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MEMO TO: Mayor and City Council

FROM: Kay Bigelow, Acting City Attorney *KB for*

SUBJECT: Continuation of Item #2 – Amendment to Chapter 15 Regarding  
Secondhand Dealers

DATE: December 12, 2013

**RECOMMENDATION:** Staff recommends that the Chandler City Council continue its consideration of the amendment to Chapter 15 regarding Secondhand Dealers to the Council's regular meeting on January 23, 2014.

**BACKGROUND/DISCUSSION:** The Police Department and City Attorney's Office have asked to have this item continued as other types of retailers also offer trade-in value credits against their merchandise. The Police Department and their attorneys need more time to review with the officers doing enforcement of these ordinances to make sure the exceptions work and do not allow potentially unlawful transactions.

KB



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**MEMORANDUM**

**Management Services Memo No. 14-026**

**DATE:** DECEMBER 12, 2013

**TO:** MAYOR AND COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER *RD*  
DAWN LANG, MANAGEMENT SERVICES DIRECTOR *DL*

**FROM:** MATT DUNBAR, REVENUE AND TAX MANAGER *MD*

**SUBJECT:** INTRODUCTION AND TENTATIVE ADOPTION OF ORDINANCE NO. 4473, AMENDING SECTION 1 OF CHAPTER 15, OF THE CODE OF THE CITY OF CHANDLER, TO EXCLUDE CERTAIN TRANSACTIONS OF CELLULAR PHONE COMPANIES FROM THE DEFINITION OF SECONDHAND DEALERS

**RECOMMENDATION:** Staff recommends introduction and tentative adoption of Ordinance No. 4473 amending Section 1 of Chapter 15, of the Code of the City of Chandler, to exclude certain transactions of cellular phone companies from the definition of secondhand dealers.

**BACKGROUND:** Chapter 15 of the Code defines a Secondhand Dealer as any person engaged in conducting, managing, or carrying on an ongoing business of buying, selling, trading, exchanging, consigning or otherwise dealing in secondhand goods and antiques. Those that meet this definition are required to obtain finger print clearance of every manager and assistant manager at the establishment, apply and pay for the additional licensing, report all defined transactions to the police department daily, and hold items received for a period no less than 10 days. While the provisions of the code are created to remove valid concerns of citizens and the pawnbroker/secondhand dealer business community, the current business practice of many of the cell phone providers to allow for a credit or discount on the purchase of a new cellular phone with the trade-in of an existing phone is outside of the intent of this code provision, but these transactions meet the technical definition of the code.

The purpose of the requested change is to exclude certain transactions of cellular phone companies from the provisions of the special regulatory license, specifically exempting transactions involving the trade-in of a customer's old cellular phone for an account credit or

discount on the purchase of a new phone from meeting the definition of secondhand dealer. These transactions deal with customers that already have, or are creating, a business relationship with the vendor. The risk of stolen or ill-gotten goods being used in traceable transactions such as these is significantly reduced due to the relationship created. The practice of trading in one's old cellular phone for a credit or discount on a new phone is becoming the everyday business process for the majority of cell phone providers, and the extra requirements under this code section adds little benefit or security to these specific types of transactions. This change will make it easier for cellular phone providers to operate in the City of Chandler while not increasing the type of behavior meant to be curtailed by the code.

**FINANCIAL IMPLICATIONS:** The proposed changes should have no impact on revenues.

**PROPOSED MOTION:** Move to introduce and tentatively approve Ordinance No. 4473, amending Section 1 of Chapter 15, of the Code of the City of Chandler, to exclude certain transactions of cellular phone companies from the definition of secondhand dealers.

Attachment: Ordinance No. 4473

c: Pat McDermott, Assistant City Manager  
Marsha Reed, Assistant City Manager

ORDINANCE NO. 4473

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTION 1 OF CHAPTER 15, CODE OF THE CITY OF CHANDLER, TO EXCLUDE CERTAIN TRANSACTIONS OF CELLULAR PHONE COMPANIES FROM THE DEFINITION OF SECONDHAND DEALERS.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, that the Code of the City of Chandler is hereby amended as follows:

SECTION I. That Section 1 of Chapter 15, Code of the City of Chandler is hereby amended as follows:

**15-1. Definitions.**

For the purposes of this chapter, the following words and phrases shall have meanings respectively ascribed to them by this section:

*Antiques.* "Antiques" is defined as goods and articles which have a greater collectible, historical or nostalgic value rather than utilitarian value.

*Antique dealer.* "Antique dealer" is any person operating a place of business that buys, sells, or otherwise deals in antiques.

*Auction house.* "Auction house" is a place of business where property is received from other persons or businesses, when such property is to be resold either publicly or privately for cash, other property or other consideration to a third party by auction immediately to the highest bidder.

*Auctioneer.* "Auctioneer" is any person operating an auction house who, as a principal or agent, receives property on consignment from persons or businesses when such property is to be resold for cash, other property or other consideration to a third party immediately upon acceptance of the highest bid at a public or private auction.

*Consign or consignment.* "Consign" or "consignment" means the act of transferring goods, but not title thereto, into the care, custody or control of an agent for the purpose of sale to a third party.

*Garage/yard sale.* "Garage sale/yard sale" means the sale to the general public of a collection of secondhand household items displayed at a private residence by or in association with the owner or occupant of thereof.

*Junk dealer.* "Junk dealer" means any person engaged in the business of purchasing or obtaining materials from persons other than the original manufacturer or authorized distributor, when the materials are purchased or obtained for sale, credit, trade or exchange and the material obtained or purchased is to be put to a use inconsistent with its original purpose. "Materials," as used here, includes, but is not limited to, vehicle parts or accessories, machinery, iron, copper, brass, lead, zinc, tin, steel, aluminum or other metals, metal alloys, metallic cables, wire, batteries, rope, rubber and other like materials. "Put to a use inconsistent with its original purpose," means to dismantle, scrap, melt down, press, transform, or otherwise disfigure a material for resale in the altered form, or for use by the purchaser in the altered form. The provisions of this chapter shall not apply to any persons engaged solely in recycling metal cans, paper, cardboard, glass or plastics.

*Nonprofit organization.* "Nonprofit organization" is any organization which does not have as its purpose the aim of making profit, and incorporated as a nonprofit organization under the Laws of Arizona or any other State.

*Pawn transaction.* "Pawn transaction" is either the act between the pawnbroker and a person pledging tangible personal property or extending credit on the security of pledged goods or the act of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller for a fixed or variable price within a fixed or variable period of time. A good-faith outright purchase of tangible personal property is not a pawn transaction.

*Pawnbroker.* "Pawnbroker" is any person who is engaged in the business of advancing money on the security of pledged goods or is engaged in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed or variable price within a fixed or variable period of time, whether such business is the principal or sole business engaged in, managed or conducted, or whether it is merely incidental to it, or conducted in conjunction with a branch or department of some other business or businesses. A person shall be deemed a pawnbroker whether the transaction takes the form of a loan by the pawnbroker secured by the pledged property, or a sale of the property to the pawnbroker with the right of repurchase or redemption by the person selling the property to the pawnbroker within a stated period of time.

*Pawnshop.* "Pawnshop" is the location or premises at which a pawnbroker is permitted to regularly conduct his/her business.

*Permit holder.* "Permit holder" is any person or business to whom a permit has been issued and includes general or limited partners, if the permit is issued to a partnership. If the permit is issued to a corporation, "permit holder" includes all officers and shareholders owning twenty (20) percent or more of the corporate stock.

*Person.* "Person" is any individual, proprietor, employee, agent, company, organization, association, joint venture, partnership, business trust or corporation.

*Pledged property.* "Pledged property" is tangible personal property which is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his/her business in connection with a pawn transaction.

*Pledgor.* "Pledgor" is the person leaving pledged property with the pawnbroker.

*Precious item.* "Precious item" means any gold, silver, platinum or jewelry, flatware or hollowware containing gold, silver or platinum, or any precious or semiprecious stones whether mounted or unmounted, or any pearls.

*Redeem or redemption.* "Redeem" or "redemption" is the act of the pledgor or his/her agent of retrieving and paying in full all charges and fees for the pledged goods left with the pawnshop.

*Reporting party.* "Reporting party" is any person required by this chapter to report transactions.

*Secondhand.* "Secondhand" means any item that has previously been owned by someone other than the original manufacturer or authorized dealer who sells the item to the public as new.

*Secondhand dealer.* "Secondhand dealer" is any person engaged in conducting, managing, or carrying on an ongoing business of buying, selling, trading, exchanging, consigning or otherwise dealing in secondhand goods and antiques, whether or not these transactions are the principal or sole business conducted or is a part thereof or incidental to it. "Secondhand dealer" shall include antique dealers. "Secondhand dealer" shall not include:

A. Dealers or auctioneers of property if the title to the property is required by the laws of the State to be evidenced by a written instrument that is recorded in a department or office of the State or County Government.

B. Persons selling, trading, or exchanging items entrusted to the person by the owner of the item for the purpose of repair but which are later abandoned by the owner.

C. Persons conducting no more than three (3) garage and/or yard sales per year, with each such sale not lasting more than three (3) consecutive days.

D. Individuals conducting isolated or casual transactions of the kinds otherwise regulated by this chapter when they are not part of any ongoing business, commercial or for-profit operation.

E. Persons conducting activities of the type otherwise regulated by this chapter when such activities are conducted by or the purchase amounts are paid solely to a nonprofit organization, duly incorporated under the laws of Arizona or any other State.

F. Persons engaged solely in recycling metal cans, paper, cardboard, glass or plastic.

G. Investment or securities brokerage houses or financial institutions as defined by A.R.S. § 44-1601, Paragraph 1, Subsections A., B., and C.

H. Persons conducting activities of a type otherwise regulated by this chapter where purchase amounts are paid solely to nonprofit organizations.

I. CELLULAR PHONE COMPANIES CONDUCTING TRANSACTIONS INVOLVING THE TRADE-IN OF A USED CELLULAR PHONE DEVICE, WHEN THE TRADE-IN VALUE IS APPLIED AS A CREDIT ON THE CUSTOMER ACCOUNT OR AS A DISCOUNT ON THE PURCHASE OF A NEW CELLULAR PHONE DEVICE.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this 12<sup>th</sup> day of December, 2013.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the Mayor and Council of the City of Chandler, Arizona, this 12<sup>th</sup> day of December, 2013.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

Approved As To Form:

\_\_\_\_\_  
CITY ATTORNEY

(RB)

#### CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4473 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 9<sup>th</sup> day of January, 2014, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK