



ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Stephen Fischer, Assistant City Attorney Agenda Item No. **I-1**

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) J.C.

**DATE:** September 7, 2011

**TO:** City Council

**FROM:** Alan Holmberg, City Attorney [Signature]

**SUBJECT:** Ordinance No. 2847 to Define and Add Pawnshops as an Allowed Use in Specific Zones, Second Reading.

**RECOMMENDATION**

That City Council adopt Ordinance No. 2847.

**DISCUSSION**

The zone text amendment contained in proposed Ordinance No. 2487 was introduced at the July 26, 2011 City Council meeting. At that meeting, the City Attorney was asked to provide information regarding the State business regulations applicable to pawnbrokers and the Planning Division proposal to regulate pawnshops as a land use, and to explain the differences between the two sets of regulations. Ordinarily, no staff report accompanies the second reading of an ordinance. This report is prepared because of that request.

**The City's Proposed Zoning Ordinance**

The proposed pawnshop zone text amendment is intended to regulate pawnshops engaged in retail sales as a land use, not to regulate how a pawnbroker conducts business. Cities may enact and enforce planning and land use regulations to protect the public health, safety and welfare through the police power. The Legislature's intent in authorizing local adoption and administration of zoning rules and regulations was "to provide only a minimum of limitation in order that ... cities may exercise the maximum degree of control over local zoning matters." (Gov. Code, § 65800.) Thus, when a city "regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, *absent a clear indication of preemptive intent* from the Legislature, that such regulation is not preempted by state statute. [Citation]" (*Big Creek Lumber Co. v. County of Santa Cruz* (2006), 38 Cal.4th 1139, 1149-1150 (emphasis added).)

The proposed pawnshop zone text amendment is intended to regulate the land use impacts of pawnshops that involve retail sales activity. Such businesses not only conduct financial service transactions similar to check cashing and payday loan establishments, they also devote a large percentage of floor area to the display of unredeemed pawned merchandise that customers may purchase. A business only loaning on personal property collateral that does not display unredeemed pawned merchandise for resale on-site does not need more than a teller window and queuing area to conduct business. The latter establishment only caters to customers pawning merchandise, not shoppers. The foot traffic it generates will be substantially less than a pawnshop making retail sales.

Thus, the Planning Division has proposed a land use definition of “pawnshop” that reflects not only the financial services offered by pawnbrokers, but the higher intensity retail sales engaged in by traditional pawnshops. The purpose of the zone text amendment is to regulate the zoning of pawnshops that engage in retail sales, not to regulate how pawnbrokers conduct business.

### **State Regulation**

State law regulates how pawnbrokers conduct business, but does not address the zoning of pawnshops. The California Financial Code defines a “pawnbroker” as “a person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan” and regulates the terms by which pawnbrokers lend money against personal property consumers pledge as security. (Fin. Code, §§ 21000 et seq.) State law does not regulate pawnbrokers’ retail sales activity. Article 4 of Chapter 9 of Division 8 of the California Business and Professions Code contains the State’s secondhand dealer licensing law, the intent of which is threefold:

1. “[T]o curtail the dissemination of stolen property and to facilitate the recovery of stolen property by means of a uniform, statewide, state-administered program of regulation of persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property and to aid the State Board of Equalization to detect possible sales tax evasion.”
2. “[T]o require the uniform statewide reporting of tangible personal property acquired by persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property, unless the property or the transaction is specifically exempt herein, for the purpose of correlating these reports with other reports of city, county, and city and county law enforcement agencies and further utilizing the services of the Department of Justice to aid in tracing and recovering stolen property.”
3. “[T]his article shall not be superseded or supplanted by the provisions of any ordinance or charter of any city, county, or city and county.” (Bus. & Prof. Code, § 21625.)

The State licensing law includes pawnbrokers within the broader definition of “secondhand dealers.” (Bus. & Prof. Code, § 21626(a).) Notwithstanding, item 3 above, the Legislature has expressly recognized and authorized additional local government regulation of businesses licensed under the secondhand dealer licensing law: “The provisions of this article [Article 4] shall not prohibit

enactment, amendment, or enforcement by any city, county, or city and county of any local ordinance relating to a secondhand dealer or coin dealer which is not inconsistent with the provisions of this article. (Bus. & Prof. Code, § 21638.)

A California Court of Appeal opinion published in 2000 noted that the secondhand dealer licensing law expressly prohibits local governments (or any other state agency) from adopting “[i]dentification, holding, or reporting requirements for the acquisition of tangible personal property, in the ordinary course of business, by pawnbrokers and secondhand dealers” other than as set forth in the secondhand dealer licensing law and Section 21208 of the Financial Code, but concluded that “supplemental regulations that fall within the reasonable exercise of the City’s police power and do not offend the spirit of the state licensing statutes” are not preempted. (*Malish v. City of San Diego*, (2000) 84 Cal.App.4th 725, 733.) The court specifically listed zoning as a local regulation that was not preempted by the State licensing statutes. *Ibid.*

### **City Permit and License Processing**

Both the Business and Professions Code and the Financial Code delegate to city and county licensing agencies the responsibility to implement the State secondhand dealer and pawnbroker licensing processes. (Bus. & Prof. Code, § 21641 & Fin. Code, § 21300.) As part of this implementation, the local licensing agency is required to accept an application from any person desiring to be licensed as a secondhand dealer or pawnbroker within its jurisdiction. The processing of these business regulatory licenses involves a criminal background check and (for pawnbrokers) the submittal of surety bonds, but has nothing to do with local zoning of pawnshops other than confirmation that an applicant has been issued a Zone Clearance Permit. The Police Department reviews applications for State pawnbroker and secondhand dealer business licenses in conjunction with the processing of business tax certificates by the City Treasurer’s Office. The City Treasurer has outlined the following steps required for an applicant to obtain State and City approval to establish a pawnshop business:

1. City Licensing Services provides a pawnshop applicant with a form for a City business tax certificate and an application for the State Department of Justice pawnbroker/secondhand dealer certificate.
2. The applicant is directed by licensing staff to the Planning Division for zoning review. If the proposed use is allowed in the zone, a Zone Clearance is issued by the Planning Division.
3. The applicant returns to Licensing with completed forms and fees for the City business tax as well as the State fee. Licensing sends the State application to the Department of Justice and to the Oxnard Police Department for a background check and approval.
4. When the approved State and City forms are returned to City Licensing Services, a City business tax certificate to operate as a pawnbroker is mailed to the applicant. Until then, the company can not operate as a pawnbroker.

The proposed zone text amendment is intended to address difficulties the Planning Division has had in

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processing Zone Clearance applications by providing a clear definition of “pawnshop” for land use purposes and specifying zones in which the use is allowed subject to a special use permit.

### **FINANCIAL IMPACT**

There is no estimated financial impact to the current FY 2011-12 budget.

SF/sf

Attachment #1 - Ordinance No. 2847

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2847

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, AMENDING CHAPTER 16 (ZONING) OF THE CITY CODE TO ADD A DEFINITION OF PAWNSHOP AND ASSOCIATED LAND USE REGULATIONS.

WHEREAS, on July 7, 2011, the Planning Commission of the City of Oxnard considered at a noticed public hearing Planning and Zoning Permit No 11-580-02, filed by the City of Oxnard, to amend Chapter 16 of the City Code concerning pawnshops, and adopted Resolution No. 2011-28 recommending approval of PZ 11-580-02; and

WHEREAS, the City finds that the zone text amendment is consistent with the 2020 General Plan; and

WHEREAS, the City Council carefully reviewed Planning Commission Resolution No. 2011-28 recommending approval of PZ 11-580-02; and

WHEREAS, on July 26, 2011 the City Council conducted a noticed public hearing and received and reviewed written and oral comments related to proposed PZ 11-580-02, and

WHEREAS, the City Council finds after due study and deliberation that the public interest and general welfare require the adoption of PZ 11-580-02; and

WHEREAS, the City Council has determined that zone text amendment PZ 11-580-02 is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines, which sets forth the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Subsection (A) of section 16-10 of the City Code is hereby amended by adding the following definition, which subsection shall be reordered alphabetically and renumbered accordingly:

“PAWNSHOP - An establishment that engages in the business of loaning money on the security of pledges of personal property, and purchasing and selling personal property.”

Part 2. Subsection (A) of section 16-136 of the City Code is amended by adding the following subsection and reordering the subsection accordingly:

“(A)(20) Pawnshops; and”

Part 3. Section 16-163 of the City Code is amended by adding the following subsection and reordering the subsection accordingly:

“(K) Pawnshops; and”

Part 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Part 5. Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation, published and circulated in the City. Ordinance No. 2847 was first read on July 26, 2011, and finally adopted on \_\_\_\_\_, 2011, to become effective thirty (30) days thereafter.

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alan Holmberg, City Attorney