ORDINANCE NO. 2009-258

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR AMENDING ZONING ORDINANCE SECTION 27.10.030 TABLE 2-4 ALLOWED USE AND PERMIT REQUIREMENTS FOR COMMERCIAL ZONING DISTRICT, SECTION 27.60.020 DEFINITION/GLOSSARY, AND ADDING SECTION 27.34.175 PERSONAL SERVICES, RESTRICTED

THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

1. In November 2008, the Town Council adopted an urgency ordinance extending a temporary moratorium on the establishment, expansion, or relocation of bail bond, check cashing/cash advance, pawn shop, smoke shop, and tattoo parlor businesses pending the review and possible amendment to zoning regulations applicable to the above-referenced business

2. Bail bond, check cashing/cash advance, pawn shops, smoke shops, and tattoo parlors have been determined that without proper regulation, these uses may have serious, objectionable impacts on the health, safety, and welfare of the residents of the Town, especially when several of them are located in close proximity to each other

3. The proposed classification for these businesses is Personal Services, Restricted.

4. An amendment is proposed to Table 2-4 of the Ordinance to allow Personal Services, Restricted to be conducted only in the Service Commercial, Gateway Commercial, and Community Commercial Zoning Districts with a Minor Use Permit.

5. An amendment is proposed to the Ordinance to provide definitions for uses in the Personal Services, Restricted category, permitting spas and tanning salons in commercial districts, and adding definitions for spas and tanning salons.

6. The Town Council conducted a noticed public hearing on the proposed Ordinance modification on November 4, 2009

7. The Town Council previously adopted a Negative Declaration for the Zoning Ordinance revision on June 21, 2000, finding that the Windsor General Plan EIR adequately reviewed potential environmental issues, and because the Zoning Ordinance is consistent with the General Plan, no additional significant impacts would occur as a result of the adoption of Zoning Ordinance and map. The proposed changes to the Zoning Ordinance serve to comply with state regulations and to clarify day-to-day regulations previously incorporated into the document. There is no evidence that the additions to the Zoning Ordinance would result in any impacts that

were not addressed in the General Plan EIR; therefore, no additional environmental review is necessary.

SECTION 2. Findings.

1. The proposed amendment is consistent with the General Plan.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the Town of Windsor.

3. The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.

4. The amendments are proposed to assure that the characteristics and activities associated with the use are compatible with the activities and uses in the surrounding areas.

5. The proposed amendments are consistent with the purpose of the commercial zoning districts.

6. The amendments are proposed to safeguard and protect the public health, safety, property, and general welfare through appropriate regulations, controls, and permits.

SECTION 3. Amendment.

Article 2, Section 27.10.030, Table 2-4 of the Zoning Ordinance shall be amended as follows:

Personal Services, Restricted – Delete this category from the "NC", "TC", "BC", "RC" and require Minor Use Permit "MUP" in the "CC", "SC", and "GC" District and add 27.34.175 to the Specific Use Regulations. Add Tanning Salons and Spas as permitted uses in all commercial zoning districts.

Article 3, Section 27.34.175 of the Zoning Ordinance shall be added to read as follows:

27.34.175 – Personal Services, Restricted

For the purposes of this Section refer to the definitions in Article 6 under Personal Services, Restricted:

A. Limitations on use:

1. Hours of operation: 9 a.m. to 8 p.m., daily.

B. Permit and License Requirements:

1. Regulatory Permits/License/Clearances: Uses shall obtain the appropriate permits/license/clearance from the County, State, or Federal agency that governs the use. Conditions of the Minor Use Permit/Use Permit shall include a provision requiring the

applicant to provide written proof of the permit/license/clearance, prior to commencement of the use.

2. **Town Requirements:** Conditions of the Minor Use Permit/Use Permit shall include a provision requiring the applicant to obtain a Business Registration/License, as appropriate, prior to commencement of the use. The Business Registration/License shall be kept current during the duration of operation of the use.

3. **Building Permit:** Obtain appropriate building permits and clearances, prior to construction, remodel and/or tenant improvements.

C. **Signs:** All signs shall comply with the Town of Windsor Zoning Ordinance Sign Regulations. As part of the Minor Use Permit/Use Permit a comprehensive sign program or signs related to the use may be considered.

D. **Massage Establishments/Businesses:** Massage businesses are subject to obtaining a certificate issued by the Massage Therapy Organization pursuant to Business and Professions Code Section 4600 et. seq. or if allowed by Town Code, a Massage Practitioner's Permit in compliance with the Town's Municipal Code requirements for massage establishments.

E. **Smoke Shops:** Smoke shops are defined as devoting more than 15% of the total floor space and/or more than a two foot by four foot section of shelf space for display for sale of smoking, drug and/or tobacco paraphernalia. The following is required and will become conditions of the Minor Use Permit/Use Permit:

1. No smoking shall be permitted inside the shop.
2. All Town smoking regulations shall be abided by.
3. Signs shall be posted in accordance with the Town's Municipal Code Chapter 20.
4. No person under age 18 may enter the business even if they are accompanied by an adult.
5. All clerks/personnel shall be 18 or older.
6. Smoke shops may not be located within 600 feet of youth-frequented locations including schools, religious institutions, public libraries, and public parks.
7. Smoke shops may not be located within 500' of residential zoned areas.
8. No products may be sold by means of self-service or vending machine assisted.
9. May not display any form of advertising for tobacco products in visible locations with the exception of any onsite sign that contains the name or slogan of a business that lawfully sells tobacco products that have been placed at or upon the business premises for the purpose of identifying the business.
10. Business shall not distribute free tobacco products or promotional items.

11. Business shall not sell or offer for sale cigarettes or other tobacco or smoking products not in the original packaging provided by the manufacturer and with all required health warnings.
12. Compliance with State law including but not limited to Health and Safety Code Section 11364.5 and as amended from time to time.

F. **Security and crime prevention.** Checking cashing/cash advance businesses, pawn shops, and bail bond businesses are subject to review and approval by the Chief of Police, prior to commencement of the use. The following may be required and become provisions of the Minor Use Permit/Use Permit, at the discretion of the Chief of Police:

1. Installation of a CCTV(or equivalent) inside the business with retrievable videotapes maintained regularly and of sufficient resolution to identify customers involved in criminal offenses,
2. Central station silent intrusion alarming of the business with teller access in strategic locations within the premises.
3. Acceptance and use of the Sonoma County Sheriff's Department bank alarm response policy and training.
4. Money safe or vault as approved by the Chief of Police. Tellers/personnel shall have the ability to make frequent cash/check drops and a policy shall be instituted to limit available cash on hand.
5. While closed the business will provide sufficient interior night-lights for night time security.

G. **Time Limitations, Revocation, and Revisions:** Permits are subject to the time limits, extensions, and revocation requirements as provided for in the Town of Windsor Zoning Ordinance.

Article 6, Section 27.60.020 of the Zoning Ordinance shall be amended to add to the "Personal Services, Restricted" definition and add definitions for uses in this section to read as follows:

Bail Bonds: A person or corporation who operate a business that will act as a surety and pledge money or property as bail for the appearance of a criminal defendant in court.

Check Casher: A person or entity that for compensation, engages in whole or in part in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. Also, includes the business of deferred deposits whereby the check casher refrains from depositing a personal check written by a customer until a specific date pursuant to a written agreement as provided in Civil Code sec 1789.31. It does not include a state or federally chartered bank, savings association, credit union, or industrial loan company, retail seller engaged primarily in the business of selling consumer goods that cashes checks or issues money orders and is incidental to its main purpose or business and is offered as a service to its customers.

Check Cashing/Cash Advance Businesses: Checking cashing/cash advance Businesses shall mean any establishment whose primary purpose is to provide cash advances, pay day loans, pay day advances, and similar services and any licensee or deferred deposit originator as defined in Financial Code Section 23001. It does not include a state or federally chartered bank, savings association, credit union, or industrial loan company, retail seller engaged

primarily in the business of selling consumer goods that cashes checks or issues money orders and is incidental to its main purpose or business and is offered as a service to its customers.

Pawn Shops: Pawn shop shall mean a building or portion thereof where personal property is received and for which money is advanced, with the privilege granted to the person to whom said money is advanced to reclaim such property upon repayment of said money, together with all legal charges. Does not include banks, savings and loan institutions, credit unions, or other banking organizations regulated by State or Federal law.

Personal Services, Restricted. Personal service establishments that may tend to have a blighting and/or deteriorating effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts, including:

bail bonds
check casher
check cashing services/cash advance
fortune tellers, psychics, palm readers, and similar services
massage parlor
smoke shops
tattooing, piercing , scarification, and similar services

These uses may also include accessory retail sales of products related to the services provided.

Scarification: Is to make scratches on or superficial incisions in the skin.

Smoke Shops: Also known as "head shops" or "smoking, drug, and/or tobacco paraphernalia establishments" are defined as those establishments that either: (1) devote more than fifteen percent (15%) of their total floor space to smoking or tobacco paraphernalia, or (2) devote more than a two foot by four-foot (two feet in depth maximum) section of shelf space for display for sale and sale of smoking, drug, and/or tobacco paraphernalia. Smoking, drug, and/or paraphernalia include, but are not limited to, the follow:

1. Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of tobacco plant or any plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing tobacco or controlled substances.
3. Isomerization devices intended for use or designed for use in increasing the potency of any species of tobacco plant or plant which is a controlled substance.
4. Testing equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of tobacco or controlled substances.
5. Scales and balances intended for use or designed for use in weighing or measuring tobacco or controlled substances.
6. Separation gins and sifters intended for use or designed for use in removing twigs, stems, seeds, or other foreign material from, or in otherwise cleaning or refining, tobacco or marijuana.

7. Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding tobacco substances or substances containing marijuana.
8. Envelopes, pouches, capsules, balloons, and other containers intended for use or designed for use in packaging small quantifies of tobacco or controlled substances.
9. Containers and other objects intended for use or designed for use in storing or concealing tobacco or controlled substances.
10. Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing tobacco or controlled substances into the human body, such as the following:
    a. Metal, wood, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls.
    b. Water pipes.
    c. Carburetion tubes and devices.
    d. Smoking and carburetion masks.
    e. Clips or other devices intended to hold burning materials, such as marijuana cigarette, that has become to small or to short to be held in the hand.
    f. Miniature cocaine spoons, and cocaine vials.
    g. Chamber pipes, carburetor pipes, electric pipes, air-driven pipes, chillums, bongs, ice pipes or chillers.

    Nothing in the definition of smoking, drug and/or tobacco paraphernalia is intended to nor shall be interpreted as applying to tobacco products or legalizing or applying to any use otherwise prohibited by state or federal law, including without limitation, California Penal Code Section 308, Business & Professions Code Section 22950 et. seq., and Health & Safety Code Section s11014.5, 11364, 11364.5 and 11364.7.

Spa: A commercial establishment devoted to overall well-being through a variety of professional services that encourage the renewal of mind, body and spirit. An establishment that provides personal care treatments such as whirlpool baths, massage, facials, waxing, sauna, steam baths, mud baths, and similar services.

Tanning Salon: A commercial business that caters to the browning of skin through some ultraviolet light source and/or painting/spraying method. (tanning beds, spray on tans, and similar).

Tattoo Parlors: Any establishment that engages in the business of tattooing and/or branding and body piercing of human beings, including scarification and the application of permanent cosmetics as defined by Health and Safety Code Section 119300. A permanent picture, design, or other marking made on the skin by pricking it and staining it with an indelible dye

SECTION 4. California Environmental Quality Act ("CEQA").
The Town Council finds that this Ordinance is no subject to the California Environmental Quality Act ("CEQA") because the Ordinance is not a "project" within the meaning of Section 15378 of the state CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) for it has no potential for resulting in physical change in the environment, directly or ultimately. The Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects

The Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, either directly or indirectly. The Ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guideline 15601(b)(3) in that it will not have a significant adverse effect on the environment.

SECTION 5. Statutory Severability.
If any section, subsection, sentence, clause or phrase or word in this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful or otherwise invalid.

SECTION 6. Effective Date and Publication.
This Ordinance shall take effect and be in force 30 days following its passage. Before the expiration of fifteen (15) days after its passage, this Ordinance, or a summary thereof, as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulations published and circulated in the Town of Windsor.

PASSED, APPROVED, AND ADOPTED this 18th day of November 2009, by vote as follows:

AYES:	**COUNCILMEMBERS ALLEN, FUDGE, SCHOLAR AND MAYOR GOBLE**
NOES:	**VICE MAYOR SALMON**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

ROBIN R. GOBLE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK