent the frustration of any new zoning regulations, the public interest, health, safety and welfare require the immediate enactment of this Urgency Ordinance. The absence of this Urgency Ordinance would create a serious threat to the orderly and effective implementation of any zoning amendments which may be adopted by the City. The City has recently experienced a surge in requests for Cash for Gold businesses, one type of Secondhand Dealer which may potentially increase illegal signage in public right of ways causing visual pollution. Further, patrons of such establishments are more likely to be targets of crime because they receive cash in these transactions.

F. The City of Richmond already has an ample supply of the uses set forth herein. Richmond's jurisdictional boundaries comprise only 55.9 square miles. Responding to an increase of inquiries and requests in the past year, the Planning Director determined that a cash for gold business, though not specifically listed in the Zoning Ordinance, is similar to pawn shops, check cashing stores, and payday loan facilities, all of which require approval of a conditional use permit in commercial districts where permitted. Staff requests an urgency moratorium to allow additional time to research and update the Zoning Ordinance to define a process to conditionally permit these types of businesses within the City. Furthermore, the City Council finds that a proliferation of such uses is not required to serve the community, but rather constitutes an imminent threat to the public peace, health, safety and welfare of the City of Richmond, its businesses, and residents. The addition of further such businesses is likely to increase crime and will diminish the work of the City Council to make the City's commercial corridors and regional shopping districts a more favorable environment for commerce if not regulated by a conditional use permit.

G. It is not the intent of this interim ordinance to legislate in the areas of licensing or reporting requirements imposed by state law. Rather, the City Council enacts this ordinance pursuant to its land use authority and as explicitly authorized by Government Code §§65858 and 65858 (f).

H. On July 30, 2013, the City Council held a public meeting and considered the adoption of this Urgency Ordinance under Government Code §65858.

## **SECTION 2. Moratorium Established**

During this moratorium period as defined herein, or any extension thereof, no approval, license, permit, entitlement, or authorization, shall be issued for or to a Secondhand Dealer, as defined herein, within the City of Richmond, and no such use may be established or expanded in the City, whether or not a permit of any kind is required from the City, and no business license shall be issued for any such new establishment. Any projects already submitted for review and that have not received final action shall be denied without prejudice. The conditional use permit application fee paid by any such applicant shall be applied to an application for the same use and same location if filed within one month of the expiration of this moratorium or any extension thereof.

## **SECTION 3. Definitions**

For purposes of this Urgency Ordinance, the following definition applies:

"Secondhand Dealers" consist of any person, co-partnership, firm, or corporation or other entity whose business includes buying, selling, trading, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property, subject to the definition and exclusions set forth in Business and Professions Code Section 21626. "Secondhand Dealers" includes but is not limited to "cash-for-gold" or other used jewelry purchases and/or sales, and swap meets, flea markets or open air markets as defined in Business and Professions Code Section 21661. It does not include people who buy and sell second hand articles as defined and regulated in Chapter 7.60 and close-out sales in Chapter 7.24 of the Richmond Municipal Code, and does not include any business owned and operated by a charitable, non-profit entity.

## **SECTION 4. Exception Process**

A. An interested person may apply for an exception to be relieved of the moratorium imposed by this Urgency Ordinance if the person believes that application of the ordinance will deprive him or her of rights under federal or state law. The exception request shall be made within fourteen (14) calendar days following any written notification by city staff (including email correspondence) that a proposed use is prohibited by this ordinance. Failure to timely apply for an exception shall constitute a failure to exhaust administrative remedies and shall bar any further judicial action challenging application of this Ordinance.

B. The party seeking the exception shall have the burden of proof to show the

existence of a legal deprivation. If the City wishes to add evidence to the record beyond that submitted by the applicant, the City shall provide the evidence to the applicant and offer the applicant up to twenty (20) additional days to address the submission. A decision on the exception application shall be rendered by the City Manager after consultation with the City Attorney. The decision shall be conveyed in writing to the applicant within forty (40) days of the date the application for exception is received or the record is finalized, whichever is later. The decision is final and not appealable administratively.

#### **SECTION 5. Severability**

A. If any provision of the Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

B. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, term or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, terms or phrases be held unconstitutional, invalid or unenforceable.

#### **SECTION 6. Penalties**

Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

#### **SECTION 7. Conflicting Laws**

For the term of this Ordinance, or any extension thereof, the provisions of this Ordinance shall govern over any conflicting provisions of any other City code, ordinance, resolution or policy.

#### **SECTION 8. Environmental Assessment**

Pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, the City Council declares that this Ordinance is exempt from CEQA based on the following findings:

1. This Ordinance is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. This Ordinance does not, in itself, allow the operation of secondhand stores, therefore there is no potential for resulting in physical change in the environment, directly or ultimately.

2. This Ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA Guidelines. This Ordinance is a regulatory action taken by the City in accordance with Government Code Section 65858, to assure maintenance and protection of the environment pending the completion of contemplated Zoning Ordinance revisions.

3. This Ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) of this paragraph, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment, and therefore, the Ordinance is not subject to CEQA.

#### **SECTION 9: Effective Date and Duration**

This Urgency Ordinance shall be introduced, passed and adopted at one and the same

meeting and shall become effective immediately and shall expire and be of no further force and effect forty-five (45) days from its effective date, unless extended as permitted by law.

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I certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Richmond at a special meeting thereof held July 30, 2013, by the following vote:

AYES: Councilmembers Bates, Beckles, Butt, Myrick, Rogers, Vice Mayor Boozé, and Mayor McLaughlin.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

GAYLE McLAUGHLIN  
Mayor

Approved as to form:

BRUCE GOODMILLER  
City Attorney

State of California            }  
County of Contra Costa        }        : ss.  
City of Richmond               }

I certify that the foregoing is a true copy of **Ordinance No. 15-13 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 30, 2013.