

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Public Hearing: An Ordinance Concerning Used Merchandise Dealer Provisions and Amending Sections 4.989 and 4.990 of the Eugene Code, 1971

Meeting Date: November 19, 2012
Department: Eugene Police
www.eugene-or.gov

Agenda Item Number: 2
Staff Contact: Det. Randy Berger
Contact Telephone Number: 541-682-5645

ISSUE STATEMENT

This public hearing provides the community an opportunity to comment on a proposal to change the regulations for second-hand dealers, to be consistent with recently adopted state legislation, as required by that legislation.

BACKGROUND

In 2006, the Eugene City Council amended the Used Merchandise Dealer Ordinance contained in sections 4.989 and 4.990 of the Eugene Code. In 2012, the State adopted HB 4108 which regulates Precious Metal Dealers, currently regulated under the City's Used Merchandise Dealer regulations. The State permits cities to modify their existing regulations to be consistent with the state regulations. If the local jurisdiction does not make the necessary changes, the state legislation will be in effect. The City of Eugene's regulations are more comprehensive; this draft ordinance amends the existing City ordinance, so it is not pre-empted by the less-desirable state legislation. Additional changes are also proposed that are based on the experience of implementing and overseeing these regulations since adoption in 2006.

It should be noted that the current regulations as well as the proposed changes specifically address businesses which purchase "regulated property," or lend money on security of "regulated property." Regulated property includes precious metals, gems, watches, jewelry, AV equipment, photo equipment, firearms and other property which is historically and traditionally the subject of property crimes. Regulated property does not include collectable trading cards, glassware, furniture, clothes, home appliances, or collectables. While most of Eugene's used merchandise dealers strive to cooperate with law enforcement and comply with both state and local laws governing their business practices, used merchandise businesses are frequently used by criminals to dispose of stolen property. In 2009, property valued at \$3.5 million was lost in burglaries or robberies, while only five percent (\$170,000) was recovered. In subsequent years, the experience is similar, with \$2.3 million stolen and four percent recovered in 2010, and \$2.3 million stolen and two percent recovered in 2011. These regulations are intended to locate and recover stolen property, and identify individuals involved in the sale of stolen property to businesses who buy regulated property.

The following changes are proposed to align the City's regulations with state regulations:

- Section 4.989 (1) Adds definition of pawnbroker, pledge, and precious metal.
- Section 4.989 (3) Adds provisions for additional information that should be recorded when items are purchased, and requires a photo be taken for all jewelry, gems and precious metals.
- Section 4.989 (7b) Adds requirement that if the Police notify the used merchandise dealer that jewelry is suspected of being stolen, the dealer cannot alter the piece.

The following changes are proposed which will strengthen the City's regulations and increase the likelihood of returning stolen property:

- Section 4.989 (2) Adds language which prohibits someone from owning or operating a used merchandise business if they have been convicted for burglary, theft I, manufacture of a controlled substance, or drug possession
- Section 4.989 (7a) Increases the amount of time that regulated property must be held from the time of purchase, from seven to 14 days.
- Section 4.89 (10b) Adds provision that if used merchandise dealer has repeatedly and substantively violated the regulations related to used merchandise dealers, the City Manager may initiate judicial proceedings for injunctive relief to prohibit the person from acting as used merchandise dealer, and to prohibit purchase and sale from that location.
- Section 4.990 (10a) Increase the maximum fine for first violations up to \$500 from \$360.
- Section 4.990 (10b) Increases the maximum fine after three previous similar convictions up to \$1,500, from \$360.
- Section 4.990 (10c) Increases the maximum fine after six previous similar convictions up to \$3,000, from \$360.
- Section 4.990 (10f) Specifies that violation of the rules related to this ordinance is subject to the penalties.

Of the changes proposed, one change which may receive significant community comment increases the amount of time property is held from seven to 14 days. This change is requested to allow law enforcement more time to determine if the property is the subject of a theft or burglary. This delay will increase the likelihood stolen property can be recovered if the crime isn't immediately reported; often, victims don't have a complete list of stolen property at the time the report is taken, so supplemental reports are provided by the victim. This proposed change will have an impact on used merchandise dealers because they will need additional storage space for items on hold, and it will increase their need for working capital, as assets are required to be held longer.

Another change that may generate complaints is the recommendation to regulate who can own or operate as a used merchandise dealer. Because this proposal is intended to curb the intentional or unintentional trafficking of stolen merchandise, the recommendation is to prohibit people convicted of some felony drug offenses and felony property crimes from owning or operating a used merchandise business. For these regulations, a used merchandise business is strictly defined as a business which purchases or lends money on property which is "regulated," or property with a higher likelihood of being stolen property. The recommended change prohibits certain convicted felons from operating a business which is frequently used to commit property felonies.

The final proposed change which may result in comments involves the increase in the amended fine schedule. The current penalty for violating the Used Merchandise Dealer Ordinance is \$360 per violation. The proposal is to increase this to \$500 for a first offense, and up to \$3,000 for a sixth and subsequent offense. This increase is needed because the \$360 flat fine amount is inconsequential compared with the profit reaped by flagrant violators. Recently EPD contacted a business operator who had previous violations for dealing stolen property. The owner committed that he was no longer buying regulated property. After a six-month investigation, the dealer was cited for 125 violations for unlawful transactions from which he gained \$90,000 in revenue. His conviction on those charges resulted in fines amounting to only \$5,600.

The increased penalties are not intended to affect stores that make random errors in reporting or compliance. Rather these penalties are for those stores currently in operation that repeatedly violate the regulations, and behave in a manner consistent with criminal fencing operations, and the presiding judge will determine fine amounts, based on the totality of the circumstances.

RELATED CITY POLICIES

This topic relates to the following:

- Council Goal - Safe Community Vision: A community where people feel safe, valued and welcome, with decreased property crime.

COUNCIL OPTIONS

1. Proceed with final action tentatively scheduled for November 26 with ordinance as drafted.
2. Proceed with final action tentatively scheduled for November 26, with amended ordinance.
3. Table or end the work on the proposed ordinance, and allow state regulations to cover precious metal dealers.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends that the ordinance be scheduled for action Nov. 26, either as proposed, or as amended based on community comments received at Nov. 19 public hearing.

SUGGESTED MOTION

No motion is needed if the ordinance is scheduled for action Nov. 26.

ATTACHMENTS

- A. Draft Ordinance

FOR MORE INFORMATION

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ORDINANCE NO. _____

AN ORDINANCE CONCERNING USED MERCHANDISE DEALER PROVISIONS AND AMENDING SECTIONS 4.989 AND 4.990 OF THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.989 of the Eugene Code, 1971, is amended to provide as follows:

4.989 **Used Merchandise Dealer - Requirements.**

- (1) As used in this section, the following words and phrases mean:
- (a) Approved identification. A currently valid identification issued by a government agency that includes a physical description and photograph of the person and bears the signature of the person.
 - (b) Chief of police. The person authorized by the city manager to carry out the duties of the chief of the Eugene Police Department, or his or her designee.
 - (c) Peace officer. As defined in ORS 133.005.
 - (d) ***Pawnbroker. A person, partnership, corporation or other business association licensed as a pawnbroker under ORS chapter 726.***
 - (e) ***Pledge. Any article deposited with a pawnbroker in the course of the business of the pawnbroker as defined in paragraph (d) of this subsection.***
 - (f) ***Precious metal. Gold in eight karat or greater purity, silver, platinum or palladium. Precious metal does not include unrefined metal ore, an electronic product or any part of a mechanical system on a motor vehicle that contains precious metal as a result of the vehicle manufacturing process.***
 - (dg) 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. It 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.
 - (eh) Regulated property.
 1. Except for property excluded in paragraph (e) 2. below, any used or secondhand personal property, including, but not limited to, precious metals and gems; watches, jewelry, and household items containing precious metals or precious gems; audio and video equipment and media; photographic and optical equipment; electrical office equipment; yard and garden tools; power equipment and tools; hand tools; telephones or telephone equipment; musical instruments; firearms; and sporting equipment.
 2. 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; collectable trading cards (e.g., baseball trading cards or movie trading cards); glassware;

furniture; clothes; refrigerators, stoves, washers, dryers, window air conditioner units, and other similar major household appliances; small kitchen appliances; or property that is purchased for investment purposes, limited to the following:

- a. Gold bullion bars or rounds (0.995 fine or better);
- b. Silver bullion bars or rounds (0.995 fine or better);
- c. All tokens, coins, or money, whether commemorative or an actual medium of exchange, adopted by a domestic or foreign government as part of its currency; or
- d. Postage stamps, stamp collections and philatelic items.

(ff) Used merchandise dealer.

1. A person who engages in, conducts, manages, or carries on any business that, as part or all of its business:
 - a. Purchases regulated property; or
 - b. Lends money on security of regulated property.
2. A used merchandise dealer does not include:
 - a. A person who engages in, conducts, manages, or carries on any business that does not buy regulated property outright, but occasionally accepts in trade regulated property as part or full payment for new articles, where such business is incidental to the primary business of the sale of new articles;
 - b. A person who engages in, conducts, manages, or carries on any business that deals exclusively in the purchase and sale of used whole automobiles, books, trading cards and sports memorabilia, clothing, furniture, major household electric or gas appliances, or farm implements and machinery; or
 - c. A person who engages in, conducts, manages, or carries on any nonprofit corporation or association that purchases, sells or otherwise exchanges only donated articles.

(2) ***No person with a felony conviction for Burglary, Theft I, Manufacture of a Controlled Substance or Schedule I or II Drug Possession may be permitted to own or operate a used merchandise business.***

(23) Recording requirements.

- (a) At the time of purchase, a used merchandise dealer shall accurately record: the description of the regulated property purchase; ***the address, date of birth and current telephone number of the person from whom the regulated property was purchased;*** and the ***person's*** approved identification.
- (b) ***The used merchandise dealer shall record an identifying description and take a discernible, clear photograph of all jewelry, gems and precious metal items. Pawnbrokers accepting a pledge are not required to photograph the pledged item.***
- (bc) Used merchandise dealers shall record purchases of regulated property via an automated electronic reporting system approved by the city.
- (cd) 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 demand. Each used merchandise dealer shall keep a paper record of each purchase bearing the signature of the customer for a period of one year.

(4) Reporting requirements.

- (a) Within 12 hours of a purchase, a used merchandise dealer shall input and transmit the recorded information required under subsection (2) using the automated electronic reporting system approved by the city.
 - (b) Only reports containing complete information shall be deemed to comply with this section.
 - (c) In the event that the automated electronic reporting system becomes inoperable, a used merchandise dealer's computer system becomes inoperable, or other event that makes reporting within the time allowed by subsection (a) of this subsection impossible, the used merchandise dealer shall immediately report the occurrence of such event to the chief of police. The chief of police may suspend the reporting requirements of subsection (a) of this subsection for a reasonable period until electronic reporting can resume. Once the chief of police determines that reporting can resume, used merchandise dealers must, within 12 hours, input and transmit the information required under subsection (2) for all purchases made during any period reporting was suspended by the chief of police using the approved automated electronic reporting system.
- (5) Reporting fees. The city manager shall establish fees for the use of an automated electronic reporting system in accordance with the procedures of section 2.020 of this code. Such fees shall reflect the costs associated with providing electronic automated reporting system services to used merchandise dealers. Used merchandise dealers shall be charged the fees on an annual basis, and the fees shall become due 45 days after the date billed.
- (6) Limitations on the purchase of regulated property.
- (a) A used merchandise 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;
 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.
 - (b) A used merchandise dealer shall comply with all applicable federal, state, and local laws and regulations.
- (7) Limitations on the sale of regulated property.
- (a) Regulated property purchased by any used merchandise dealer shall not be sold for a period of [~~7~~] **14** full days after the date the report required in subsection (3) is received by the city. The used merchandise 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 [~~7~~] **14**-day holding period. The purchased property shall be located on the business premises during normal business hours during this holding period so that it can be inspected as provided in subsection (7). ***The 14-day holding period does not apply to a pledge held by a pawnbroker.***

- (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 **and shall not remove gemstones from, or make other alterations to, pieces of jewelry.** 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.
- (8) Inspection of used merchandise dealers and regulated property. Upon presentation of official identification, any peace officer may enter onto the business premises of any used merchandise dealer to ensure compliance with the provisions of subsections (1) - (6). The inspection shall be for the limited purpose of inspecting any regulated property purchased by the dealer, held by the dealer pursuant to subsection (6), or the records incident thereto. Any inspection pursuant to this subsection shall only be authorized to occur during normal business hours.
- (9) Administrative rules. The city manager or the manager's designee is authorized to promulgate rules necessary to carry out the provisions of this section following the procedures of section 2.019 of this code.
- (10) Enforcement.
 - (a) Any peace officer may enforce the provisions of this section 4.989.
 - (b) ***If it appears to the city manager that a used merchandise dealer has repeatedly and substantially violated this section or other laws applicable to used merchandise dealers, the city manager may initiate judicial proceedings for injunctive relief to prohibit the person from acting as a used merchandise dealer and to prohibit the purchase or sale of regulated property at the location where the violations occurred.***
- (11) Penalties. Violation of any of the requirements in subsections (1) – (8) of this section **or the rules adopted pursuant to subsection (9) of this section** is subject to punishment as provided in subsection 4.990(10). ~~[In addition to the remedies provided in subsection 4.990(10), additional proceedings may be instituted, including but not limited to proceedings for injunctive relief, to enforce the provisions of subsections (1) – (8) of this section.]~~ ***Each act that violates section 4.989 or any of the rules adopted pursuant to subsection (9) of this section is a separate offense.***

Section 2. Subsection (10) of Section 4.990 of the Eugene Code, 1971, is amended to provide as follows:

4.990 Penalties - Specific.

- (10) Violation of section 4.989 [and any rules adopted thereunder] is punishable by a fine of not more than \$360. ~~Each violation shall constitute a separate offense, and each day that a violation continues shall constitute a separate offense.]~~ ***as follows:***
 - (a) ***A person who violates section 4.989 may be punished by a fine of not more than \$500.***

- (b) A person who violates section 4.989 after having been convicted at three different times for violating section 4.989 may be punished by a fine of not more than \$1500 for each new violation.**
- (c) A person who violates section 4.989 after having been convicted at six different times for violating section 4.989 may be punished by a fine of not more than \$3000 for each new violation.**
- (d) Each violation of section 4.989 or any of the rules adopted thereunder is a separate offense.**
- (e) For purposes of this section and section 4.989, "a violation of sections 4.989" includes a violation of the rules adopted under that section.**

Section 3. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this

___ day of November, 2012

Approved by the Mayor this

___ day of November, 2012

City Recorder

Mayor