

**WORK SESSION AGENDA
WYOMING CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS**

Monday, February 14, 2011, 7:00 P.M.

- 1) Call to Order**
- 2) Public Comment on Agenda Items (3 minute limit per person)**
- 3) Secondhand Goods Regulation**
- 4) Any Other Matters**
- 5) Acknowledgement of Visitors/Public Comment (3 minute limit per person)**

CLH/lj

MEMORANDUM

TO: Curtis Holt, City Manager

FROM: Timothy Cochran, City Planner

DATE: February 8, 2011

SUBJECT: Secondhand Goods Regulation

CC: Barb Van Duren, Deputy City Manager
Rebecca Rynbrandt, Director of Community Services
James Carmody, Chief of Police

Overview:

City Council requested the Development Review Team (DRT) consider Zoning Code amendments to potentially allow more used goods (secondhand) businesses. This matter received additional attention in recent months with two Board of Zoning Appeals use variances (denied) and a rezoning (approved) that involved used goods business proposals. Used goods businesses may take many forms, such as: antique stores, used clothing, used merchandise, used books, used electronics, consignment shops, precious metal purchasers, flea markets (indoor and outdoor), equipment rental, used auto parts, used vehicles, and pawnshops. This report will provide a framework for the consideration of used goods by providing a historical perspective on their regulation within Wyoming, the factors that may justify reconsideration of the issue, adjoining community regulations, business association perspectives, law enforcement concerns, and potential regulations.

History:

The regulation of used goods businesses within Wyoming has a unique history. For several decades, most used goods businesses were allowed by obtaining Special Use Approval (SUA) from the Planning Commission. Such businesses had to be located in a B-2 General Business district (primarily Division Avenue) and be a minimum of 250 feet away from other similar uses. Antique stores are an exception within the Zoning Code, and are permitted by right in all commercial districts. Used vehicle sales are also a separate designation, and are allowed by right in commercial districts if entirely indoors, or by SUA in the B-2 district with an outdoor display. Pawn shops remain another separate category, and are more regulated than other used goods businesses. It is my understanding that Wyoming has no true pawn broker businesses. The City has seven different commercial districts, each with a unique set of regulations: B-1 Local Business, B-2 General Business, B-3 Planned Business, DC Downtown Center, PUD-1 Low Density PUD, PUD-2 Commercial PUD, and PUD-3 Planned Health Care District.

In the last twelve years, there have been two significant amendments to the Zoning Code

regulation of used goods businesses. The Downtown Development Authority (DDA) for the 28th Street corridor was established in 1999. The impetus for their creation was the perception by business owners along the corridor, along with the Planning Commission, City Council and staff, that 28th Street was exhibiting significant economic decline. One of the first actions of the DDA was to recommend a prohibition of many land uses they believed to no longer be appropriate. These uses included storage facilities, new and used vehicle sales, machinery sales, commercial greenhouses, adult businesses, pool halls, and the sale of used goods. Effectively, the DDA considered these uses detrimental to the revitalization of the corridor. Planning staff, the Planning Commission and City Council concurred with this recommendation and subsequently amended the Zoning Code. Prior to this change, these uses would have been permissible with SUA from the Planning Commission. The amendments merely added the words “Not permitted in the downtown development authority area” to those use listings. This addressed the majority of the 28th Street frontage which was zoned B-2 General Business. A notable exception was the area surrounding Rogers Plaza, Wyoming Village Mall and Studio 28. This area was zoned B-3 Planned Business, which requires a larger building site and has greater use restrictions. The uses which were banned by the amendments from the DDA district were already prohibited in the B-3 zoned area. Existing businesses that would otherwise be prohibited by the new ordinances became nonconforming uses. These existing uses were permitted to continue. However, under the Zoning Ordinance, if a nonconforming business ceases operation for more than a one year period it may not be reestablished.

In 2008, Mission Thrift established a used clothing business on 36th Street west of Clyde Park Avenue without authorization. That use was not permitted in a B-1 Local Business district. A use variance from the Board of Zoning Appeals was requested and subsequently denied. Upon request by the City Council, the Zoning Code was amended to allow the sale of used clothing in the B-1 districts by SUA. Subsequently, Mission Thrift was able to obtain their SUA. It was recently brought to staff’s attention that Mission Thrift is no longer selling used clothing, but is selling used books. This is in violation of Zoning Code requirements. Staff has not taken action on this matter pending resolution of the used goods considerations.

Additional Considerations:

Since the prohibition of used goods in the DDA in 1999, staff has administered the ordinance to deter many such businesses from this area. Meanwhile, we have supported several requests for used goods businesses in other parts of the City. This includes a used goods business on 28th Street west of Byron Center Avenue which is not in the DDA district. Several such uses have also been approved on Division Avenue. Staff has been very accommodating in working with used goods businesses in locating in Wyoming. For the most part, used goods businesses in moderation serve a need in the community. Because of our success in deterring such businesses in the DDA, there is effectively a void in the market area in our downtown. Used goods businesses are attracted by this void and recognize the competitive advantage available to them if they can locate here. A recent market analysis by CB Richard Ellis showed a commercial vacancy rate of 22.4 percent in the southwest Metropolitan Grand Rapids submarket. Landlords are offering bottom level lease rates in order to attract tenants. Recently, an inquiry was made to

establish an indoor flea market (prohibited use) within the recently vacated Joanne Fabrics lease space within Wyoming Village Mall.

In addition, there is a strong movement nationwide that encourages the reuse and recycling of goods. Essentially, it has become socially responsible to repurpose used goods. In these difficult economic times, resale stores serve a need. My impression is that used clothing and merchandise stores may be culturally desirable to the young professional population, who are considered highly advantageous for community sustainability. Related to this may be the perception that outdoor flea markets could be culturally festive and advantageous to businesses and the community.

Also, the proliferation of E-Bay type services has created a market for businesses catering to used goods sales through the internet. Most such uses are minor and operate as a home based business. However, staff has experience with more major operations that desire significant storage at a central location to accommodate drop off, pick up, and shipment. Such businesses desire warehouse facilities that are customarily found in the Industrial districts. Under our Code, this is a commercial activity regulated as used goods sales, and is prohibited in Industrial districts.

Adjoining Community Provisions:

The Cities of Grand Rapids, Kentwood, Grandville and Walker allow most used goods businesses by right in their commercial districts. In conversations with their city planners, the basic premise is that used goods are essentially similar to new goods and it helps fill vacant retail space. Potential concerns, such as building façade upkeep, is the same regardless of the business occupying the site. Market forces will direct where used goods businesses occur. A relatively high business turnover can be expected with lower quality used goods tenants.

Business Association Perspectives:

On January 4, 2011, the Wyoming Downtown Development Authority advised that they are amenable to allowing more used goods businesses within the DDA's 28th Street three mile corridor. Their main concern is that lower quality used goods businesses may not be desirable. Their desire is to have used goods businesses be considered as SUA's by the Planning Commission. In addition, there should be a distance requirement between such uses, such as 250 feet currently in the Zoning Code. The \$500 review fee, and the required review process, would filter out lesser quality businesses.

The Division Avenue Business Association have also been considering this issue. On January 13, 2011 they concurred with the recommendation from the DDA requiring the SUA and the use separation standards.

Police Department Concerns:

Most used goods businesses fall into the City licensing category of “Secondhand Dealers”. Essentially, all purchased items must be retained for a period of 15 days by the business before it can be sold. In addition, fingerprints and identification must be obtained from the seller. The items must be electronically identified to the City for entry into the database by senior volunteers. This process is in place to potentially retrieve stolen property. The submitted detail by the businesses for the purchased items is generally minimal and, lacking a serial number, is not readily identifiable. Most used goods businesses believe the requirements are excessive, since the used goods are not those typically associated with theft. As a further matter, a second hand dealer that also purchases precious metals or gems is required to abide by Act 95 of the Michigan Public Acts of 1981, and obtain an additional license. The Police Departments primary concern regarding used goods businesses is how to enforce the existing regulations. When a market for used goods is established, a certain criminal element will strive to take advantage of it. With additional used good businesses within the City, the Police Department may have to devote their limited resources to establish teams for sting operations to ensure a high level of compliance within the community.

Potential Zoning Code Amendments:

On January 17, 2011 the DRT met and considered the various options regarding amending the Zoning Code regulations for the sale of secondhand (used) goods. These options included the following:

1. As with the adjoining communities, the Code would be amended to allow most used goods businesses by-right in all commercial districts.
2. The Code would be amended to allow most used goods businesses in all commercial districts by Special Use Approval (SUA) from the Planning Commission.
3. Provide for a greater allowance of used goods businesses through a mixture of by-right and SUA in a wider range of commercial districts.
4. Maintain current regulations.

DRT Recommendations:

The DRT decided, upon recommendation from the Downtown Development Authority and the Division Avenue Business Association, to propose Option 2 that would allow for most used businesses in all commercial districts by SUA. To achieve the direction proposed by the DRT, the Zoning Code will need to align with the Secondhand Dealers and Pawn Shops Ordinance (Article XVI Section 14-901 through 935), as adopted by City Council on August 17, 2009. As explained in this report, our current regulations were derived over several decades, are contradictory, and are difficult to administer. Effectively, the proposed Zoning Code amendments would accomplish the following:

1. Provide for all secondhand businesses, as defined by Article XVI, to be allowed by SUA from the Planning Commission in all commercial zoning districts. Nonprofit organizations reselling donated used goods, for the purposes of the Zoning Code, would remain a SUA. The selling of used cars would remain a separate category, but would be expanded to allow them by SUA in the DC District and DDA area.
2. Eliminate the current differences in regulating different types of secondhand businesses, such as antique stores, used clothing, or precious metal purchasers.
3. Establish a uniform minimum 250 foot distance between secondhand businesses to deter possible stigmatizing of a particular area.
4. Provides for clarity in the prohibition of certain used goods businesses. These would be temporary businesses purchasing precious metals and gems, and outdoor flea markets.

Proposed Zoning Code Amendments:

The following Zoning Code amendments will be necessary to accommodate secondhand businesses within all commercial zoning districts, as recommended by the DRT:

1. Amend Section 90-1 Definitions:

Secondhand dealers shall be as defined in Section 14-901 of this Code. Outdoor secondhand sales, except as permitted under Section 90-371 (19), are prohibited. Temporary businesses, established for the purchase or sale of secondhand merchandise, are also prohibited. Nonprofit organizations reselling donated goods are required to obtain Special Use Approval.

Note: This connects the Zoning Code more clearly with the more complete regulations regarding secondhand dealers. It would also prohibit outdoor flea markets and quick strike businesses. Nonprofit organizations reselling donated goods, though exempt from the business requirements of Section 14-901, must still obtain approval from the Planning Commission to establish. Pawn brokers will retain a separate definition in the Zoning Code and Code of Ordinances. These definitions are attached for reference.

2. Amend Section 90- 336 (B-1 District permitted uses) to remove (10) h – “antique shops”, and Section 90-337 (B-1 District special uses) to replace (4) “Sale of used clothing etc...” with Secondhand dealer.

Note: This removes antique shops as a permitted use in the commercial districts. They would still be allowed as a SUA as a secondhand dealer. The sale of used clothing would no longer have a distinct category but would be included as a secondhand dealer. The B-1 districts are typically the local commercial areas, such as Porter Avenue and Lee Street.

3. Amend Section 90-372 (B-2 District special uses) subsections (8) and (18) to remove the last sentence “Not permitted in the downtown development authority area.”

Note: This allows new or used vehicle sales by SUA in the B-2 portion of the DDA district, as requested by the DDA. It would also allow secondhand dealers, pawnshops, and rental of used merchandise by SUA in the B-2 portion of the DDA. This area is 28th Street, east of Clyde Park Avenue and west of Burlingame Avenue.

4. Amend Section 90-402 (B-3 District special uses) by adding subsection (4) Secondhand dealers.

Note: This permits secondhand dealers by SUA in the B-3 district, such as Clyde Park Avenue and 54th Street.

5. Amend Section 90-617 (PUD-1 District special uses) by adding (7) Secondhand dealers.

Note: This will permit secondhand dealers by SUA in PUD-1 commercial districts, such as Bayberry Market.

6. Amend Section 90-901 (PUD-2 District special uses) by adding subsection (3) Secondhand dealers.

Note: This will permit secondhand dealers by SUA in the PUD-2 district, which is Wilsontown Center located south of the RiverTown Crossings Mall.

7. Amend Section 90-952 (PUD-3 District special uses) by removing (8) “General retail and other commercial uses” and replacing it with Secondhand dealers.

Note; This amendment accomplishes two things. First, under Section 90-951 (v) B-1 uses are permitted by right in the commercial area. This is the intent of the Code but is contradicted by Section 90-952 (8) which requires SUA for general commercial uses. Second, the amendment provides for secondhand dealers by SUA. The PUD-3 district is Metro Health Village, with the commercial area fronting Byron Center Avenue.

8. Amend Section 90-977 (DC District special uses) by adding (9) Secondhand dealers.

Note: This allows secondhand dealers by SUA in the Downtown Center district. This district encompasses most of 28th Street between Clyde Park Avenue and Burlingame Avenue.

9. Amend Section 90- 895 Same – Requirements for permitted uses after special approval to: Strike the term “or secondhand dealers” from it’s inclusion with pawnshops in both subareas. Also, replace the term “Sales of used merchandise and rental of new or used merchandise, excluding motor vehicles” with Secondhand dealers. The Zoning Districts Permitted must also be amended to allow secondhand dealers in the B-1, B-2, B-3, PUD-1, PUD-2, PUD-3 and DC

Districts.

Note: These amendments eliminate a contradiction within the Code with used good businesses and provide for a minimum separation of 500 feet for pawnshops and 250 feet for secondhand dealers. The amendment does eliminate the separation requirement between rental facilities, but this has never been an issue, and helps to clean up the ordinance. The amendment reiterates the commercial districts where secondhand goods are permitted by SUA.

Summary:

This report was prepared for City Council consideration. The Development Review Team will address this issue as directed. If it is determined to move forward with a Zoning Code amendment, it could be presented to the Planning Commission as a public hearing on March 15, 2010.