



Planning Division
Community & Economic Development
Department

Communication to the City Council

To: David Everitt, Chief of Staff

From: Mary De La Mare-Schaefer, Community & Economic Development
Interim Director

A handwritten signature in black ink, appearing to read "MDS".

Date: April 29, 2008

CC: Joel Paterson, Acting Assistant Planning Director

Re: "Check Cashing/Payday Loans" text amendment review.

Staff Contact: Nole Walkingshaw, 535-7128, Senior Planner, Planning Division

The proposed text amendment is complex and considers land-use issues, as well as, socio-economic issues. There are three primary pieces which need to be in place for this proposed amendment to function to its intended benefit.

- Definitions; a suitable definition of "Check Cashing" this establishes the use, and permits the distribution of the use throughout the Tables of Permitted and Conditional Uses. It may also be possible to control density and locations of such uses based on the definition. The proposed definition details the scope of the applicability and does not include other financial institutions or financial services, such as banks, credit unions, title loans, or pawn loans, etc.
- Tables of Permitted and Conditional Uses: Once a definition has been created the newly defined "use" needs to be assigned to appropriate zoning districts.
- Business Licensing Ordinance: the proposed Business Licensing Ordinance sets out some basic first steps to controlling the business practices of these establishments. This area of the proposed amendment requires a great deal of discussion and debate. Issues to be discussed; are the changes appropriate and legal under state law? How will the new changes be administrated and enforced?

How do these changes apply to existing businesses? Where can the changes be strengthened, based on a better understanding of the business practices?

Discussion:

It has been determined that the practice of these businesses has a detrimental effect on the community. The determination is based on research conducted by The U.S. Defense Department and has been recently adopted by the U.S. Congress. They said the average {military} borrower pays \$827 on a \$339 loan and called the lending “predatory”. Military officers pushed for the law, saying the loans saddled low-paid enlisted men and women with debts that ruined their finances, jeopardized security clearances and left them unable to deploy to Iraq or other assignments. The practice of these companies allows for a “Rollover” of the loan, where for a fee the client may continue the debt, it is through the action of the “Rollover” where the interest rates or fees dramatically increase the debt trapping the borrowers in a cycle of debt. A concentration of lenders enables the borrower to take money from one location to another to “Pay-Off” the debt, but this in fact exacerbates the problem. For this purpose it has been determined that controls on the concentration of these businesses serves the public welfare, and lessens the negative economic effect. Additional research shows that Check Cashing/Payday Loan businesses target recipients of social security and other government benefits, including disability and veteran’s benefits, and cluster in areas where financially vulnerable citizens reside.

The proposed ordinance definition “Option 3”, puts a cap on the number of businesses allowed based on a population ratio of 1:10,000. Current population statistics show our population at approximately 181,743 establishing a total number of allowed businesses at 18. Current reports from business licensing show a total number of licensed businesses to be approximately 24 (*current number and location information is being developed*), this excess of licenses in circulation, establishes a non-conforming use status to these business. The management of the excessive number of licenses raises some particular considerations such as:

- Will we allow an existing business to relocate?
- Will the City encourage relocation of businesses where the establishments are not in compliance within the proposed ½ mile or 2,640 feet separation? (*spatial analysis required to determine appropriate radius*)
- Are licenses transferable based on ownership change? Theoretically the proposed amendment may have an opposite desired effect.

Considering basic Supply v. Demand economics, when limiting or capping the total number of locations you are essentially fixing the supply. Should the demand for these services increase it is possible/probable that the interest rates and fees would increase as well.

Staff sees no real benefit to simply controlling location, location spacing and density. The arguments made thus far by other agencies has been, we should pass an ordinance because everybody else has, or because everybody else has we need one before they all flock here. It has been difficult to identify pure land-use impacts such as: Traffic,

crime, environmental, lighting, noise, etc versus other similar financial institution uses. Simply controlling the land-use does nothing to control the “predatory” lending practices of the institutions. Arguably the other municipalities have done nothing but strengthen the existing businesses success, by minimizing competition.

The proposed text changes to the Business Licensing Ordinance are very rough; they demand discussion and legal review prior to routing for comments and introduction to the public. It is in this section that we have our greatest opportunity to control the “predatorily” lending practices.

Definitions:

Proposed Definition 21A.62.040 “Check Cashers” means a person or entity engaged in the business of check cashing. **“Payday Lender”** means a “lender” in the business of making payday loans.

Proposed Definition (Option 1): 21A.62.040 “Check Cashing/Payday Loan” means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

Proposed Definition (Option 2): 21A.62.040 “Check Cashing/Payday Loan” means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. No check cashing or deferred deposit loan business shall be located within ½ mile or 2,640 feet (*spatial analysis required to determine appropriate radius*) of any other check cashing business. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

Proposed Definition (option 3): 21A.62.040 “Check Cashing/Payday Loan” means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. No check cashing or deferred deposit loan business shall be located within ½ mile or 2,640 feet (*spatial analysis required to determine appropriate radius*) of any other check cashing business. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. One check cashing or deferred deposit loan business shall be allowed for every 10,000 citizens living in Salt Lake City. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

Proposed Distribution: Table of Permitted and Conditional Use by District

Table of Permitted and Conditional Use by District
Residential Districts

Not permitted in any Residential District, Currently Financial institutions with drive through facilities, are conditional uses in the R-MU and RO districts. Financial institutions without drive through facilities are permitted in the R-MU-35, R-MU45, R-MU and RO districts

Table of Permitted and Conditional Use by District
Commercial Districts (21A.26.080)

C = Conditional Use

P = Permitted Use

USE	CN	CB	CC	CS1	CSHBD1	CG	TC-75
Check Cashing/Payday Loan						<u>P</u>	

Table of Permitted and Conditional Use by District
Manufacturing Districts (21A.28.040)

C = Conditional Use

P = Permitted Use

USE	M-1	M-2
Check Cashing/Payday Loan		

Table of Permitted and Conditional Use by District
Downtown Districts (21A.30.050)

C = Conditional Use

P = Permitted Use

USE	D-1	D-2	D-3	D-4
Check Cashing/Payday Loan				

Table of Permitted and Conditional Use by District
Special Purpose Districts (21A.32.140)

C = Conditional Use
P = Permitted Use

USE	RB	BP	FP	AG	AG -2	AG -5	AG -20	OS	NO S	A	PL	PL- 2	I	UI	M H	EI	M U
Check Cashing /Payday Loan																	

**Proposed Amended language to Business Licensing Ordinance
(New Section)**

Chapter 5.49 Regulation of Payday Lending

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-Note

(New Chapter added by Ordinance No. xxxxxx, effective DATE.)

5.49.010 Purpose

The City finds that, in order to minimize the detrimental effects that certain payday lending practices have on individuals and families, payday lenders should require payment of a portion of the original loan amount prior to the renewal of a payday loan,

borrowers should be able to cancel a payday loan, and borrowers should be able to convert a payday loan into a payment plan. This Chapter shall be construed in conformity with the laws and regulations of the State of Utah.

5.49.020 Definitions

As used in this Chapter unless the context requires otherwise:

- A. "Borrower" means a natural person who receives a payday loan.
- B. "Cancel" means to annul the payday loan agreement and, with respect to the payday loan agreement returning the borrower and the payday lender to their financial condition prior to the origination date of the payday loan.
- C. "Director" means the Director of the Building Services and Licensing.
- D. "Payday Lender" means a "lender" in the business of making payday loans.
- E. "Check Cashers" means a person or entity engaged in the business of check cashing.
- F "Check Cashing/Payday Loan" (**needs consistency with Zoning Ord.**) means a loan, other than a purchase money loan: means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.
- (A) Made primarily for personal, family or household purposes;
 - (B) Made for a period of 60 days or less or for which the lender may demand repayment within 60 days; and
 - (C) Usually evidenced by a check or electronic repayment agreement provided by or on behalf of the borrower.
- (b) "Payday loan" does not include a loan for a period of more than 60 days, the repayment of which the lender may accelerate upon a default by the borrower.
- (4) "Title loan" means a loan, other than a purchase money loan:
- (a)(A) Secured by the title to a motor vehicle, recreational vehicle, boat or mobile home;
 - (B) Made for a period of 60 days or less;
 - (C) With a single payment payback; and
 - (D) Made by a lender in the business of making title loans; or
- (b) That is secured, substantially equivalent to a title loan as defined in paragraph (a) of this subsection.
- G "Principal" means the original loan proceeds advanced for the benefit of the borrower in a payday loan excluding any fee or interest charge.

5.49.030 Permits

Within 60 days of the effective date of the ordinance enacting this Chapter, any Payday Lender operating in Salt Lake City shall apply for and obtain a permit to operate as a Payday Lender. Permits shall be required for each location a lender operates in Salt Lake City and shall be renewed annually. The application shall be in a form to be determined by the Director. The Director shall require the Payday Lender to report its fee schedule in the Payday Lenders permit application. No person shall operate a Payday lending business or loan any funds as a Payday Loan without a current permit to do-business issued by Salt Lake City. The annual cost for the permit shall be \$1,500.00, payable to Salt Lake City; this permit is in addition to the Salt Lake City business license required by section 5.02.010 of the Salt Lake City Code.

5.49.040 Administrative Authority

A. The Director is authorized and directed to enforce all provisions of this Chapter. The Director shall have the power to investigate any and all complaints regarding alleged violations of this Chapter. The Director may delegate any or all authority granted under this Section to any License Supervisor, employee or agent.

B. The Director is authorized to adopt and enforce administrative rules interpreting and applying this Chapter. The Director or designee shall make written findings of fact and conclusions of law to support all decisions.

C. Prior to adoption of a new administrative rule, the Director shall give notice to all interested parties of the terms of the proposed rule, and shall conduct a public hearing to consider public comment. Public notice shall be given when administrative rules have been adopted.

1. At the public hearing, the Director or designee shall hear oral and written testimony concerning the proposed rule. The Director shall have the power to establish and limit the matters to be considered at the hearing, to prescribe procedures for the conduct of the hearings, to hear evidence, and to preserve order.

2. The Director shall adopt, modify or reject the proposed rule after considering testimony received during the public hearing.

3. Unless otherwise stated, all rules shall be effective upon adoption by the Director. All rules adopted by the Director shall be filed with Building Services and Licensing Division and the Office of the City Recorder in compliance with section 2.64.030 of the Salt Lake City Code. Copies of all current rules shall be available to the public upon request.

4. Notwithstanding subsections 1 and 2 of this Section, the Director may adopt an interim rule without prior public notice upon a finding that failure to act promptly may result in serious prejudice to the public interest or the interest of the affected parties.

Such interim rules shall detail the specific reasons for such prejudice. Any interim rule adopted pursuant to this paragraph shall be effective for a period not to exceed 180 days.

D. *Inspection of Records.* Salt Lake City reserves the right to review and/or copy the records of any Payday Lender for purposes of auditing or complaint resolution. Such records shall be made available for inspection during normal business hours within 24 hours of written notice by the Director or its designee.

5.49.050 Location and Zoning Restrictions:

It is unlawful for any Payday Loan business to do business at any location within the city not zoned for such business. Payday Loan businesses shall only be allowed in areas zoned for their use pursuant to subsection 21A.36.200(zoning location and controls section to be written) of this code and at locations also complying with the other requirements of section 21A.36.200 of this code

5.49.060 Payment of Principal Prior to Payday Loan Renewal and interest rate controls

A. *A Payday Lender may not renew a Payday Loan unless the Borrower has paid an amount equal to at least twenty-five percent (25%) of the principal of the original Payday Loan, plus interest on the remaining balance of the Payday Loan. The Payday Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type.*

B. *A payday lender shall not charge interest over XXXXX% and rates of accrual shall not exceed???? Needs language and discussion (legal and financial practicing input)*

5.49.070 Cancellation of Payday Loan

A. *A Payday Lender shall cancel a Payday Loan without any charge to the Borrower if prior to the close of the business day following the day on which the Payday Loan originated, the Borrower:*

1. *Informs the Payday Lender in writing that the Borrower wishes to cancel the Payday Loan and any future payment obligations; and*

2. *Returns to the Payday Lender the uncashed check or proceeds given to the Borrower by the Payday Lender or cash in an amount equal to the principal amount of the Payday Loan.*

B. *A Payday Lender shall disclose to each Borrower that the right to cancel a Payday Loan as described in this section is available to the Borrower. The Payday Lender shall disclose this requirement to the borrower in a minimum of bold 12 point type.*

5.49.080 Payment Plan for a Payday Loan

A. *A Payday Lender and a Borrower may agree to a payment plan for a Payday Loan at any time.*

B. *A Payday Lender shall disclose to each Borrower that a payment plan described in this section is available to the Borrower after the maximum amount of renewals allowed*

by state law. The Payday Lender shall disclose this requirement to the Borrower in a minimum of bold 12 point type.

C. After a Payday Loan has been renewed to the maximum amount allowed by state law, and prior to default on the Payday Loan, a Payday Lender shall allow a Borrower to convert the Borrower's Payday Loan into a payment plan. Each payment plan shall be in writing and acknowledged by both the Payday Lender and the Borrower.

D. The Payday Lender shall not assess any fee, interest charge or other charge to the Borrower as a result of converting the Payday Loan into a payment plan.

E. The payment plan shall provide for the payment of the total of payments due on the Payday Loan over a period of no fewer than 60 days in three or more payments. The Borrower may pay the total of payments due on the payment plan at any time. The Payday Lender may not assess any penalty, fee or other charge to the Borrower for early payment on the payment plan.

F. A Payday Lender's violation of the terms of a payment plan entered into with a Borrower under this section constitutes a violation of this Chapter. If a Payday Lender enters into a payment plan with a Borrower through a third party that is representing the Borrower, the Payday Lender's failure to comply with the terms of that payment plan constitutes a violation of this Chapter.

5.49.090 Remedies

A. Failure to comply with any part of this Chapter or the administrative rules may be punishable by civil penalties. The Director may impose a civil penalty of up to \$100.00 per day for a substantial violation of this Chapter or the administrative rules. A substantial violation is a violation having an impact on the public that informal compliance methods fail to resolve. Each substantial violation may be assessed a separate civil penalty.

B. Civil penalties shall be payable to Salt Lake City.

C. Civil remedies. Nothing in this Section is intended to prevent any person from pursuing any available legal remedies.

D. No civil penalties shall be assessed within 60 days of the effective date of this ordinance.

5.49.100 Appeals

Any person upon whom a civil penalty has been imposed, or who has been directed by the Director to resolve a complaint, may appeal to the Code Hearings Officer pursuant to the provisions of Chapter 21A.20.090 of this Code.

5.49.110 Complaints

The Director shall have the authority to investigate any and all complaints alleging violation of this Chapter or administrative rules.

A. The Director may receive complaints from Borrowers by telephone or in writing. Within a reasonable time, the Director shall forward the complaint by telephone or in writing to the Payday Lender it concerns for investigation.

B. The Payday Lender shall investigate the allegations of the complaint and report the results of the investigation and the proposed resolution of the complaint to the Director by telephone or in writing within two (2) business days from initial contact by the Director.

C. If the proposed resolution is satisfactory to the Director, the Payday Lender shall proceed to resolve the complaint directly with the Borrower according to the resolution proposed to the Director.

D. If the proposed resolution is not satisfactory to the Director, the Director shall conduct an independent investigation of the alleged complaint and propose an alternative resolution of the complaint. If the Payday Lender accepts the proposed alternative resolution and offers it to the Borrower, the complaint shall be final. If the Payday Lender refuses to accept and implement the proposed alternative resolution it shall be subject to remedies as provided by Section 5.02.250. In the event of imposition of remedies, the Payday Lender may appeal as provided by Section 5.02.260.

5.49.120 Severability

If any provision of this Chapter, or its application to any person or circumstance is declared invalid or unenforceable the remainder of the Chapter and its application to other persons and circumstances, other than that which has been held invalid or unenforceable, shall not be affected, and the affected provision of the Chapter shall be severed.

Check Cashing/ Payday Loans Zoning Text Amendment Process and Time Line

Management/Administration review: Approximate Time 1 month

- Discussion of options and draft information.
- Preparation of Memorandum for interdepartmental routing and legal review.
(Two Week Routing)
- Minimum time needed one week following Administration review to finalize comments and prepare Routing Memo. Following routing one week min. to finalize comments and prepare memo for “Open House and other public reviews. Management review and corrections not included.

Public Comment Period: Approximate Time 3 months, may be extended if there are requests from the public for additional presentations.

- Open House, presentation of memo to general public, includes notification to existing businesses and known organizations. (open house requires 14 day notification and one week following for comment submission and assessment by planner)
- Presentation to Business Advisory Board (requires setting item on agenda and reasonable time period for submission of written comments, policy based on BAB guidelines)
- Presentation of ordinance to other interested community or business groups as requested.
- Additional public participation may be appropriate.
- Revisions to draft ordinance based on public comments.

Planning Commission: Approximate Time 2 months

- “Issues Only” meeting; staff prepared issues report, required agenda and noticing based on policies.
- “Public Hearing”, staff report with recommendation, required agenda and noticing based on policies.

Transmittal: Approximate Time 2 months

- Due to CED Administration 30 Days following Planning Commission Public Hearing
- Review by Administration and forwarded on to City Council

Total Administration time, 8 months

City Council: Time based on Councils Staff workload and noticing requirements.

- Review and Agenda
- Briefing and Public Hearing