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# M E M O R A N D U M

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**DATE:** April 3, 2009  
**TO:** City Council Members  
**FROM:** Russell Weeks  
**RE:** Proposed Ordinance Amending Certain Sections of Title 21A (Zoning) of the Salt Lake City Code Pertaining to Check Cashing/Payday Loan Businesses  
**CC:** Cindy Gust-Jenson, David Everitt, Ed Rutan, Frank Gray, Wilf Sommerkorn, Mary De La Mare Schaefer, Lynn Pace, Robert Farrington, Pat Comarell, Everett Joyce, Nole Walkingshaw, Janice Jardine, Gail Meakins, Karen Hale, Helen Langan.

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This memorandum pertains to a proposed ordinance amending certain sections of Title 21A (Zoning) of the *Salt Lake City Code* pertaining to check cashing businesses also known as payday lending businesses.

A City Council Subcommittee made up of City Council Chair Carlton Christensen, Vice Chair J.T. Martin, and District 4 Council Member Luke Garrott met January 30, 2009, to review issues involved in the proposed ordinance. The Subcommittee opted to recommend the following variation of the proposed ordinance: Payday lending businesses located within districts where they would be allowed as permitted uses would have to comply with the following restriction: "No check cashing/payday loan business shall be located closer than one-half mile of another check cashing/payday loan business."

The City Council on March 10 scheduled a public hearing for April 7. Under a new City Council policy, after the public hearing the Council is likely to wait until April 14 to reach a decision during the Public Hearing Action Item portion of the meeting. The Council would continue to receive written and oral comment by telephone until April 14. The City Council will continue the public hearing, if it determines that more comment at a hearing is warranted.

## OPTIONS

After the public hearing, the City Council appears to have four options:

- Adopt an amended ordinance that follows the Subcommittee's recommendation, pursuant to PLNPCM2008-00409 (Petition No. 400-08-18).
- Adopt the proposed original ordinance, pursuant to PLNPCM2008-00409 (Petition No. 400-08-18).
- Deny PLNPCM2008-00409 (Petition No. 400-08-18)
- Adopt more amendments to the proposed ordinance.

## POTENTIAL MOTIONS

1. I move that the City Council adopt the ordinance amending certain sections of Title 21A (Zoning) of the Salt Lake City Code pertaining to check cashing/payday loan businesses, pursuant to PLNPCM2008-00409 (Petition No. 400-08-18) with the following amendment: That the language appearing under “**Qualifying Provision**” in Sections 2,3, and 4 of the proposed ordinance read, “No check cashing/payday loan business shall be located closer than one-half (1/2) mile of another check cashing/payday loan business.”
2. I move that the City Council adopt the ordinance amending certain sections of Title 21A (Zoning) of the Salt Lake City Code pertaining to check cashing/payday loan businesses, pursuant to PLNPCM2008-00409 (Petition No. 400-08-18).
3. I move that the City Council deny PLNPCM2008-00409 (Petition No. 400-08-18).
4. I move that the City Council adopt the ordinance amending certain sections of Title 21A (Zoning) of the Salt Lake City Code pertaining to check cashing/payday loan businesses, pursuant to PLNPCM2008-00409 (Petition No. 400-08-18) with the following amendments: (This motion would be used by any Council Member who may wish to propose other amendments.)

## KEY POINTS

- The proposed ordinance would limit businesses involved in payday lending/check cashing transactions to areas zoned as Community Business District (CB), Corridor Commercial District (CC), General Commercial District (CG), Light Manufacturing District (M-1), and Central Business District (D-1). The businesses would be allowed as a permitted use.
- Under the Subcommittee’s proposed recommendations, payday lending businesses located within the permitted districts also would have to comply with the following restriction: “No check cashing/payday loan business shall be located closer than one-half mile of another check cashing/payday loan business.” One-half mile equals 2,640 linear feet. The distance along four Salt Lake City blocks equals 2,640 linear feet. The Subcommittee indicated that, given the areas where the businesses were permitted, a one-half mile separation would in effect limit the number of check cashing/payday lending businesses to the ones that currently exist. It might be noted that Planning Division representatives at the December 9, 2008, briefing also indicated that a one-half mile radius between businesses “mitigated the need” to limit the number of businesses based on population.
- Businesses involved in check-cashing/payday lending would not be permitted uses in areas zoned as Downtown Support District (D-2); Downtown Warehouse/Residential (D-3); Downtown Secondary Central Business District (D-4); Neighborhood Commercial District (CN); Community Shopping (C-S); Sugar House Business District (CSHBD); Transit Corridor District (TC-75); Heavy Manufacturing District (M-2); and residential districts.
- The half-mile separation language originally was proposed by the Salt Lake City Planning Commission. The Commission also recommended that the businesses be separated by a half-mile radius from “public and private schools, church, government municipal building, or state-owned property.”

- The Commission unanimously adopted a motion to forward a favorable recommendation to the City Council. The Commission's action occurred at its September 24, 2008, meeting after a public hearing in which no one from the public spoke to the issue.
- According to the Administration, there are roughly 50 businesses identified as check-cashing/payday lending businesses in Salt Lake City. The proposed ordinance would affect them only if they sought to move to different locations. (It might be noted that in 2007 the Administration estimated the number of check-cashing/payday lending businesses at 21.<sup>1</sup> According to the Administration, the 2007 figure was based on a review of a list of financial institutions and picking out ones that sounded like they might be check-cashing establishments. The estimate of about 50 businesses is based on the number of businesses that have registered with the Utah Department of Financial Institutions after the Legislature passed the *Check Cashing and Deferred Deposit Lending Registration Act* in the 2008 session.)
- Petition No. 400-08-18 (PLNPCM2008-00409) began as a City Council legislative action.

### **ISSUES/QUESTIONS FOR CONSIDERATION**

- The Planning Commission's reason for recommending a half-mile distance appears to be that the half-mile distance more likely would require someone to drive to a payday lending business instead of walk. Stated reasons for limiting the presence of check-cashing businesses near other facilities included sending mixed messages to children whose school curricula included becoming a responsible financial citizen, and insuring that the lending businesses were not near liquor stores, children or legal courts.<sup>2</sup>
- Planning Division staff also included an option for a proposed text change in its report to the Planning Commission. The option reads: "No check cashing/payday loan business shall be located closer than 600 feet from another check cashing/payday loan business, and the total number of check cashing/payday loan businesses shall be limited to a ratio of one for every 10,000 residents."<sup>3</sup> According to the Administration, enacting the limit would mean that no new payday lending or check cashing business could open until Salt Lake City's population reached 490,000 people.<sup>4</sup>
- A Planning Commissioner also suggested that the City Council look at phasing out check-cashing/payday lending businesses by helping to fund a study or by giving Planning Division staff or the City the authority to amortize non-conforming uses of the businesses. However, the Commission did not adopt the suggestion as part of its motion.<sup>5</sup>

### **BACKGROUND**

As indicated in the Administration transmittal, the City Council adopted a motion on March 6, 2007, that contained the following language:

That the City Council direct the City Attorney's Office with a recommendation from the Planning Commission to prepare an ordinance to regulate payday-loan check-cashing businesses in the following manner:

- Through a distance requirement that would prevent those businesses from concentrating in locations throughout the City.
- Through design guidelines.
- Through a requirement that would establish a ratio between the number of businesses and the City's total population.
- Through determining where are the most appropriate areas for payday-loan check-cashing businesses to be and whether they should be permitted or conditional uses in those locations.<sup>6</sup>

The intent of the motion was to provide the City Council with a number of options to consider in connection with regulating check-cashing/payday lending businesses.

At the time the City Council adopted the motion a number of cities had adopted regulations that sought to limit the number of check-cashing businesses through distance requirements or capping the number of check-cashing businesses by establishing a ratio of businesses to total population.

At that point Draper, Midvale, South Jordan, South Salt Lake, Taylorsville, West Jordan and West Valley City had adopted ordinances regulating payday lending businesses. Since then, Murray, Sandy and Salt Lake County have adopted similar ordinances.<sup>7</sup>

At the City Council work session on December 9, 2008, Chair Jill Love requested that Council Members Christensen, Garrott and Martin meet to work out a recommendation the Subcommittee would bring to the full City Council. After reviewing the Planning Commission's recommendation, the Subcommittee agreed to recommend that the proposed ordinance contain the same areas where payday lending/check cashing businesses would be prohibited and the same areas where they would be permitted uses. The Subcommittee also agreed to recommend that check cashing/payday lending businesses in the areas where they are permitted uses be separated by one-half mile.

One-half mile equals 2,640 linear feet. The distance along four Salt Lake City blocks equals 2,640 linear feet. The Subcommittee indicated that, given the areas where the businesses were permitted, a one-half mile separation would in effect limit the number of check cashing/payday lending businesses to the ones that currently exist. It might be noted that Planning Division representatives at the December 9, 2008, briefing also indicated that a one-half mile radius between businesses "mitigated the need" to limit the number of businesses based on population.

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<sup>1</sup> Please see attached memorandum dated March 2, 2007.

<sup>2</sup> Planning Commission Minutes, September 24, 2008, Page 8.

<sup>3</sup> Please see Attachment No. 3.

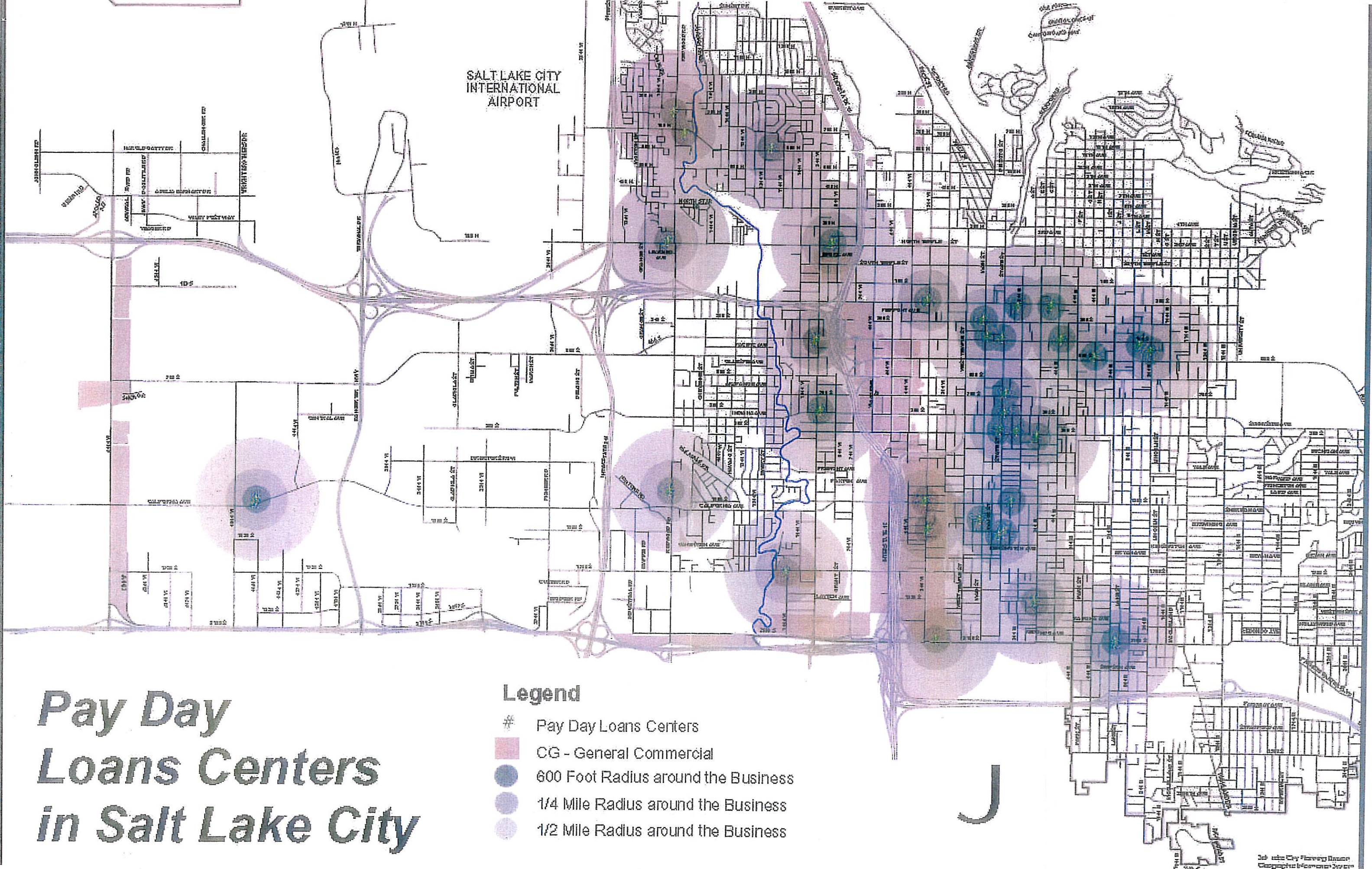
<sup>4</sup> Administration Transmittal, Page 2.

<sup>5</sup> Planning Commission Minutes, September 24, 2008, Page 10.

<sup>6</sup> Ibid., and City Council Minutes, March 6, 2007.

<sup>7</sup> Planning Staff Report, September 24, Page 2.

SALT LAKE CITY  
INTERNATIONAL  
AIRPORT



# Pay Day Loans Centers in Salt Lake City

## Legend

- # Pay Day Loans Centers
- CG - General Commercial
- 600 Foot Radius around the Business
- 1/4 Mile Radius around the Business
- 1/2 Mile Radius around the Business

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L E G I S L A T I V E   A C T I O N

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**DATE:** March 2, 2007  
**TO:** City Council Members  
**FROM:** City Council Member Nancy Saxton  
**RE:** Briefing and Consideration: Legislative Action Regarding Payday-Loan Businesses  
**CC:** Cindy Gust-Jenson, Lyn Creswell, Louis Zunguze, Ed Rutan, Orion Goff, Edna Drake, Gary Mumford

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I would again appreciate the City Council's support for a Legislative Action to prepare an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check-cashing service," and perhaps consider expanding the ordinance to cover the ratio of businesses to the number of people served and where those businesses should be allowed.

In previous City Council discussions in November and January, Council Members seemed comfortable considering regulating the distance between businesses providing payday-loan check-cashing services. Council Members noted that the business is legal in Utah and 31 other states. However, I would like to note that several cities in Salt Lake County have adopted regulations defining how many payday-loan, check-cashing businesses can locate in those cities and where they can locate.

I would like to propose the following motion:

That the City Council direct the City Attorney's Office with a recommendation from the Planning Commission to prepare an ordinance to regulate payday-loan check-cashing businesses in the following manner:

- Through a distance requirement that would prevent those businesses from concentrating in locations throughout the City.
- Through design guidelines.
- Through a requirement that would establish a ratio between the number of businesses and the City's total population.
- Through determining where are the most appropriate areas for payday-loan check-cashing businesses to be and whether they should be permitted or conditional uses in those locations.

The motion provides the City Council with three options:

- Not adopting the Legislative Action.
- Adopting the Legislative Action with all the proposed regulatory methods.

- Adopting the Legislative Action with one or more of the proposed regulatory methods.

Council Members may recall that at its November 7, 2006, meeting the Council agreed to calendar this proposal for a briefing and discussion. The discussion would take place after receiving an opinion from the City Attorney's Office about the best methods available for municipalities to regulate the number of payday loan businesses.

The City Attorney's Office determined that amending the City zoning ordinance – as other cities in Salt Lake County have – is the best course for municipalities in our area to take in the regulation of this legal business. The City Council discussed the proposal further at its January 9 meeting and agreed to consider the proposal formally.

Again, I am seeking your help to regulate the businesses in this industry primarily because I believe their presence is detrimental to the aesthetic appeal of our City's neighborhoods, commercial and otherwise, as people walk our sidewalks, and they detract from efforts to improve commercial areas.

I do not seek to abolish payday-loan check-cashing businesses, but I believe they are too concentrated in some City areas; they generate little pedestrian energy or activity; and their presence does not seem conducive to fostering commercial activities that help communities grow.

A few things that have happened should be noted since this proposal first was raised. First, according to the most recent information available from the Business License Office, the number of businesses engaged in payday lending in Salt Lake City has declined from 24 to 21, if a business that lends money against vehicle titles is excluded. (Please see attachment). That means that, if the 2000 Census population estimate of 181,743 is used, the ratio of payday lending businesses to the City's population is one per 8,654 people instead of one per 7,572 residents when 24 businesses were operating.

Second, the Utah Legislature added regulations (SB 16) to payday lending businesses, and industry officials indicated that the industry would voluntarily alter some practices. (Please see attachment).

Third, the Sandy City Council will consider adding zoning regulations for payday-lending businesses in the coming week, according to a news story. If Sandy, and Salt Lake City adopt regulations, the number of municipalities with some regulation of the industry will rise to nine. Seven cities: South Salt Lake, West Valley City, Taylorsville, West Jordan, South Jordan, Draper and Midvale already have imposed limits on payday lending businesses. Cottonwood Heights also is exploring whether to adopt an ordinance to regulate payday lending businesses.

Finally, the City Council raised two issues during the January discussion: Why should a business be singled out for regulation when other, larger companies provide the same product, and does Salt Lake City regulate other businesses in a similar manner?

Taking the second issue first, Council Members may recall that Deputy Planning Director Cheri Coffey responded to a question about pawn shops by saying that the City has a distance requirement, restricts pawn shops to certain zones, and lists pawn shops as

a conditional land use. On the first issue, if the City Council is concerned about differentiating between the banking industry and payday lending businesses, the Council could consider definitions similar to the following in West Jordan's zoning ordinance:

**Check cashing credit service** means an establishment engaged in providing credit intermediation and related activities that facilitate the lending of funds issuance of credit, or any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. Typical uses include check cashing services, payday advances/loans, short term loans, deferred deposit loans, and Title loans. This definition excludes kiosks, banks and financial institutions, and investment companies.

**Bank or financial institution** means an organization involved in deposit banking, finance, investment, mortgages, trusts and the like. Typical uses include commercial banks, credit unions, finance companies, and savings institutions. This definition also includes automated teller machines. This definition excludes check cashing credit services, bail bonds, and pawn shops.

I agree with my colleagues that the City Council should not prevent people from seeking a payday loan from a business primarily established for that purpose, or from a full service bank that provides the service to those who have their pay automatically deposited into an account there, or from the Internet. Doing that is a function of the state and federal governments. But seven cities in Salt Lake County have adopted restrictions on payday lending businesses in part because of concerns about the effect payday lending businesses have on how they want to look and how they want to develop economically. I believe the Salt Lake City Council should adopt the Legislative Intent so this City can fashion something that benefits our residents.

<b>CITIES THAT REGULATE PAYDAY LENDING BUSINESSES THROUGH ZONING ORDINANCES</b>				
<b>CITY</b>	<b>DISTANCE BETWEEN SIMILAR BUSINESSES</b>	<b>POPULATION RATIO?</b>	<b>RESTRICTED TO CERTAIN ZONES?</b>	<b>CONDITIONAL USE?</b>
<b>Draper</b>	1,000 feet	No	One Commercial Zone.	Yes
<b>Midvale</b>	600 feet	1 per 10,000	Commercial Zones	Yes
<b>Sandy (Under Consideration)</b>	1 mile	1 per 10,000	Some Commercial Zones	Yes
<b>South Jordan</b>	1 mile	No	Community Commercial (Large-scale) Zone	Yes
<b>South Salt Lake</b>	600 feet (Between Businesses and from Residential Zones)	1 per 5,000	Commercial Corridor	Yes
<b>Taylorsville</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes
<b>West Jordan</b>	1,000 feet (Also from pawn shop or bail bond businesses)	Maximum limit of 12 allowed within city boundaries	Some Commercial Zones	Yes
<b>West Valley City</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes



CHECK CASHING  
BUSINESSES LOCATED  
IN SALT LAKE CITY

<u>ID#</u>	<u>Business Name</u>	<u>Address</u>	<u>Ownership</u>	<u>Telephone</u>	<u>Approve Date</u>
20052242	1st Choice Money Center	274 East 900 South	RFG Utah LLC	623-1711	12/15/05
20060293	1st Choice Money Center	1244 So Redwood Road	RFG Utah LLC	623-1711	07/09/06
Term	Access 2 Cash - Terminated 11/14/06	65 North 1000 West	RRZ Financial Services	886-2662	01/06/05
20062020	All Types Checkcashing	369 S Main St	Rhonda/Robert Hovseith-pine	328-2274	12/21/06
20042406	Buckeye Checksmart	832 W North Temple St	Buckeye Check Cashing of Utah	(614) 798-5900	01/13/05
20051793	Check N Go	1423 South 300 West #A	Great Plains Specialty Finance inc	486-4438	09/23/05
20061977	Check N Go	1645 West 700 North	Great Plains Specialty Finance inc	364-7974	11/21/06
20041646	Checkmate Payday Loans & Check Cashing	1290 South 300 West	LMSA Financial Corp Arizona	478-0728	10/21/04
20000623	Checkmax	1726 W North Temple #C	David Ha Truong	994-0616	03/31/03
20030175	Easy Money	350 East 200 South	Reed Bensen	359-2212	01/30/03
Term	ELITECASHADVANCE	2150 South 1300 East #500	ELITCASHADVANCE	(888) 920-5111	
money trf	Envios Yosi	169 East 900 South	Envios Yosi	wrong #	
money trf	Envios Yosi	170 East 900 South	Rubissel Tovar	870-0597	
20051583	Five Star of Salt Lake City	1850 S Redwood Rd	Tali Hoi LLC	972-3808	08/26/05
19941424	Money Mart	370 S State St	Jeffrey Weiss	532-5765	12/05/94
20000854	Money Mart Express Inc	1355 S 4700 W #200	Money Mart Express Inc.	933-4520	02/15/05
20061098	Money Menders	231 East 400 South #112	Savage Holdings Inc	386-0558	06/14/06
20030650	Money Talk	180 South 300 West	Alice Marie Folau	wrong #	04/08/03
19981254	Nationwide Budget Finance	665 S State St	Western Budget Finance	575-8172	12/09/98
20060441	Perulawn Care Services	1465 S State St #1	Carlos Roman	604-0578	03/24/06
19971132	Quick Loan	675 East 2100 South #0	Quick Loan Inc.	485-8181	07/25/97
19990585	Rent A Center Inc #02310	797 N Redwood Rd	Rent A Center Inc	521-8001	04/05/99
19990844	Rent A Center Inc #02313	409 East 400 South	Rent A Center Inc	532-2002	3/30/05
20051279	Quick Title Loans	1055 West 1700 South	Quick Tow Towing	619-7010	07/11/05

- a. **Property must be rezoned to permit construction of the planned development proposal. Failure to obtain appropriate zoning shall render the Planning Commission approval null and void.**
- b. **Approval is subject to compliance with Attachment G—Department Comments.**
- c. **Illumination of the parking lot shall be sufficient to ensure public safety; however, security lighting must be shielded to control light pollution and glare. Light pole height shall not exceed 15 feet. All lighting shall be oriented downward except for the highlighting of any building architecture and landscape features, or for low wattage decorative lighting.**
- d. **The preservation, exterior restoration, and maintenance of the Stanley F. Taylor House shall comply with Section 21A.34.020.G and applicable Residential Design Guidelines for Residential Historic Districts in Salt Lake City.**
- e. **Landscaping plans shall be revised to comply with quantity and density requirements of buffer regulations, except for buffer width reductions specified on page 4 of this staff report. In addition, vertical growth landscaping shall be increased to mitigate proposal to reduce building setbacks. Approval of the final landscaping plan shall be delegated to the Planning Director.**
- f. **Private roadway will remain at 26 feet. All building structures abutting the south property line shall be shifted northward an additional two feet to increase the landscape buffer to address privacy concerns.**

**Commissioner McHugh seconded the motion. All in favor voted, “Aye,” the motion carried unanimously.**

Chair Wirthlin announced a short break at 7:24 p.m.

Chair Wirthlin reconvened the meeting at 7:33 p.m.

**7:33:38 PM Petition 400-08-18, a legislative action initiated by the Salt Lake City Council**—a request by the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide “payday-loan check cashing services,” and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed. Everett View: [Staff Report](#)

Chair Wirthlin recognized Everett Joyce and Nole Walkingshaw as staff representatives.

Mr. Walkingshaw stated that check cashing/payday loan lending was a legislative action initiated by the City Council, it was an ordinance that was becoming more common across the Salt Lake City valley, as a way to regulate these types of businesses. He noted that prior to this, the use of a check cashing/ payday loan lending business had been considered a financial institution similar to banks or credit unions. He noted that this was a growing industry, and staff felt that this growth constituted a specific definition within the ordinance.

Mr. Walkingshaw noted that some of the options to help regulate these institutions could be population ratio caps, or spacing between each business. He noted that the first step was to establish it as a use and then distribute it as a new defined use.

Mr. Walkingshaw noted that the potential options to handle this would be to define it as a use, establish a radius since there seemed to be a development trend to cluster these types of businesses together, which tended to

have a negative appeal, but there was some findings from Congress that found that there seemed to be a practice to roll over these loans. Where a customer borrows from check cashing place one and then uses check cashing place two to pay off the loan and the first, thus a feeding cycle and pattern develops. He noted a distance radius would help break up this clustering, and staff would recommend 600 feet, though other municipalities have done more. He noted that 600 feet is a city block, which seemed reasonable.

Commissioner De Lay inquired if this new ordinance would restrict existing businesses from closing and the same type of businesses opening in a cluster of these businesses.

Mr. Walkingshaw noted that would fall within a non-conforming use and there would need to be a discussion about how to manage that.

Mr. Walkingshaw stated that the a concept of placing a cap on the total number of these businesses, which right now there were 49 of these businesses in operation, and that number comes from the state which requires a registration for these businesses. He noted now there are roughly 180,000 residences, which means that only 18 locations were actually legal. Essentially every single payday lending institute was a non-conforming use, because that ratio has been exceeded and each facility becomes a non-conforming use in association to the clustering pattern.

Mr. Walkingshaw noted that typically with non-conforming uses they would be allowed to continue, because it was a legal non-conforming use.

Mr. Pace stated that if the Planning Commission adopted only a spacing requirement, then there was no population cap, but in theory one business could move from one location into another legal location. He noted that another option could be that the Planning Commission adopted a spacing requirement as well as a cap per number of residents; language would need to be added to the ordinance to address how to deal with non-conforming uses. He noted that generally the City had allowed modification if it made the subject less non-conforming then before.

He noted that the Planning Commission could use the spacing to break up the clustering, by requiring that one of the businesses move somewhere more conforming, because it would meet the 600 foot spacing requirement, but not the population cap. Mr. Pace noted that to answer Commissioner De Lay's question, these uses run with the land, and a new owner could continue the non-conforming use.

Vice Chair Woodhead inquired if the next tenant of the building happened to be a different type of business and they were there for two years, then would the check cashing/ payday use be eliminated.

Mr. Walkingshaw noted that if the next tenant changed the use, it would be eliminated.

Commissioner McDonough inquired about how the current ordinance dealt with non-conforming uses running with the land, and if the Planning Commission could change the language so that some of the uses ran with the land and some of the uses were particular to the occupant.

Mr. Pace stated that if currently an owner had a non-conforming use they get to continue it; however, if a new owner was to come in under this ordinance, the Commission could say that a new owner's conditional use would not be tied to the land.

Commissioner McDonough inquired why these were not considered as conditional uses.

Mr. Joyce noted that they were permitted uses, because if both criteria for controlling spacing of these types of businesses were used, then there would have to be a population of over 500, 000 people to build a new one.

Mr. Pace noted that if the Commission put into effect a population cap, and then told the payday loan businesses the City would not let them move this tends to memorialize them in place and they never move to a better location—for instance this has happened with billboards, rarely they will move out of a residential areas to another area because the City has frozen them in place. He noted that in contrast if the Commission adopted a spacing requirement without the population cap, this would allow for more, but would allow the businesses over time to move to better locations, that were more appropriate.

Mr. Joyce noted that the negative impact of a conditional use versus a permitted use would be clustering, and the spacing criteria would address that.

Commissioner Scott stated that it seemed that nobody thought that these types businesses were a good idea, so the Commission could put a cap on them and minimize the damage, but what if the Commission did something radical and stated that the zoning should not include these types of businesses.

Mr. Pace stated that legally the Commission could do that, there would just need to be a rational basis for the regulation, but it was not a protected constitutional use.

Commissioner McDonough stated that she understood that differently, for instance with sexually-oriented businesses, it had been mandated.

Mr. Pace stated that sexually-oriented businesses had been determined to be businesses that involved an element of free speech, and therefore could not be outlawed completely, only the time, place, and manner could be regulated. He noted that there had been no such finding with check cashing/ payday loan facilities.

Vice Chair Woodhead stated that as far as the population cap versus the 600 foot spacing, was there a number of these businesses now that were in inappropriate or bad locations.

Mr. Joyce stated that it was more a clustering issue, rather than a location issue. He noted that he and Mr. Walkingshaw did map out the 49 facilities that exist and there were quite a few that would be affected by a spacing regulation alone.

Chair Wirthlin inquired why staff had chosen the 600 foot spacing, and would there be legal issues if the Commission increased this to 1,000 feet.

Mr. Pace noted that as long as the Commission had a rationale basis for the 1,000 feet the Commissioner could do it. He also noted that there was an impact from these businesses being clustered as far as increased crime, and economic issues, and as long as the Commission had a reasonable standard the spacing could be increased.

Commissioner De Lay inquired if these types of business could be banned.

Mr. Pace noted that was a more aggressive direction to take, but as long as the Commission gave solid reasons as to why it was appropriate it could be done.

Commissioner De Lay stated that South Salt Lake City agreed to cap their bars and taverns, so it could be done.

Vice Chair Woodhead stated that by banning them, it does not mean they will go away.

Mr. Pace stated that there was nothing in the ordinance that required existing businesses to go away.

Vice Chair Woodhead stated that essentially doing this would leave the situation the same, with nowhere for the businesses to go.

**Public Hearing**—Chair Wirthlin opened the public hearing portion of the petition and noted here was no one present to speak, he then closed the public hearing.

Commissioner McDonough stated that she agreed that a cap would tend to nestle these businesses in place for a long period of time. She noted that she would be inclined to consider a more restrictive distance requirement.

Commissioner McHugh stated that in the future, especially in the Northwest Quadrant, under a new ordinance with capping restrictions, it precluded them from ever going out into that area, so this could prevent problems in other areas.

Mr. Joyce stated that one of the other things staff was looking at in the zoning ordinance was which zoning districts they could go into. Right now financial institutions would be in commercial residential and all of the commercial districts.

Commissioner Algarin stated that he would like to see 1,200 foot spacing between these businesses, which would be two city blocks in any direction.

Commissioner Scott noted that there were other cities, which had had other options, for example phasing out these businesses over a long term period, or putting a cap on what the lending rate could be. She suggested putting together a subcommittee to scrutinize some alternatives, and then bring it back to the Commission at a later date.

Mr. Pace stated that the City Council felt that this issue was pressing. He noted that in terms of phasing out existing uses, there was one option available that the Commission might want to consider or mention in their comments to the City Council. He noted that under state law, non-conforming uses could be amortized, but it would have to allow the property owner enough time to recover the extent of their investment. He noted that as a city, that had never been done, but the Commission could suggest to the City Council that this would be one situation where that should be looked at.

Chair Wirthlin inquired if Mr. Pace was saying that the Commission could suggest putting a statutory timeframe in place which would give these businesses a certain number of years to recover the investment.

Mr. Joyce stated that would be variable based upon each individual investment, he noted that this would require additional staff and funds to monitor and keep this program going.

Commissioner McHugh stated that in the staff report it was noted that some of these businesses do not have licenses, and inquired if Mr. Joyce or Mr. Walkingshaw had reviewed all 49 of these businesses and validated that they were legal, meaning they had a business license for this specific type of business.

Mr. Walkingshaw stated that they determined that the existing places that they were aware of were legal.

Vice Chair Woodhead suggested keeping these types of businesses a certain distance from schools, so that as part of teaching our youth to be good financial citizens; these businesses were not visible to children right outside of their schools.

Mr. Pace stated that as part of this ordinance the Commission could suggested that the check cashing/payday loan businesses could not be within a certain distance from each other, as well as in proximately to a school.

Commissioner De Lay stated that the Commission could also include schools, churches, or state owned properties. She noted that the ordinance could include that these businesses could not be within 1,200 feet of either of these entities.

Commissioner McDonough stated that she would like to see the distance be a half mile apart.

Mr. Pace inquired about what Commissioner De Lay meant about state or city publicly owned property.

Commissioner De Lay noted that she meant government buildings.

Mr. Pace stated that Commissioner De Lay should expand on why she felt this was important. He also noted that given the survey of other cities it looked like West Jordan had a one mile spacing requirement for these businesses and Orem, had a half mile requirement. He stated that given Salt Lake City's density, if the Commission wanted to recommend a full half mile, they needed more justification as to why a half mile made sense in a dense city, such as Salt Lake City.

Chair Wirthlin noted that technically the Planning Commission was only a recommending body and did not necessarily have to provide any rational basis for anything other than forming suggestions for the City Council to use and rely on to help them make a decision.

Mr. Pace stated that this was true; however, it was important to put on the record, so that there was documented reason why the Commission ended up with a half mile or other specified distance requirements from state or city owned property.

Commissioner McDonough stated that she felt a half mile was necessary because a quarter mile was actually a stated walkable distance by planning standards, and she felt that the Commission should go with a driving distance between these businesses. She noted that a second reason, was due to the disconnect that she saw with the one business per 10,000 residence, and even with the current population in Salt Lake City, that language would only allow a total of 18 check cashing/ payday loan businesses in the entire city. She noted that if these were spread through out all of the districts, a half mile distance could be achieved.

Mr. Walkingshaw stated that where the ratio cap is placed, it starts to reinforce the clustering and prevents the businesses from moving to a different location. He noted that perhaps existing businesses should be allowed to relocate to a legal conforming location, to combat this.

Commissioner McDonough inquired if this would occur if the Commission did not recommend a cap.

Commissioner De Lay stated that her rationale for suggesting that these businesses not be placed near schools, churches, or state owned property was to insure that these businesses were not near liquor stores, children, or where there were legal proceedings/courts.

Chair Wirthlin stated that certainly the ethic that was trying to be promoted in this city was one of being responsible financial citizens. He noted that he agreed with the idea that these businesses should not be built near schools was rational, because it would send mixed financial management messages to children.

Commissioner McHugh inquired about what the Commission wanted to do about amortizing the number of these businesses.

Commissioner De Lay stated that staff was saying this would create a layer of funding and staff that they did not have, it might be mentioned to the City Council that they might want to look at funding for that idea and should be considered as a suggestion.

Commissioner De Lay inquired about the statutory timeframe regarding phasing the licensing out, along with the authority to amortization the non-conforming use of these types of businesses.

Commissioner Scott stated that it would be beneficial to look at a permanent moratorium idea.

Commissioner McHugh noted that if the Commission did not put a cap, but stated the distance of these types of businesses, in the future there could be more locations than the 49 that exist now.

Mr. Pace stated that this was correct, but a new location would only be able to be built where it had been decided it was permitted.

Commissioner McHugh stated that members of the Commission seemed fine with not having any of these types of businesses at all.

Commissioner McDonough stated that if staff could analyze under a half mile radius distance only, in all of the zones that they had suggested where these types of business were permitted, then what total maximum number would that yield. She stated that intuitively thinking it would be less than the current 49.

Mr. Joyce stated that it would not be a concrete number.

Commissioner McDonough stated that if staff identified all of the zones on a zoning map and then mapped it, by using a half mile grid of dots and superimposed the maximum amount of dots within each district, a total number could be made.

Mr. Joyce stated that staff could do that, but using a designated space grid was not concrete, because a business could relocate to the point where there were more.

Commissioner McDonough stated that she agreed, but it would give the Commission good data to make a reasonable judgment with and the error factor might only be one percent.

Vice Chair Woodhead stated that this was premised on the idea that some of the current businesses would want to move, or would go out of business and whatever replaced them would have to replace them in the greater distance.

Mr. Walkingshaw stated that he had recently read an article that showed how well these businesses were doing because of our economy and the reality that access to credit was so poor. He noted that certainly a reduction in the numbers of these types of businesses was not in the near future, and by capping the number a monopoly would be created that would affect the supply and demand economics.

Vice Chair Woodhead noted that she was referring to the current business being bad business people and might not stay in business long enough to reach their peak, make their money, and move on.

Commissioner Chambless stated that these types of businesses were becoming a growth industry.

Commissioner De Lay stated that some of these businesses had the same owner, so they are sort of chains that are being franchised.

Vice Chair Woodhead stated that some of these businesses were also owned by big banks that choose not to put their names on them.

**8:11:30 PM** Commissioner De Lay made a motion regarding Petition 400-08-18 Check Cashing/Payday Loans, based on the comments, analysis, and findings of fact listed in the staff report, the Planning Commission transmit a favorable recommendation to the City Council to adopt the proposed text amendment for Check Cashing/ Payday Loan as shown in Exhibit A—Proposed Text Amendments, with the following modifications:

1. No check cashing/ payday loan business shall be located closer then one half mile from another check cashing/payday loan business, *public and private* schools, church, government municipal building, or state owned property.

Commissioner McDonough seconded the motion.

8:12:33 PM Discussion of the motion

Commissioner De Lay amended the motion to read condition 3: The Planning Commission adopts the definition of check cashing/payday loan businesses.

Chair Wirthlin stated that as far as state owned property, the Commission had discussed schools, and he suggested that it *public and private schools* should be added.

Commissioner De Lay accepted this amendment.

*Commissioner De Lay stated that the Planning Commission should suggest that the City Council also look at phasing out these types of businesses by helping to fund a study, or by giving planning staff or the City the authority to amortize non-conforming uses of these businesses.*

Commissioner Scott inquired about the amortizing of non-conforming uses.

Mr. Pace stated that it was only a side recommendation.

Commissioner De Lay agreed and stated that it was a recommendation that the City Council should do a more in depth study of this.

Mr. Joyce inquired if the Commissioners agreed with the zoning designations.

The Commissioners agreed that the zoning designation was acceptable as is and did not need to be modified at this time.

**All in favor voted, "Aye," the motion carried unanimously.**

*The meeting adjourned at 8:15 p.m.*

*This document, along with the digital recording, constitute the official minutes of the Salt Lake City Planning Commission held on September 24, 2008.*

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Tami Hansen



**Proposed Text Changes for Check Cashing / Payday Loan Businesses**

**Petition 400-08-18**

Proposed text is underlined

**Proposed Definitions 21A.62.040**

Check Cashing/Payday Loan Business” means a business that conducts transactions of 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 Distribution:** Tables of Permitted and Conditional Use by District

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

C = Conditional Use  
P = Permitted Use

USE	CN	CB	CC	CS <sup>1</sup>	CSHBD <sup>1</sup>	CG	TC-75
<u>Check Cashing/Payday Loan Business</u>		<u>P<sup>8</sup></u>	<u>P<sup>8</sup></u>			<u>P<sup>8</sup></u>	

**Qualifying Provision:**

<sup>8</sup>Option 1. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

<sup>8</sup>Option 2. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check caching / payday loan businesses shall be limited to a ratio of one for every 10,0000 residents.

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

C = Conditional Use

P = Permitted Use

USE	M-1	M-2
<u>Check Cashing/Payday Loan Business</u>	<u>P<sup>7</sup></u>	

**Qualifying Provision:**

<sup>7</sup>Option 1. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

<sup>7</sup>Option 2. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check caching / payday loan businesses shall be limited to a ratio of one for every 10,0000 residents.

**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
<u>Check Cashing/Payday Loan Business</u>	<u>P<sup>5</sup></u>			

**Qualifying Provision:**

<sup>5</sup>Option 1. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

<sup>58</sup>Option 2. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check caching / payday loan businesses shall be limited to a ratio of one for every 10,0000 residents.

City Object Code	Additional Disproportion Fee
------------------------	------------------------------------

**21A.38.150 Termination By Amortization Upon Decision Of Board Of Adjustment:**

The board of adjustment may require the termination of a nonconforming use, except billboards, under any plan providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of the owner's investment in the nonconforming use, if any, as determined by the zoning administrator. The board of adjustment may initiate a review for amortization of nonconforming uses upon a petition filed by the mayor or city council, in accordance with the following standards and procedures and consistent with the municipal land use development and management act, title 10, chapter 9, of the Utah Code Annotated and shall mail written notice to the owner and occupant of the property:

- A. **Initiation Of Termination Procedure:** Board of adjustment review of a use determined to be nonconforming pursuant to the provisions of this section, for the purpose of establishing an amortization plan for termination of the use, shall first require a report from the zoning administrator to the board of adjustment. The zoning administrator's report shall determine the nonconforming use, provide a history of the site and outline the standards for determining an amortization period.
- B. **Notice To Nonconforming User:** Upon receipt of the report of the zoning administrator, recommending the establishment of an amortization plan for a nonconforming use, the board of adjustment shall mail the report and plan to the owner and occupant(s) of the nonconforming use, giving notice of the board of adjustment's intent to hold a public hearing to consider the request in accordance with the standards and procedures set forth in part II, chapter 21A.10 of this title.
- C. **Board Of Adjustment Review:** The board of adjustment shall hold a noticed public hearing within a reasonable time, following the procedures established in part II, chapter 21A.10 of this title, on the request for amortization of the nonconforming use. Upon the conclusion of the hearing, the board shall determine whether the nonconforming use should be amortized within a definite period of time.
- D. **Standards For Determining Amortization Period:** The board of adjustment shall determine the appropriate amortization period upon the consideration of evidence presented

City Object Code	Additional Disproportion Fee
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by the zoning administrator and the owner of the nonconforming use that is sufficient to make findings regarding the following factors:

1. The general character of the area surrounding the nonconforming use;
  2. The zoning classification and use(s) of nearby property;
  3. The extent to which property values are adversely affected by the nonconforming use;
  4. The owner's actual amount of investment in the property on the effective date of nonconformance, less any investment required by other applicable laws and regulations;
  5. The amount of loss, if any, that would be suffered by the owner upon termination of the use; and
  6. The extent to which the amortization period will further the public health, safety and welfare.
- E. **Appeal:** Any person adversely affected by the decision of the board of adjustment may, within thirty (30) days after the decision, present to the district court a petition specifying the grounds on which the person was adversely affected. (Ord. 15-05 § 1, 2005)

# SALT LAKE CITY CORPORATION

FRANK B. GRAY  
DIRECTOR

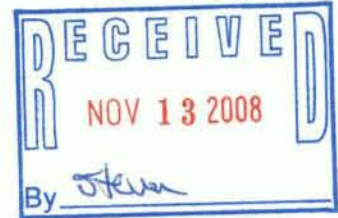
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT  
OFFICE OF THE DIRECTOR

RALPH BECKER  
MAYOR


MARY DE LA MARE-SCHAEFER  
DEPUTY DIRECTOR

ROBERT FARRINGTON, JR.  
DEPUTY DIRECTOR

## CITY COUNCIL TRANSMITTAL



Date Received: \_\_\_\_\_

  
\_\_\_\_\_  
David Everett, Chief of Staff  
Ralph Becker, Mayor

Date Sent to City Council: 11/26/08

**TO:** Salt Lake City Council  
Jill Remington-Love, Chair

**DATE:** November 13, 2008

**FROM:** Frank Gray, Community & Economic  
Development Department Director

**RE:** Petition 400-08-18 Changed to PLNPCM2008-00409: Zoning Text Amendment  
(City Council Petition, Check Cashing/Payday Lending Text Amendment)

*Hunter*  
*11/20/2008*

**STAFF CONTACTS:** Nole Walkingshaw, Senior Planner, at 535-7128 or  
nole.walkingshaw@slcgov.com  
Everett Joyce, Senior Planner, at 535-7930 or  
everett.joyce@slcgov.com

**RECOMMENDATION:** That the City Council hold a briefing and schedule a Public  
Hearing

**DOCUMENT TYPE:** Ordinance

**BUDGET IMPACT:** None, typical administration of business license issuance

### DISCUSSION:

**Issue Origin:** The Salt Lake City Council requested the Planning Commission analyze the appropriateness of amending the Zoning Ordinance to more precisely regulate businesses in Salt Lake City that provide "check cashing/payday loan service".

The City Council specifically requested the administration consider regulating check cashing/payday loan businesses in the following manner:

1. Through a distance requirement that would prevent those businesses from concentrating in locations throughout the City.
2. Through design guidelines.
3. Through a requirement that would establish a ratio between the number of businesses and the City's total population.
4. Through determining where are the most appropriate areas for payday loan check-cashing businesses to be and whether they should be permitted or conditional uses in those locations.

**Analysis:** In developing a response to the City Council issues, the Planning Staff has identified two factors that address the concentration issue. These are spacing and population to business ratio.

**Spacing Factor:** This proposed ordinance approach establishes that no check cashing or deferred deposit loan business shall be located within ½ mile 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 Planning Commission determined that the ½ mile radius exceeds the ¼ mile walk used as a standard of a walkable neighborhood, mitigating the negative affects of clustering.

**Population Ratio Factor:** This proposed ordinance approach puts a cap on the number of businesses allowed based on a population ratio of 1 business per 10,000 residents. Current population statistics show the City population at approximately 181,743 establishing a total number of allowed businesses at 18. Current reports from business licensing show the total number of these types of licensed businesses to be approximately 49. This excess of licenses in circulation, establishes a non-conforming use status to existing check cashing/payday loan businesses which would not allow any more new businesses until the City population exceeds 490,000.

The use of a *population ratio factor* raises concern related to the management of the excessive number of business licenses for check cashing/payday loan businesses. Will the City allow an existing business to relocate to a permitted location which meets spacing criteria? Allowing relocation could lessen the concentration of check cashing/payday loan businesses when they are already located within ½ mile from one another. The Planning Commission discussion determined that through the spacing standards and proper zoning district assignment that the population ratio was not necessary.

**Ordinance Restriction Benefits:** In addressing concentration issues the ordinance proposal could use either the spacing or population ratio approaches or a combination of both of both approaches. Use of these concentration restriction criteria will provide the following benefits:

- Allow for the control of distribution of a rapidly growing industry to limit excessive concentration of check cashing/payday loan businesses.

- The specific use classification and definition will enable better management of Business License data, which would be the source to monitor the cap limitations of check cashing/payday loan businesses within Salt Lake City.

*Existing Ordinance:* The zoning ordinance does not define check cashing/payday loan businesses as a use and as such they have been considered to be similar to financial institutions. The proposed amendment accomplishes a defined use and managed distribution.

*Department Comments:* The Police Department reviewed crime statistics in areas where check cashing/payday loan businesses are located. The analysis did not show any significant difference in police call levels in these areas compared to other commercial areas. The Airport identified that check cashing/payday loan businesses would not be a necessary support business for the Airport operations and support the proposed text changes that would not allow these types facilities within the "A" Airport Zoning District. Other departments had no comments.

There are no known unresolved problems or concerns raised as a part of the public input process.

*Master Plan Considerations:* The community master plan land use policies generally define neighborhood, community and regional commercial land use locations and characteristics. They do not specifically address retail service types or activities, except for services that have potential impacts to adjacent neighborhoods. None of the community plans specifically addresses check cashing/payday loans businesses.

The citywide Urban Design Element addresses development character and land use patterns and intensity. The plan identifies that an area's characteristics give it a sense of identity, but also provides a sense of order and organization. The concentration of one particular business type within a neighborhood can provide a negative impact on neighborhood character.

## **PUBLIC PROCESS:**

An Open House was held July 1, 2008. There were approximately six attendees for this meeting each with an interest in the Check Cashing/Payday Loan industry. No comments were submitted, however no one voice an opinion in opposition to the proposed amendment.

The Business Advisory Board (BAB) was briefed on the issue August 13, 2008, No comments or recommendations were received.

The Planning Commission held a public hearing on September 24, 2008. Issues raised at the public hearing included spacing requirements, appropriate zoning districts, proximity to schools, churches and state properties, and non-conforming uses. The Planning Commission voted in favor to forward a positive recommendation to the Council. The vote was All in favor; None opposed.

## **RELEVANT ORDINANCES:**

Amendments to the Zoning Ordinance and Maps are authorized under Section 21A.50 of the Salt Lake City Zoning Ordinance, as detailed in Section 21A.50.050: "A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the City Council and is not controlled by any one standard." It does, however, list five standards, which should be analyzed prior to rezoning property (Section 21A.50.050 A-E). The five standards are discussed in detail starting on page 5 of the Planning Commission Staff Report (see Attachment 5b).



## **TABLE OF CONTENTS**

- 1. CHRONOLOGY**
- 2. ORDINANCE**
- 3. NOTICE OF CITY COUNCIL HEARING**
- 4. MAILING LABELS**
- 5. PLANNING COMMISSION**
  - A) Original Agenda/Notice  
Hearing September 24, 2008**
  - B) Staff Report**
  - C) Minutes and Agendas  
Hearing October 8, 2008**
- 6. COMMUNICATIONS TO CITY COUNCIL**
- 7. LEGAL OPINIONS FROM CITY ATTORNEY**
- 8. ORIGINAL PETITION**

# **1. CHRONOLOGY**

**PROJECT CHRONOLOGY**  
**Petition 400-08-18, Accela # PLNPCM2008-00409**

March 2, 2007	Legislative Action initiating petition.
June 13, 2007	Petition assigned to Nole Walkingshaw, Senior Planner for staff analysis and processing.
May 6, 2008	Salt Lake City Council Briefing of issues and clarification of direction (Postponed)
May 13, 2008	Salt Lake City Council Briefing and clarification of direction
May 28, 2008	Routed petition to City Departments for comment and recommendation.
July 1, 2008	Planning Division conducted an Open House meeting to present petition for citizen input. Community Councils, as well as business owners were invited to attend.
August 13, 2008	Planning Division conducted a briefing of the proposed amendment to the Business Advisory Committee (BAB), no formal comments or recommendations were received.
September 9, 2008	Publication of Planning Commission public hearing notice.
September 24, 2008	Planning Commission held public hearing and voted 6-0 to recommend approval of petition to City Council.
October 8, 2008	Planning Commission ratified minutes for September 24, 2008 meeting.
October 9, 2008	Staff requested draft of proposed ordinance from City Attorney's Office.
October 24, 2008	Staff received draft of proposed ordinance from City Attorney's Office.

## **2. ORDINANCE**

SALT LAKE CITY ORDINANCE  
No. \_\_\_\_\_ of 2008  
(An Ordinance Amending Provisions of Title 21A (Zoning) of the  
*Salt Lake City Code* Regarding Check Cashing/Payday Loan Businesses)

AN ORDINANCE AMENDING CERTAIN SECTIONS OF TITLE 21A (ZONING) OF  
THE *SALT LAKE CITY CODE* PERTAINING TO CHECK CASHING/PAYDAY LOAN  
BUSINESSES.

WHEREAS, the Salt Lake City Planning Commission (“Planning Commission”) held a public hearing on September 24, 2008 to consider a request made by the Salt Lake City Council (“City Council”) to amend the text of sections 21A.26.080, 21A.28.040, 21A.30.050 and 21A.62.040 of the *Salt Lake City Code* to regulate the land uses of Check Cashing/Payday Loan Businesses; and

WHEREAS, at its September 24, 2008 hearing, the Planning Commission voted unanimously in favor of recommending to the City Council that the City Council amend sections 21A.26.080, 21A.28.040, 21A.30.050 and 21A.62.040 of the *Salt Lake City Code* to address and regulate Check Cashing/Payday Loan Businesses; and

WHEREAS, after a public hearing on this matter the City Council has determined that the following ordinance is in the City’s best interests,

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Amending text of Salt Lake City Code section 21A.62.040. That section 21A.62.040 of the Salt Lake City Code, shall be, and hereby is, amended to add the following definition to be inserted alphabetically in the list of definitions appearing in that section, which definition to be inserted shall read as follows:

**“Check Cashing/Payday Loan Business”** means a business that conducts transactions of 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.

SECTION 2. Amending text of Salt Lake City Code section 21A.26.080. That the table, titled “Table of Permitted and Conditional Uses for Commercial Districts”, which is located at section 21A.26.080 of the Salt Lake City Code, shall be, and hereby is, amended to add to that table the category of “Check Cashing/Payday Loan Business” to be listed alphabetically under the category of “Miscellaneous” uses in that table, with a footnote to each designation of Check Cashing/Payday Loan Business as a permitted or conditional use and a corresponding qualifying provision such that the inserted provisions shall appear and read as follows:

USE	CN	CB	CC	CS <sup>1</sup>	CSHBD <sup>1</sup>	CG	TC-75
<u>Check Cashing/Payday Loan Business</u>		<u>P<sup>8</sup></u>	<u>P<sup>8</sup></u>			<u>P<sup>8</sup></u>	

**Qualifying Provision:**

<sup>8</sup>. No check cashing/ payday loan business shall be located closer than ½ mile of other check cashing / payday loan business, public and private schools, church, government municipal building, or state owned property.

SECTION 3. Amending text of Salt Lake City Code section 21A.28.040. That the table, titled “Table of Permitted and Conditional Uses for Manufacturing Districts”, which is located at section 21A.28.040 of the Salt Lake City Code, shall be, and hereby is, amended to add to that table the category of “Check Cashing/Payday Loan Business” to be listed alphabetically under the category of “Miscellaneous” uses in that table, with a footnote to each designation of Check Cashing/Payday Loan Business as a permitted or conditional use and a corresponding qualifying provision such that the inserted provisions shall appear and read as follows:

USE	M-1	M-2
<u>Check Cashing/Payday Loan Business</u>	<u>P</u> <sup>7</sup>	

**Qualifying Provision:**

<sup>7</sup> No check cashing/ payday loan business shall be located closer than ½ mile of other check cashing / payday loan business, public and private schools, church, government municipal building, or state owned property.

SECTION 4. Amending text of Salt Lake City Code section 21A.30.050. That the table, titled “Table of Permitted and Conditional Uses for Downtown Districts”, which is located at section 21A.30.050 of the Salt Lake City Code, shall be, and hereby is, amended to add to that table the category of “Check Cashing/Payday Loan Business” to be listed alphabetically under the category of “Miscellaneous” uses in that table, with a footnote to each designation of Check Cashing/Payday Loan Business as a permitted or conditional use and a corresponding qualifying provision such that the inserted provisions shall appear and read as follows:

USE	D-1	D-2	D-3	D-4
<u>Check Cashing/Payday Loan Business</u>	<u>P</u> <sup>5</sup>			

**Qualifying Provision:**

<sup>5</sup> No check cashing/ payday loan business shall be located closer than ½ mile of other check cashing / payday loan business, public and private schools, church, government municipal building, or state owned property.

SECTION 5. Effective Date. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
CHAIRPERSON

ATTEST AND COUNTERSIGN:

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on \_\_\_\_\_.

Mayor's Action: \_\_\_\_\_ Approved. \_\_\_\_\_ Vetoed.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. \_\_\_\_\_ of 2008.  
Published: \_\_\_\_\_.

HB\_ATTY-#5994-v1-Payday\_Lending\_Ordinance

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date OCTOBER 27, 2008  
BY Paul C. Nielson  
PAUL C. NIELSON, SR. CITY ATTORNEY

*Mayor OK*  
*[Signature]*



### **3. NOTICE OF CITY COUNCIL HEARING**

## NOTICE OF PUBLIC HEARING

The Salt Lake City Council will hold a public hearing regarding Petition PLNPCM2008-00409 **a legislative action initiated by the Salt Lake City Council**—requesting the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide “payday-loan check cashing services,” and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed.

As part of its study, the City Council is holding an advertised public hearing to receive comments regarding the petition. During this hearing, anyone desiring to address the City Council concerning this issue will be given an opportunity to speak. The hearing will be held:

**Date:**

**Time:** 7:00 p.m.

**Place:** Room 315 (City Council Chambers)\*  
Salt Lake City and County Building  
451 S. State Street  
Salt Lake City, UT

\*Please enter building from east side.

If you have any questions relating to this proposal or would like to review the petition on file, please call Nole Walkingshaw, Senior Planner, at 535-7128 or Everett Joyce at 535-7903 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or via e-mail at [nole.walkingshaw@slcgov.com](mailto:nole.walkingshaw@slcgov.com) or [everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com).

People with disabilities may make requests for reasonable accommodations no later than 48 hours in advance in order to attend this public hearing. Accommodations may include alternate formats, interpreters, and other auxiliary aids. The City & County Building is an accessible facility. For questions, requests, or additional information, please contact the ADA Coordinator at (801) 535-7971; TDD 535-6021.

## **4. MAILING LABELS**

LESLIE REYNOLDS-BENNS, PHD  
WESTPOINTE CHAIR  
1402 MIAMI ROAD  
SALT LAKE CITY UT 84116

RON JARRETT  
ROSE PARK CHAIR  
1441 WEST SUNSET DR  
SALT LAKE CITY UT 84116

ANGIE VORHER  
JORDAN MEADOWS CHAIR  
1988 SIR JAMES DRIVE  
SALT LAKE CITY UT 84116

VICKY ORME  
FAIRPARK CHAIR  
159 NORTH 1320 WEST  
SALT LAKE CITY UT 84116

MIKE HARMAN  
POPLAR GROVE CHAIR  
1044 WEST 300 SOUTH  
SALT LAKE CITY UT 84104

RANDY SORENSON  
GLENDALE CHAIR  
1184 SOUTH REDWOOD DR  
SALT LAKE CITY UT 84104

POLLY HART  
CAPITOL HILL CHAIR  
355 NORTH QUINCE STREET  
SALT LAKE CITY UT 84103

WAYNE F GREEN  
GREATER AVENUES CHAIR  
371 E 7TH AVENUE  
SALT LAKE CITY UT 84103

D. CHRISTIAN HARRISON  
DOWNTOWN CHAIR  
336 WEST BROADWAY, #308  
SALT LAKE CITY UT 84101

BILL DAVIS  
PEOPLE'S FREEWAY CHAIR  
332 WEST 1700 SOUTH  
SALT LAKE CITY UT 84115

THOMAS MUTTER  
CENTRAL CITY CHAIR  
EMAIL ONLY/ON LISTSERVE

JOEL BRISCOE  
EAST CENTRAL CHAIR  
PO BOX 58902  
SALT LAKE CITY UT 84158

JIM FISHER  
LIBERTY WELLS CHAIR  
PO BOX 522318  
SALT LAKE CITY, UT 84152

LISETTE GIBSON  
YALECREST CHAIR  
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## **5. PLANNING COMMISSION**

**5 A. PLANNING COMMISION**

**Original Agenda/Notice  
Hearing September 24, 2008**

**AGENDA FOR THE  
SALT LAKE CITY PLANNING COMMISSION MEETING  
In Room 326 of the City & County Building at 451 South State Street  
Wednesday, September 24, 2008 at 5:45 p.m.**

The field trip is scheduled to leave at 4:00 p.m. Dinner will be served to the Planning Commissioners and Staff at 5:00 p.m., in Room 126. **Work Session**—the Planning Commission may discuss the Accela project tracking program, project updates and other minor administrative matters. This portion of the meeting is open to the public for observation

**APPROVAL OF MINUTES FROM WEDNESDAY, August 13, 2008.**

**REPORT OF THE CHAIR AND VICE CHAIR**

**REPORT OF THE DIRECTOR**

**BRIEFING**

1. **Conditional Use Project- Issues for Further Study**—The Planning Staff will review and discuss with the Planning Commission the proposed responses to issues that were raised during the City Council's recent review of conditional use regulations. The City Council requested further study of issues that were not addressed prior to the July 22, 2008 adoption of amendments to the Zoning Ordinance relating to conditional and permitted uses. The Planning Staff is requesting comment and direction from the Planning Commission prior to submitting the responses to the City Council for its review.

**PUBLIC HEARING**

2. **Petition 400-08-02, Driggs Avenue Street Closure at 1300 East**—the Utah Department of Transportation (UDOT) is requesting to close a portion of Driggs Avenue (approximately 2370 South and just west of 1300 East). It is proposed that Driggs Avenue will terminate in a cul-de-sac at this location. The purpose of the street closure is to accommodate the reconfiguration of the east bound I-80 off ramp at approximately 1300 East. The subject closure is located in City Council District 7 represented by Søren Simonsen (Staff contact: Lex Traughber at 535-6184 or [lex.traughber@slcgov.com](mailto:lex.traughber@slcgov.com)).
3. **Crestview Holdings Master Plan and Zoning Map Amendment**—a request by Juston Puchar, with Crestview Holdings, for a master plan and zoning map amendment for property located between approximately 356 to 358 North Redwood Road. The proposed master plan and zoning map amendment would accommodate an eight (8) unit multi-family residential development. The property is located in City Council District One represented by Carlton Christensen (Staff contact: Michael Maloy at 535-7118 or [michael.maloy@slcgov.com](mailto:michael.maloy@slcgov.com)).
  - a. **Petition 400-08-10 Master Plan Amendment**—the applicant is requesting an amendment of the Northwest Community Land Use Plan map for the property from Parks/Open Space to Medium Density Residential.
  - b. **Petition 400-08-09 Zoning Map Amendment**—the applicant is requesting amendment of the Salt Lake City Zoning Map for the property from R-1/5000 Single Family Residential to RMF-35 Moderate Density Multi-Family.
4. **West Temple Senior Housing Master Plan Map Amendment, Zoning Map Amendment, and Planned Development**—a request by Bill Nighswonger, Executive Director of the Housing Authority of Salt Lake City, for a master plan amendment, zoning map amendment, and planned development for property located at approximately 1812 South West Temple Street. The proposed master plan amendment, zoning map amendment, and planned development petition would accommodate a proposed 95 unit senior-housing residential development. The property is located in City Council District Five represented by Jill Remington-Love (Staff contact: Michael Maloy at 535-7118 or [michael.maloy@slcgov.com](mailto:michael.maloy@slcgov.com)).
  - a. **Petition 400-07-37 Master Plan Amendment**—the applicant is requesting approval to amend the Central Community Future Land Use map for the property from Low Density Residential (1-15 dwelling units/acre) to Medium High Density Residential (30-50 dwelling units/acre).
  - b. **Petition 400-07-38 Zoning Map Amendment**—the applicants are requesting approval to change the zoning of the property from CB Community Business to RMU-45 Residential Mixed Use.
  - c. **Petition 410-08-51 Planned Development**—the applicant is requesting approval of a planned development containing 105 units for senior housing on the property. The proposal includes renovation and reuse of an existing single-family dwelling as an "amenity" for the project.
5. **Petition 400-08-18, a legislative action initiated by the Salt Lake City Council**—a request by the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check cashing services," and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed (Staff contact: Everett Joyce at 535-7930 or [everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com)).

Visit the Planning and Zoning Enforcement Division's website at [www.slcgov.com/CED/planning](http://www.slcgov.com/CED/planning) for copies of the Planning Commission agendas, staff reports, and minutes. Staff Reports will be posted the Friday prior to the meeting and minutes will be posted two days after they are ratified, which usually occurs at the next regularly scheduled meeting of the Planning Commission.

TAM! HANSEN  
ST. EMER

# PUBLIC HEARING NOTICE

Salt Lake City Planning Division  
451 South State Street, Room 406  
PO Box 145480  
Salt Lake City UT 84111



1. Fill out registration card and indicate if you wish to speak and which agenda item you will address.
2. After the staff and petitioner presentations, hearings will be opened for public comment. Community Councils will present their comments at the beginning of the hearing
3. In order to be considerate of everyone attending the meeting, public comments are limited to two (2) minutes per person, per item. A spokesperson who has already been asked by a group to summarize their concerns will be allowed five (5) minutes to speak. Written comments are welcome and will be provided to the Planning Commission in advance of the meeting if they are submitted to the Planning Division prior to noon the day before the meeting.  
Written comments should be sent to:

Salt Lake City Planning Commission  
451 South State Street, Room 406  
Salt Lake City UT 84111

4. Speakers will be called by the Chair.
5. Please state your name and your affiliation to the petition or whom you represent at the beginning of your comments.
6. Speakers should address their comments to the Chair. Planning Commission members may have questions for the speaker. Speakers may not debate with other meeting attendees.
7. Speakers should focus their comments on the agenda item. Extraneous and repetitive comments should be avoided.
8. After those registered have spoken, the Chair will invite other comments. Prior speakers may be allowed to supplement their previous comments at this time.
9. After the hearing is closed, the discussion will be limited among Planning Commissioners and Staff. Under unique circumstances, the Planning Commission may choose to reopen the hearing to obtain additional information.
10. The Salt Lake City Corporation complies with all ADA guidelines. People with disabilities may make requests for reasonable accommodation no later than 48 hours in advance in order to attend this meeting. Accommodations may include alternate formats, interpreters, and other auxiliary aids. This is an accessible facility. For questions, requests, or additional information, please contact the Planning Office at 535-7757; TDD 535-6220.

## **5 B. PLANNING COMMISION**

### **Staff Report**



# PLANNING COMMISSION STAFF REPORT



Planning and Zoning Division  
Department of Community and  
Economic Development

## "Check Cashing/Payday Loans" Zoning Text Amendment Petition 400-08-18 – City-wide September 24, 2008

**Applicant:** Salt Lake City  
Council

**Staff:** Everett Joyce 535-7930  
[everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com)  
Nole Walkingshaw 535-7128  
[nole.walkingshaw@slcgov.com](mailto:nole.walkingshaw@slcgov.com)

**Master Plan Designation:**  
City-wide

**Council District:** City-wide

**Applicable Land Use  
Regulations:**

*Review Standards:* 21A.50.050  
Standards for General  
Amendments

*Affected Text:*

21A.62.040 Definitions  
21A.26.080 Table of Permitted  
and Conditional Uses,  
Commercial Districts.  
21A.28.040 Table of Permitted  
and Conditional Uses,  
Manufacturing Districts.  
21A.30.050 Table of Permitted  
and Conditional Uses,  
Downtown Districts.  
21A.32.140 Table of Permitted  
and Conditional Uses, Special  
Purpose Districts.

**Attachments:**

- A. Proposed Text  
Amendments
- B. Public Comments
- C. Department Comments
- D. Legislative Intent

### **REQUEST**

The Salt Lake City Council is requesting the Planning Commission analyze the appropriateness of amending the Zoning Ordinance to more precisely regulate businesses in Salt Lake City that provide "check cashing / payday loan service".

The City Council specifically requested the administration consider regulating check cashing / payday loan businesses in the following manner:

1. Through a distance requirement that would prevent those businesses from concentrating in locations throughout the City.
2. Through design guidelines.
3. Through a requirement that would establish a ratio between the number of businesses and the City's total population.
4. Through determining where are the most appropriate areas for payday loan check-cashing businesses to be and whether they should be permitted or conditional uses in those locations.

### **PUBLIC NOTICE**

On September 9, 2008, a notice for the Planning Commission public hearing was mailed to community council chairs meeting the minimum 14-day notification requirement. In addition, notice was sent to all individuals on the Planning Division's list serve and the agenda was posted on the city's website. Notice was also sent to Check Cashing / Payday Loan businesses identified by the State of Utah as licensed in Salt Lake City.

### **STAFF RECOMMENDATION:**

Based on the comments, analysis and findings of fact listed in the staff report, Planning Staff recommends the Planning Commission transmit a favorable recommendation to the City Council to adopt the proposed text amendment for Check Cashing/Payday Loan businesses as shown in Exhibit A - Proposed Text Amendments.

**Background/ Project Description**

**Project Description / History.** On March 6, 2007, the City Council adopted a legislative action initiated by Councilmember Nancy Saxton directing the City Attorney’s Office, with the recommendation of the Planning Commission, to draft an ordinance regulating the location of payday lending check-cashing businesses. The requested action was to create an ordinance that would restrict the distance between check cashing / payday loan businesses and consideration of a ratio of businesses to the number of people served and where those businesses should be allowed. The legislative action report identified that eight different cities within Salt Lake County have addressed regulations defining how many check cashing / payday lending businesses can locate (population/ratio) in those cities and where they can locate (spacing criteria).

The legislative action proposes consideration of regulations that affect the number and concentration of a single business type. In considering these restrictive regulation standards, staff has noted action taken by the federal government on determining the detrimental effects that a concentration of payday loan lenders have on a community. The Federal government has determined that the practice of these businesses has a detrimental effect on the community based on research conducted by the U.S. Defense Department and has been recently adopted by the U.S. Congress through a Military Lending Act. The study showed the average military borrower pays \$827 on a \$339 loan and called the lending “predatory”. Military officers supported action 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.

**Check cashing / payday loan regulations adopted by other local jurisdictions in Salt Lake County**

<b>Adopted Location Requirements for Check Cashing / Payday Loan Business</b>		
American Fork, UT	Density	One per 10,000 residents
Draper, UT	Zoning	Permitted as a conditional use within one commercial zone
Midvale, UT	Density	One per 10,000 residents
Murray, UT	Density	One per 10,000 residents, minimum of 1,000 feet apart
Orem, UT	Density	One per 10,000 residents, minimum ½ mile between outlets
Salt Lake County	Density	One per 10,000 residents and 600 feet between outlets
Sandy, UT	Density	One per 10,000 residents, minimum 1000 feet between outlets
South Salt Lake City, UT	Density	One per 5,000 residents, Restricts businesses to 600 ft. from the nearest residential zone (some exceptions)
South Jordan, UT	Density	Outlets must be a minimum of one mile apart
Taylorsville, UT	Density	One per 10,000 residents
West Jordan, UT	Density	One per 10,000 residents, minimum 1000 feet between outlets
West Valley City, UT	Density	One per 10,000 residents, 600 ft. between payday lending outlets

## City Council Requests and Discussion

The City Council requested the administration consider regulating check cashing / payday loan businesses through distance, design guidelines, limitation on number, and use tables of the zoning districts. The following table briefly summaries staff discussion of the four concepts identified by the City Council.

1. *A distance requirement that would prevent those businesses from concentrating in locations throughout the City.*

The proposed ordinance introduces a radius spacing concept. Staff recommends a radius of 600 feet. This radius is representative of a typical Salt Lake City block face and adequately breaks up the potential for future “clustering”

2. *Design guidelines.*

Design guidelines may be achieved by classifying the use as Conditional; the Standards of Approval for a Conditional Use utilize design guidelines. Design guidelines may also be achieved by classifying the use as permitted subject to Conditional Building and Site Design Review.

Staff analysis does not recommend specific design guidelines.

Staff recommends if design review is desired then classify the use a Permitted, with a qualifying provision that they are subject to Conditional Building and Site Design Review. The purpose of which would be to maintain consistency in appearances with surrounding development, and possible controls on excessive or obnoxious signage.

3. *A ratio requirement that would establish a ratio between the number of businesses and the City's total population.*

The proposed ordinance approach puts a cap on the number of businesses allowed based on a population ratio of one establishment per 10,000 persons (1:10,000). This standard can be implemented using Qualifying Provisions footnotes in the Tables of Permitted and Conditional Uses, and or through the Check Cashing / Payday Loan definition.

*Non-conforming uses:* The proposed amendment options create two levels of non-conformance. First, by placing a cap on the total number allowed based on a population ratio, all existing facilities are classified as non-conforming uses. The total number allowed has already been achieved. Second, by establishing a radius, existing “clusters” of these businesses become non-complying and non-conforming. A set policy on how to address non-conforming issues may be needed. This policy may be included in the ordinance.

4. *Appropriate Zoning Districts and processes.*

Staff recommends permitting check cashing / payday loans facilities within the CB, CC, CG, M-1, and D-1 Zoning Districts. These zoning districts allow more intensive land uses, are adjacent to residential areas, have a high concentration of employment and are areas typically served by public transit and arterial roadways. With the use of spacing and a population ratio regulation, Staff recommends that the uses be permitted these zoning districts.

## **Ordinance Approach**

In developing a response to the City Council issues, the staff has identified two factors that address the concentration issue. These are spacing and population to business ratio.

*Spacing Factor:* This proposed ordinance approach establishes that no check cashing or deferred deposit loan business shall be located within 600 feet 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.

*Population Ratio Factor:* This proposed ordinance approach puts a cap on the number of businesses allowed based on a population ratio of 1 business per 10,000 residents. Current population statistics show the City population at approximately 181,743 establishing a total number of allowed businesses at 18. Current reports from business licensing show the total number of these types of licensed businesses to be approximately 49. This excess of licenses in circulation, establishes a non-conforming use status to existing check cashing / payday loan businesses which would not allow any more new businesses until the City population exceeds 490,000.

The use of a *population ratio factor* raises concern related to the management of the excessive number of business licenses for check cashing / payday loan businesses. Will the City allow an existing business to relocate to a permitted location which meets spacing criteria? Allowing relocation could lessen the concentration of check cashing / payday loan businesses when they are they are already located within 600 feet from one another.

Theoretically, the proposed population ratio 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 that the interest rates and fees could increase as well without competition to help regulate rates.

*Ordinance Restriction Benefits:* In addressing concentration issues the ordinance proposal could use either the spacing or population ratio approaches or a combination of both of both approaches. Use of these concentration restriction criteria will provide the following benefits:

- Allow for the control of distribution of a rapidly growing industry to limit excessive concentration of check cashing / payday loan businesses.
- The specific use classification and definition will enable better management of Business License data, which would be the source to monitor the cap limitations of check cashing / payday loan businesses within Salt Lake City.

## **Comments**

### **Public Comments**

An Open House was held on July 1, 2008. The Attendance Roll has been attached as part of the Public Comments Exhibit B. No written comments were received from the Open House, each of the attendees were representatives of the Check Cashing Industry. Attendees generally supported the proposed regulation modifications.

**Walkingshaw, Nole**

**From:** Joyce, Everett  
**Sent:** Tuesday, May 27, 2008 12:05 PM  
**To:** Walkingshaw, Nole  
**Subject:** RE: CheckCashing Ord Proposal routing memo 5 23 08.doc  
**Attachments:** image001.jpg

Nole,

Add Payday Loans to CC, M-1, D-1 and MU and delete from AG-20.

If we end up using a distance and/or population control, the criteria, should be footnoted and listed as a Qualifying Provision within Table of Permitted and Conditional Uses.

Everett L. Joyce, AICP  
Senior Planner  
801-535-7930  
Salt Lake City Planning Division  
451 South State Street, Rm 406  
PO Box 145480  
Salt Lake City, UT 84111-5480

---

**From:** Walkingshaw, Nole  
**Sent:** Tuesday, May 27, 2008 9:53 AM  
**To:** Joyce, Everett  
**Subject:** CheckCashing Ord Proposal routing memo 5 23 08.doc

Here is a draft routing memo, The who it goes to still needs to be double checked by the list that Joel sent out. What do you think?



# Memorandum

**To:** <sup>Community Development</sup> Mary De La Mare-Schaefer, Community & Economic Development Department Interim Director

**From:** Everett Joyce, Senior Planner  
Nole Walkingshaw, Senior Planner

**Date:** May 28, 2008

**CC:** Esther Hunter, Senior Advisor to Mayor  
Orion Goff, Building Services  
Brad Larsen, Fire Department  
Dave Askerlund, Police Department  
Barry Walsh, Transportation

Staff presented the proposal to the Salt Lake City Business Advisory Board on August 13, 2008. No response comments were received from the board members.

Comments were received from the Utah Consumer Lending Association, which is the trade organization representing the Deferred Deposit/Payday Lending Industry which has been attached as part of the Public Comments Exhibit B. The Association acknowledges that local officials wish to respond to the growth in Deferred Deposit lending. They encourage development of reasonable zoning regulations which still allows the provision of services but reflects concerns by officials on placement of businesses.

Comments were received in the form of a report from the Coalition of Religious Communities, representing an opposition position to the Check Cashing/Payday Lending Industries. This report has been attached as part of the Public Comments Exhibit B. The report and comments support more restrictive regulations for check cashing / payday loan businesses.

### **City Department Comments:**

The Police Department reviewed crime statistics in areas where check cashing / payday loan businesses are located. The analysis did not show any significant difference in police call levels in these areas compared to other commercial areas. The Airport identified that check cashing / payday loan businesses would not be a necessary support business for the Airport operations and support the proposed text changes that would not allow these types facilities within the "A" Airport Zoning District. Other departments had no comments. Department comments are included in Exhibit C.

## **Analysis and Findings**

### **21A.50.050 Standards for general amendments.**

A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the city council and is not controlled by any one standard. However, in making its decision concerning a proposed amendment, the city council should consider the following factors:

#### **A. Whether the proposed amendment is consistent with the purposes, goals, objectives, and policies of the adopted general plan of Salt Lake City;**

**Analysis:** The community master plan land use policies generally define neighborhood, community and regional commercial land use locations and characteristics. They do not specifically address retail service types or activities, except for services that have potential impacts to adjacent neighborhoods. None of the community plans specifically addresses check cashing / payday loans businesses.

The citywide Urban Design Element addresses development character and land use patterns and intensity. The plan identifies that an areas characteristics give it a sense of identity, but also provides a sense of order and organization. The concentration of one particular business type within a neighborhood can provide a negative impact on neighborhood character.

**Finding:** The proposed text amendments provide additional refinement of the zoning regulations of the City's policies by providing greater detailed zoning regulations. The proposed check cashing / payday loan regulations are consistent with the City's land use policies and urban design element.

**B. Whether the proposed amendment is harmonious with the overall character of existing development in the immediate vicinity of the subject property;**

**Analysis:** The proposed amendment regulates the location and spacing aspects of check cashing / payday loan businesses citywide. The amendment establishes standards that minimize the concentration of one particular business type.

**Finding:** The proposed amendment is a citywide approach and does not impact the overall character of existing development.

**C. The extent to which the proposed amendment will adversely affect adjacent properties;**

**Analysis:** The technical standards of the zoning ordinance generally will not change the business functions but affect the concentration and number of such businesses within Salt Lake City. It is the intention that the proposed amendments minimize potential effects to adjacent properties, by limiting a concentration of a single type of business that may appear to have a negative impact on the surrounding community.

**Finding:** The proposed text changes will establish standards to minimize the concentration of check cashing and payday loan businesses within a particular location and within the City as a whole. Appropriate City Departments would ensure the location and distribution of businesses base on the standards of the proposed ordinance changes.

**D. Whether the proposed amendment is consistent with the provisions of any applicable overlay zoning districts which may impose additional standards; and**

**Analysis:** The development of any structures used to house one of these businesses would be subject to the provisions of any applicable overlay zoning district. The occupation of and/or tenant finishing of existing building would also be subject to the provisions of any overlay zoning district. The proposed text amendment would not affect any existing overlay district standards.

**Finding:** The proposed text amendment is consistent with the provisions of any applicable overlay zoning districts which may impose additional standards.

**E. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies, and wastewater and refuse collection.**

**Analysis:** The proposed ordinance should not place any additional burdens on public facilities and/or services. The city departments that provide public facilities and services have reviewed the proposed text changes and had no specific comments regarding the proposed text amendments.

**Finding:** All pertinent City departments will have review authority on the development of new business structures to ensure that any determined development impacts which may be associated with the new developments will be mitigated.

Exhibit A  
Proposed Zoning Ordinance Text Options  
Check Cashing/Payday Lending



# Proposed Text Changes for Check Cashing / Payday Loan Businesses

## Petition 400-08-18

Proposed text is underlined

### Proposed Definitions 21A.62.040

**Check Cashing/Payday Loan Business**” means a business that conducts transactions of 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 Distribution: Tables of Permitted and Conditional Use by District

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

C = Conditional Use

P = Permitted Use

USE	CN	CB	CC	CS <sup>1</sup>	CSHBD <sup>1</sup>	CG	TC-75
<u>Check Cashing/Payday Loan Business</u>		<u>P<sup>8</sup></u>	<u>P<sup>8</sup></u>			<u>P<sup>8</sup></u>	

#### Qualifying Provision:

<sup>8</sup>Option 1. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

<sup>8</sup>Option 2. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check caching / payday loan businesses shall be limited to a ratio of one for every 10,000 residents.

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

C = Conditional Use

P = Permitted Use

USE	M-1	M-2
<u>Check Cashing/Payday Loan Business</u>	<u>P<sup>7</sup></u>	

**Qualifying Provision:**

<sup>7</sup>Option 1. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

<sup>7</sup>Option 2. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check caching / payday loan businesses shall be limited to a ratio of one for every 10,0000 residents.

**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
<u>Check Cashing/Payday Loan Business</u>	<u>P<sup>5</sup></u>			

**Qualifying Provision:**

<sup>5</sup>Option 1. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

<sup>58</sup>Option 2. No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check caching / payday loan businesses shall be limited to a ratio of one for every 10,0000 residents.

Exhibit B  
Public Comments

LESLIE REYNOLDS-BENNS, PHD  
WESTPOINTE CHAIR  
1402 MIAMI ROAD  
SALT LAKE CITY UT 84116

RON JARRETT  
ROSE PARK CHAIR  
1441 WEST SUNSET DR  
SALT LAKE CITY UT 84116

ANGIE VORHER  
JORDAN MEADOWS CHAIR  
1988 SIR JAMES DRIVE  
SALT LAKE CITY UT 84116

VICKY ORME  
FAIRPARK CHAIR  
159 NORTH 1320 WEST  
SALT LAKE CITY UT 84116

MIKE HARMAN  
POPLAR GROVE CHAIR  
1044 WEST 300 SOUTH  
SALT LAKE CITY UT 84104

RANDY SORENSON  
GLENDALE CHAIR  
1184 SOUTH REDWOOD DR  
SALT LAKE CITY UT 84104

POLLY HART  
CAPITOL HILL CHAIR  
355 NORTH QUINCE STREET  
SALT LAKE CITY UT 84103

WAYNE F GREEN  
GREATER AVENUES CHAIR  
371 E 7TH AVENUE  
SALT LAKE CITY UT 84103

D. CHRISTIAN HARRISON  
DOWNTOWN CHAIR  
336 WEST BROADWAY, #308  
SALT LAKE CITY UT 84101

BILL DAVIS  
PEOPLE'S FREEWAY CHAIR  
332 WEST 1700 SOUTH  
SALT LAKE CITY UT 84115

THOMAS MUTTER  
CENTRAL CITY CHAIR  
EMAIL ONLY/ ON LISTSERVE

JOEL BRISCOE  
EAST CENTRAL CHAIR  
PO BOX 58902  
SALT LAKE CITY UT 84158

JIM FISHER  
LIBERTY WELLS CHAIR  
PO BOX 522318  
SALT LAKE CITY, UT 84152

LISETTE GIBSON  
YALECREST CHAIR  
1764 HUBBARD AVENUE  
SALT LAKE CITY UT 84108

GREG MORROW  
WASATCH HOLLOW CHAIR  
EMAIL ONLY/ON LISTSERVE

DIANE BARLOW  
SUNNYSIDE EAST CHAIR  
859 SOUTH 2300 EAST  
SALT LAKE CITY UT 84108

ELLEN REDDICK  
BONNEVILLE HILLS CHAIR  
2177 ROOSEVELT AVE  
SALT LAKE CITY UT 84108

MICHAEL AKERLOW  
FOOTHILL/SUNNYSIDE CHAIR  
1940 HUBBARD AVE  
SALT LAKE CITY UT 84108

MARIELLA SIRAA/MARGARET  
BRADY  
EAST LIBERTY PARK CO-CHAIRS  
EMAIL ONLY, SEE City Council site

ARCADIA HEIGHTS/BENCHMARK  
CHAIR  
Vacant

MAGGIE SHAW  
SUGAR HOUSE CHAIR  
1150 WILSON AVE  
SALT LAKE CITY UT 84105

OAK HILLS CHAIR  
Vacant

KEVIN JONES  
EAST BENCH CHAIR  
2500 SKYLINE DR  
SALT LAKE CITY, UT 84108

SUNSET OAKS CHAIR  
Vacant

INDIAN HILLS CHAIR  
Vacant

ST. MARY'S CHAIR  
Vacant



3 Hermanos  
1232 S Redwood Rd  
Salt Lake City UT 84104

Eagle Finance Corporation  
312 W 200 S #184  
Salt Lake City UT 84101

Joyas Liliانا Inc  
1260 W 500 N  
Salt Lake City UT 84116

AACA of Utah  
250 W 2100 S Unit C  
Salt Lake City UT 84115

El Gallo De Oro  
938 N 900 W  
Salt Lake City UT 84116

Joyas Maria  
1179 S Navajo St  
Salt Lake City UT 84104

AACA of Utah  
1156 W 600 N  
Salt Lake City UT 84116

El Tapatia Mexican Imports Inc  
1465 S State #8  
Salt Lake City UT 84115

Joyas Robles Inc  
1422 S Redwood Rd  
Salt Lake City UT 84104

Best Cash Advance Inc  
2150 S 1300 E  
Salt Lake City UT 84106

Eloy's Services  
1013 N 900 W  
Salt Lake City UT 84116

LMSA Financial Corp AZ  
1290 S 300 W  
Salt Lake City UT 84101

Blue Star 1 Inc  
610 N 300 W  
Salt Lake City UT 84103

Essex Capital Group LLC  
32 W 200 S Ste 220  
Salt Lake City UT 84101

Marisa's Fashion & Market  
872 S State St  
Salt Lake City UT 84111

Buckeye Check Cashing of Utah Inc  
1842 S 300 W Unit C  
Salt Lake City UT 84115

EZMoney Utah Inc  
820 E 400 S  
Salt Lake City UT 84102

Mi Tierra Market Inc  
402 S 900 W  
Salt Lake City UT 84104

Buckeye Check Cashing of Utah Inc  
832 W N Temple  
Salt Lake City UT 84116

EZMoney Utah Inc  
145 E 1300 S #101  
Salt Lake City UT 84115

Midtown Wholesale  
1465 S State St Ste 1  
Salt Lake City UT 84115

Cash America Financial Services Inc  
789 S State St  
Salt Lake City UT 84111

Great Plains Specialty Finance Inc  
1423 S 300 W Ste A  
Salt Lake City UT 84115

Monetary Management of CA Inc  
370 S State St  
Salt Lake City UT 84111

Check Max  
1726 W N Temple  
Salt Lake City UT 84116

Great Plains Specialty Finance Inc  
1645 W 700 N Ste K  
Salt Lake City UT 84116

North America Title Loans, LLC  
350 E 200 S  
Salt Lake City UT 84111



PDL Financial Services  
1640 S Main  
Salt Lake City UT 84115

Shree Investment Inc  
1709 S 900 W  
Salt Lake City UT 84104

PDL Financial Services  
1350 S State  
Salt Lake City UT 84115

Upfront Payday LLC  
2274 S 1300 E Suite G-8-273  
Salt Lake City UT 84106

QC Financial Services Inc  
665 S State St  
Salt Lake City UT 84111

Super Loan Center  
167 E 900 S Ste A  
Salt Lake City UT 84111

Quick Loan Inc.  
464 S 600 E Unit C  
Salt Lake City UT 84102

Three B Financial, LLC  
Box 45385  
Salt Lake City UT 84111

Quick Title Loans  
1055 W 1700 S  
Salt Lake City UT 84106

Tosh Inc  
2311 E 3300 S  
Salt Lake City UT 84109

Raincheck Corporation  
434 S 900 E  
Salt Lake City UT 84012

Utah Title Loans Inc  
1460 S State St  
Salt Lake City UT 84115

Rent-A-Center West, Inc  
799 N Redwood Rd #C  
Salt Lake City UT 84116

WP Associates Inc  
950 W 1000 N  
Salt Lake City UT 84116

RFG Utah, LLC  
1244 S Redwood Rd  
Salt Lake City UT 84104

Wyoming Financial Lenders  
369 S Main St  
Salt Lake City UT 84111

RFG Utah, LLC  
274 E 900 S  
Salt Lake City UT 84111

X-Press Loans LLC  
723 E 2100 S  
Salt Lake City UT 84106

Ruelas Envios y Multiservicios LLC  
55 N Redwood Rd Ste H  
Salt Lake City UT 84116

**OPEN HOUSE**  
**Check Cashing Payday Loans**  
**Petition 400-08-18**

**ATTENDANCE ROLL**  
**July 1, 2008**

PRINT NAME <u>Joan Hays</u> ADDRESS <del>7128</del> <u>1325</u> <u>Washington Dr</u> ZIP CODE <u>Murray</u> <u>64121?</u>	PRINT NAME _____ ADDRESS _____ ZIP CODE _____
PRINT NAME <u>IVAN R. Lora</u> ADDRESS <u>402 South 900 West</u> ZIP CODE <u>84104</u>	PRINT NAME _____ ADDRESS _____ ZIP CODE _____
PRINT NAME <u>FRANK P. GONAWELI</u> ADDRESS <u>60 S. 600 E. #150</u> ZIP CODE <u>84102</u>	PRINT NAME _____ ADDRESS _____ ZIP CODE _____
PRINT NAME <u>Aurelio Ruelas</u> ADDRESS <u>55 N Redwood Rd Ste H</u> ZIP CODE <u>84116</u>	PRINT NAME _____ ADDRESS _____ ZIP CODE _____
PRINT NAME _____ ADDRESS _____ ZIP CODE _____	PRINT NAME _____ ADDRESS _____ ZIP CODE _____
PRINT NAME _____ ADDRESS _____ ZIP CODE _____	PRINT NAME _____ ADDRESS _____ ZIP CODE _____

**Joyce, Everett**

**From:** Bruce K. Duncan [duncan@wifunds.com]  
**Sent:** Thursday, September 04, 2008 6:14 PM  
**To:** Joyce, Everett  
**Subject:** Comment on Petition 400-08-18

re: **Petition 400-08-18, a legislative action initiated by the Salt Lake City Council**-a request by the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check cashing services," and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed (Staff contact: Everett Joyce 535-7930 or [everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com)).

-----  
Dear Ms. Everett,

Is the proposed ordinance the best Salt Lake City (or the State of Utah) can do? This is a question, not a criticism. PayDay lenders may be beneath contempt. But people use them for a reason. Can the City create conditions where potential PayDay customers want to go elsewhere for a better deal?

**Background:**

I recently wrote my niece, who has credit card debt problems. She seems to think she will never have to pay off her credit card debt.

My message: As a financial professional I am sophisticated about investing money and know what kind of return on investment that I can earn when I make a loan.

If I can consistently earn a 25% return, people will think I am a Warren Buffet.

I know that earning a 25% APR in an honest financial loan product just doesn't happen. By symmetry, no borrower pays 25% APR to borrow in an honest transaction.

Nobody borrows money at 25% interest with the intention of paying the money back. Similarly, nobody loans money at 25% expecting the return OF their capital.

The only way to earn or pay a 25% return is to deal with a criminal.

My thesis was that when you borrow using a credit card, you are dealing with criminals. (see "loan shark" in [www.wikipedia.com](http://www.wikipedia.com) for some interesting reading). Credit card issuers may argue otherwise, but I think the facts are on my side if you do the research. Card issuers don't want debtors to pay off their loans, they want the fees and the vigorish. There is, however, one legitimate way for a debtor to earn 25% (for a while) --> By paying off the credit balance and getting a debt card the debtor effectively earns 25% APR on the balance which the debtor is no longer paying interest on.

**What do Credit Card Issuers have in common with with PayDay lending businesses?**

Payday loan companies may be operating on the same business model as credit card issuers. I don't know the economics of PayDay lending; PayDay lenders aren't showing their books. Banks do not break out their Credit Card books either. I suspect the two business is extremely profitable for the same reason.

My opinion: PayDay lenders, like Credit Card issuers, are criminal enterprises with legal protection.

**How to regulate PayDay lending?**

I think one way to deal with the practice is for the municipal government to go into the PayDay loan business after determining what it takes to run a profitable check cashing service .

If the City can't figure out how to run a successful, competitive business without charging the same high rates charged by your typical PayDay lender, then perhaps the city shouldn't be in the business. The logical conclusion might be that maybe the City shouldn't try to regulate the payday lending business by Ordinance 400-08-18.

**Why do people patronize PayDay lenders?**

Maybe there is nowhere else where they can get a check cashed?

Maybe they don't have a bank account, the only place that will give them an account is the friendly PayDay lender.

Maybe they have such a desperate need for fast cash that they are willing to pay anything?

Maybe it would be dangerous for a PayDay customer to go into a bank? This is true in some other countries.

Does Salt Lake City know why PayDay customers use PayDay lender services?

I do not use PayDay lenders.

9/11/2008



I will not even enter a business located in a building or shopping center occupied by a PayDay business.

Now that I have vented, I'd like to suggest there may be other, better ways to discourage the PayDay business model as currently structured.

The city ordinance doesn't seem like a good way to go.

If the City really needs the ordinance, perhaps banks should be included with the PayDay lenders. Our banks fund the PayDay lenders with bank loans. The same banks also think it is OK to charge their credit card customers usury rates.

Give my high regards to the City Council.

Sincerely,

Bruce Duncan  
1785 Princeton Avenue  
Salt Lake City, UT 84108  
568-1400

**Joyce, Everett**

---

**From:** Jardine, Janice  
**Sent:** Thursday, September 11, 2008 9:14 AM  
**To:** Joyce, Everett  
**Subject:** check cashing comment  
**Categories:** Program/Policy  
**Attachments:** FW: Planning Commission Agenda: September 24, 2008

Comment from Jim A re: check cashing businesses. I told him I would pass it along to you. JJ

---

**From:** jja-1@comcast.net [mailto:jja-1@comcast.net]  
**Sent:** Wednesday, September 10, 2008 11:34 PM  
**To:** Jardine, Janice  
**Cc:** Gust-Jenson, Cindy; Tarbet, Nick  
**Subject:** Re: FW: Planning Commission Agenda: September 24, 2008

Hi Janice,

On a different note, (with the preface thst I am neither a user of, nor a fan of paycheck cashing businesses), why does the City feel it is appropriate to legislate the density of these businesses? I would humbly submit that unless the intent is to mitigate known and predictable adverse impacts, the market should drive what types of businesses and how many of any type of business should operate within a given area. I would make this argument for almost any type of business. Let the market determine demand and succes or failure....

Thanks very much,

Jim



UTAH CONSUMER  
LENDING ASSOCIATION  
May 9, 2008

Salt Lake City Council  
410 South State  
Salt Lake City, Utah

Re: Deferred Deposit and Payday Lending

Dear Council members,

As the President of the Utah Consumer Lending Association, I appreciate the public service that you provide to city residents and businesses.

The Utah Consumer Lending Association is a trade association for Deferred Deposit/Payday Lending companies in Utah. Some of our members own and operate companies in Salt Lake City, while many employ and serve Salt Lake City residents. Our primary goals include urging lenders to comply with the best practices we develop locally and nationally.

Our Association just received a copy of the April 29, 2008 memo from Ms. De La Mare-Schaeffer to the City Council. We are disappointed that the author of this report provided such a one-sided view of the small loan industry in Utah. We would have been happy to provide qualitative and methodologically sound economic reviews demonstrating the important niche that payday lending serves in the marketplace.

Further, Ms. De La Mare-Schaeffer's memo does not take into account current state law and the dynamics of lending and borrowing in Utah. We have attached several reference documents for your convenience and review. Of particular importance are the following:

1. Utah law prevents any payday loan to be extended past 12 weeks from the origination date and prohibits any interest past 12 weeks. Thus, no one pays the APR rate that is often discussed in the media.
2. A number of studies indicate that consumers choose payday loans to prevent the imposition of penalties from utilities, other lending institutions, overdue rent, etc.
3. Consumers are choosing to use payday loans because they are less expensive than many other fees, penalties and interest rates imposed by a number of other companies and organizations.
4. Most consumers of payday loans are middle and high middle income families. Borrowers must have a checking account and demonstrate employment before obtaining a loan.
5. Deferred Deposit or payday lending in Utah is well regulated by the Department of Financial Institutions, which conducts audits and reviews of practices and enforces the 12 week interest cap. The Commissioner has the ability to fine companies that deviate from state law, and he does so when warranted.

6. Over one million payday transactions occur in Utah every year, and yet the department receives an average of 24 complaints a year (most of these are for Internet lenders outside of state regulation).

We are also attaching surveys and research conducted by the Federal Reserve Bank of New York, economic experts and others stating the need for a well regulated payday lending industry.

The memo is troublesome because it suggests a new structure of regulation for Deferred Deposit/payday lending in Salt Lake City. Because the state has articulated detailed regulations, any attempt by the city to regulate lending beyond normal municipal functions of zoning and land use will be preempted by state law. Indeed, such an ordinance would demand an immediate response from Deferred Deposit lenders and a number of other financial institutions and organizations across the state. The potential of a patchwork of laws governing financial transactions in Utah, varying among municipalities, would not be tolerated.

We respectfully remind the Council and staff that Utah is the eighth largest center of financial services in the country. Because of this economic engine, thousands of Utahns are employed in high wage jobs with incredible benefits. Salt Lake City has especially benefited from the financial service sector. Signals from the city that it wants to over regulate consumer lending would be counterproductive to the efforts promoting economic development.

The memo errs again when stating that zoning and land use regulations would drive interest rates up. Again, we are frustrated that better research was not utilized. The number of Deferred Deposit lenders in the state and in the city has increased in the last 10 years. Because of this growth, the average finance charge for a loan has dropped by at least 20% in that time through competition. Thus, the status quo (even if frozen by city ordinances) is one of intense competition inside and outside the city. Finance charges will remain competitive for a long time to come.

Our industry leaders and the Association acknowledge that local officials wish to respond to this growth in Deferred Deposit lending. Indeed, we encourage regulations that promote reasonable signage and appearances by lenders. We too are part of the community. We consulted with a number of neighboring cities and Salt Lake County in the development of their legislation. Therefore, we commit to the Council to the following:

1. We will collaborate with the Administration and Council to develop a reasonable zoning ordinance similar to those enacted in other parts of Salt Lake County which still allows the provision of services but reflects concerns by officials on placement of businesses.
2. We will work with the Council Administration on financial literacy programs to assist residents and others wanting to curb debt and household expenses.
- 3 In cooperation with the Department of Financial Institutions, we will assist the City in resolving issues or complaints against lenders that may occur.

Again, we appreciate the hard work of the Council, Administration and staff serving the city.  
We look forward to discussing and resolving these issues with you.

Sincerely,

Richard Rawle  
President, Utah Consumer Lending Association

# **Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions**

**A Guide for Advocacy Groups and Government Officials**

**November, 2007**

Written By:

Kelly Griffith, Deputy Director  
Southwest Center for Economic Integrity  
[kelly@economicintegrity.org](mailto:kelly@economicintegrity.org)

Linda Hilton, Director  
Coalition of Religious Communities  
Crossroads Urban Center - Utah  
[linda@crossroads-u-c.org](mailto:linda@crossroads-u-c.org)

Lynn Drysdale, Staff Attorney  
Jacksonville Area Legal Aid - Florida  
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## Preface

Neighborhoods across America are witnessing the resurgence of predatory small loan operations. In the last fifteen years, payday lenders have exploited deregulated interest rates, won special treatment from state legislatures, or designed products that slip through regulatory loopholes. As a result, payday lending legally operates in about thirty-eight states, costing consumers as much as \$6 billion a year in interest for up to \$40 billion in loans. Payday loans cost cash-strapped borrowers triple digit interest rates, trap borrowers in repeat loans, foster coercive debt collection practices, and endanger bank account ownership for families that live on the financial edge.

Payday lending has become increasingly controversial as the consequences of this defective financial product have become painfully apparent. Payday lenders now outnumber Starbucks and Burger King outlets across the country. Billions of dollars in usurious interest flows out of communities to the national chain lenders. Mapping of payday loan locations by neighborhood characteristics and studies of payday loan use issued by regulators and academics document that these high cost loans disproportionately harm minority families and low to moderate-income borrowers. (For more information, please visit Consumer Federation of America's [www.paydayloaninfo.org](http://www.paydayloaninfo.org))

Local leaders see the impact of payday lending on economic development, requests for financial assistance, and financial distress in communities with high levels of low to moderate income and minority families. While industry lobbying and campaign contributions have thwarted reform in many state legislatures, local officials are taking action to stop payday lenders from exploiting their neighborhoods by enacting restrictive zoning requirements and local ordinances.

Local policymakers interested in preventing predatory payday lending can also lend their support to state-level reform efforts to cap annual interest rates at an all-inclusive 36 percent or repeal payday loan authorization outright. As documented in North Carolina, reinstating small loan caps allows responsible credit to flow, while saving consumers the billions of dollars now lost to predatory payday lenders. Resolutions urging state legislative reform have been adopted by local governments in Virginia and Ohio in 2007. Local officials who are closest to their communities have a powerful role to play in the nationwide campaign to stop predatory payday lending and improve the financial lives of millions of families.

This guide has been developed to assist community consumer advocates and government officials take action to combat payday lenders in local communities and at state legislatures. The guide is divided into the following sections:

- \* Introduction - How payday loans work and their harmful effects on consumers and communities.
- \* How to pass an ordinance for advocates
- \* Assistance for Government Officials - Understanding payday loans, the type of ordinance that might be best for their community, and legal challenges that have been faced in the past. Along with this section are the following appendices:
  - o Appendix 1 - List of Payday Lending Ordinances
  - o Appendix 2 - Legal Challenges to Local Payday Lending Ordinances
  - o Appendix 3 - Ordinance and Resolution Examples

## Introduction

Local governments have a right and a responsibility to protect the economic health, welfare and safety of their communities using whatever tools they have available to them. High cost payday lenders are proliferating in low to moderate income areas of cities and towns in states where this form of lending is authorized. As a result, land use code amendments, commonly known as ordinances, have been enacted to reduce the negative impacts of payday lenders in areas within their jurisdictions that are particularly vulnerable.

In most cases payday lenders present a classic example of an industry that creates local community financial drain. The more money that is exported out of the local economy by excessive fees, the less money there is to spend within the local economy. This creates not only individual financial spirals but community economic spirals as well. The capital that could be circulated within a local economy is lost to outside interests.

Payday loans are small cash advances ranging from \$100 to \$500. The average loan amount is \$325 and the full amount of the loan plus interest is typically due and payable in full on the borrower's next payday. Because the borrowers cannot afford to live until the next payday after repaying their high-cost payday loan, they find they must take out another loan to make ends meet. On average, in America borrowers renew their loan 8 times before they are able to pay the loan in full and ended up paying \$800 on the original \$325 loan. Finance charges are generally calculated as a fee per hundred dollars borrowed. This fee is usually \$15 to \$30 per \$100 borrowed. The average interest rate for a payday loan is between 391% and 782% APR for a two-week loan.

The loan is secured by the borrower's personal check or some form of electronic access to the borrower's bank account. These balloon payment loans can equal 50 to 95% of bi-weekly paychecks of the typical borrower. Loans secured by personal checks or electronic access to the borrower's bank account endanger the banking status of borrowers, facilitate coercive collection tactics, and constitute unfair wage assignments.<sup>1</sup>

Simply put, payday loans are bad for business because the lender is going to get paid first even if the borrower entered into an obligation with other businesses before getting into a payday loan. The payday lender is going to get paid even before basic living expenses such as rent, utilities and child support payments. This is because the payday lender is holding the borrower's checking account hostage, thus having the effect of a "super priority lien."

Local economies rely heavily on viable small businesses. Ordinances to restrain the supply of payday loan outlets are not likely to have an adverse impact on the price of loans to consumers. Competition does not drive down the price of payday loans. An FDIC report found "payday advance stores tend to charge an effective APR near the applicable statutory limit"<sup>2</sup>. SEC annual filings by publicly traded payday lenders show consistently high rates even in seemingly saturated markets. Payday lenders irrespective of the number of storefronts consistently charge the maximum interest rates allowed by state law.

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<sup>1</sup> Jean Ann Fox, Director of Consumer Protection Testimony before the Subcommittee on Domestic Policy of the House Committee on Oversight and Domestic Reform, March 21, 2007

<sup>2</sup> Flannery & Samolyk, Payday Lending: Do the Costs Justify the Price?, FDIC, June 2005, endnote 34 at 9



Tucson, Arizona illustrates the growing interest in restraining high-density payday loan storefronts. The results of a study released by the Southwest Center for Economic Integrity *conservatively* estimated that \$20 million dollars in fees were being extracted annually from residents in Pima County, which includes the City of Tucson. These fees were being extracted from the very neighborhoods where the city and the county were investing approximately \$8 million dollars in federal revitalization grant monies. The number of payday loan storefronts in Tucson and Pima County has increased exponentially. In 2002 there were 78 storefronts in the city and in 2005 there were 130. Further mapping studies initiated by the Southwest Center for Economic Integrity report that 83% of the payday loan storefronts were located within ¼ mile of low-moderate income neighborhoods.<sup>3</sup>

A study by the Center for Responsible Lending found that African-American neighborhoods have three times as many payday lending stores per capita as white neighborhoods. "The findings show that race matters, even when we control for other factors. Variables the payday industry claims are key demographics of its customer base - income, homeownership, poverty, unemployment rate, age, education, share of households with children and gender - do not account for the disparity."<sup>4</sup>

Ace Cash Express, a leading nation-wide lender, reported in an SEC filing that its growth strategy is to open new stores, franchise stores in new and existing markets, opportunistically acquire stores, and introduce new services into its store network. This illustrates intent to saturate specific markets and to maintain existing customers caught in the payday loan trap. These storefronts crowd out local businesses such as non-franchised restaurants and cafes.

Given that we are able to geographically demonstrate the payday lending industry continues to expand its storefronts into minority, low-middle income, economically distressed neighborhoods within cities and counties brings us back to the local land use issue. Local governments restrict all types of businesses and enterprises from liquor stores to adult entertainment facilities. Restricting payday lenders through ordinances can be an effective strategy in curbing economic blight while efforts at the state and federal levels to reign in these abusive lending practices proceed.

### **Clustering by Payday Lenders -**

Payday lenders cluster in low to moderate-income neighborhoods in urban areas, in rural communities and around concentrations of lower wage workers, and military bases. Steve Graves, a geographer at California State University, Northridge, has provided maps for three communities to graphically illustrate the patterns of store distribution as follows:

#### **San Fernando Valley, CA.**

The first map, found on the next page, is of the San Fernando Valley, California which would be Americas' fifth largest city if it were separate from Los Angeles. What you will see from this map is the concentration of payday lenders in the Latino neighborhoods of the East Valley.

Alex Padilla's 20th State Senate district in the San Fernando Valley has 96 payday lenders and 76 banks, an inverted ratio that is quite rare in California. Padilla's district, gerrymandered to insure a heavily Latino constituency, also has a very high per capita density of payday lenders, earning it the distinction of 'worst' in California. Meanwhile, the adjacent, but largely white and middle class 23rd

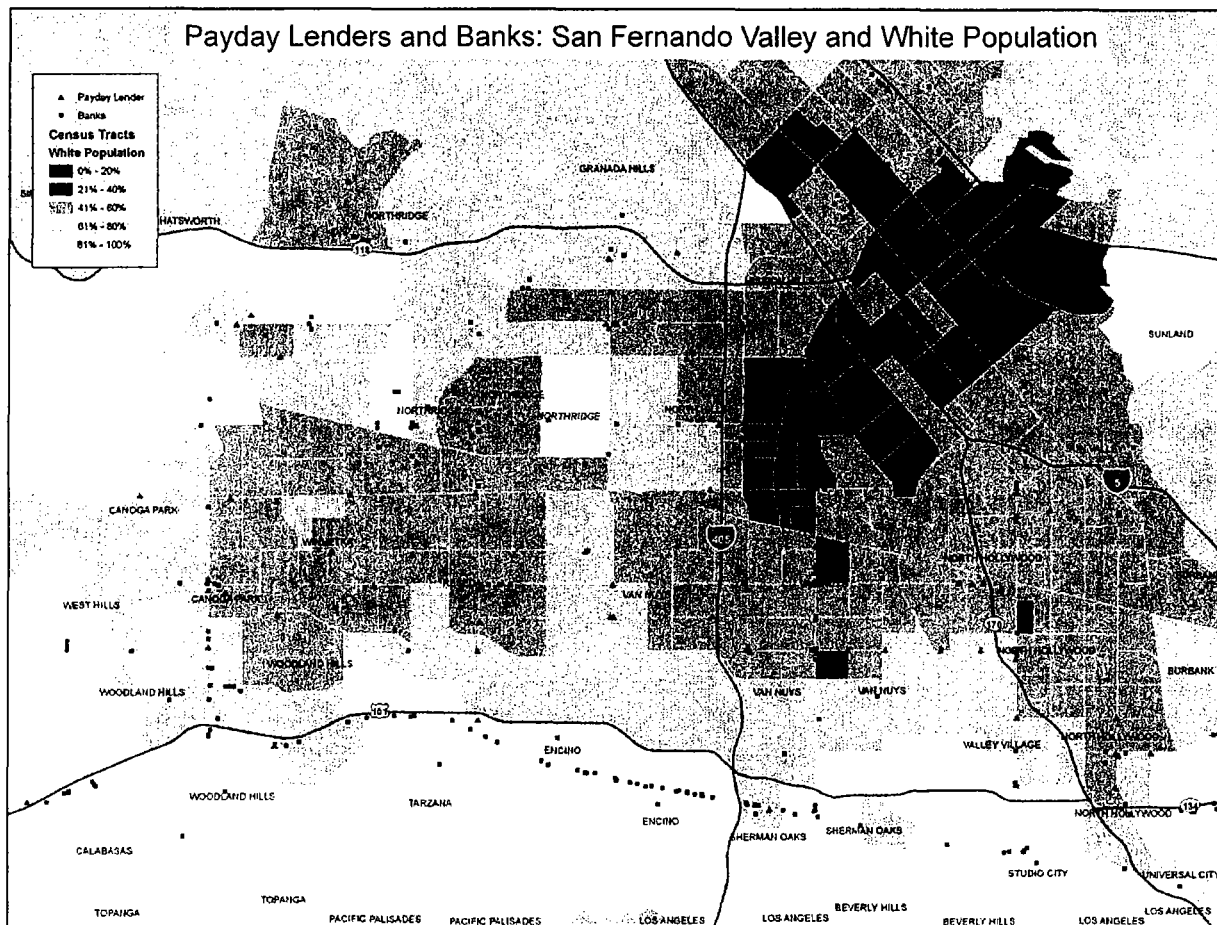
<sup>3</sup> Payday Lending in Pima County, AZ, Southwest Center for Economic Integrity, December 2003

<sup>4</sup> "Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina" Delvin Davis, Keith Ernst, Uriah King, Wei Li, Center for Responsible Lending 2005

class district has 31 payday lenders and 270 banks, making it 38th out of 40 statewide for payday lending. Other nearby, largely white middle class districts have similar figures<sup>5</sup>.

Van Nuys zip code, 91406, also heavily Latino, has eight payday lenders and only one bank. Zip codes in Pacoima, North Hills, North Hollywood, Reseda and Panorama City also have zip codes with badly inverted ratios. Meanwhile, neighboring white neighborhoods have very few payday lenders and many banks. Woodland Hills, in the West Valley, has 27 banks and only one payday lender. Encino has 24 banks and no payday lenders.

It is absolutely clear that Latinos are a favorite target of payday lenders. This business robs capital poor areas of the city of precious resources and is correlated with higher crime.



Chillicothe, OH.

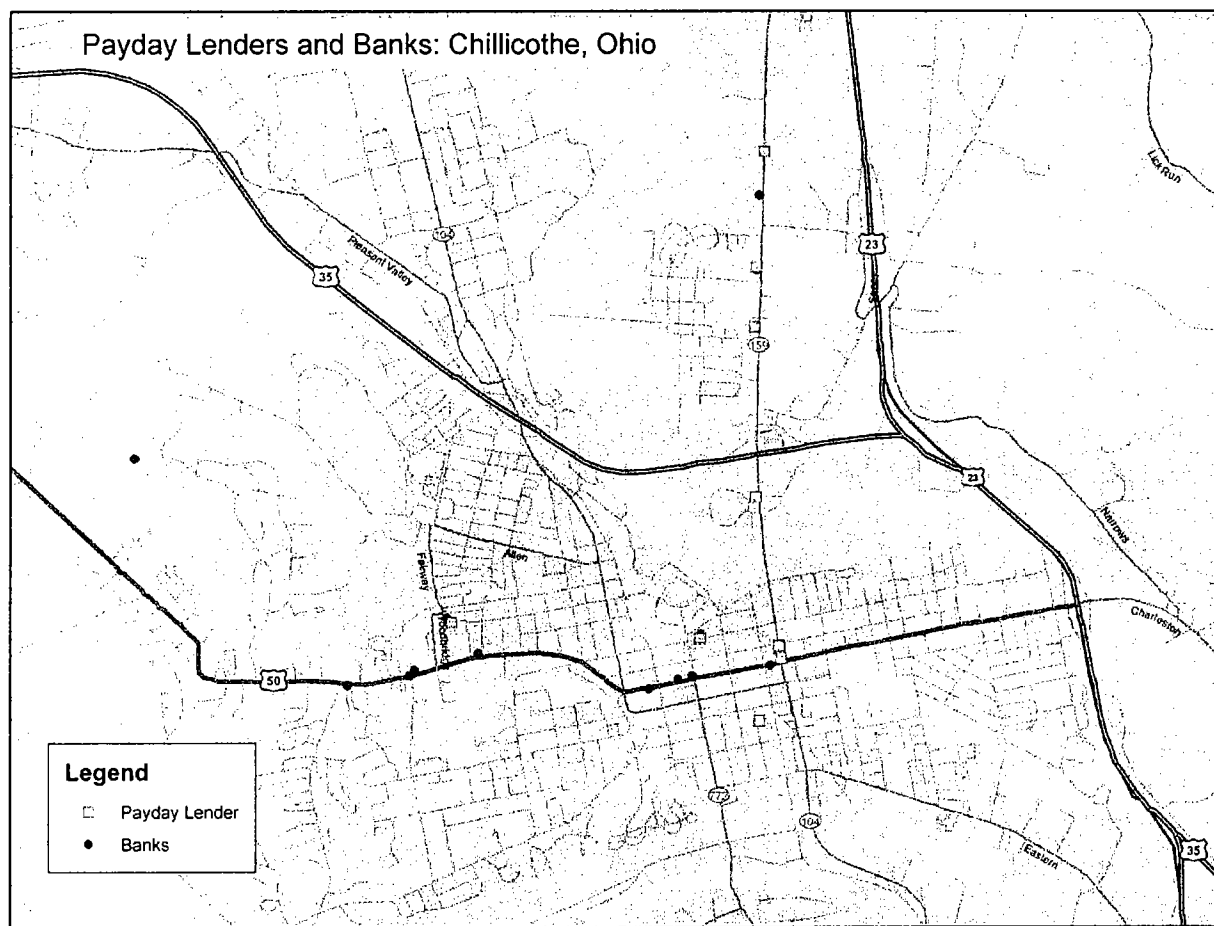
Small town America is also facing a payday lending crisis. While much of the spotlight has focused on the manner in which payday lenders blanket minority neighborhoods, military towns and big cities, small towns and cities across the heartland have also proven to be fertile ground. The map below

<sup>5</sup> Usury Law and the Christian Right: Faith Based Political Power and the Geography of American Payday Loan Regulations, Steven M. Graves and Christopher L. Peterson, not yet released.

shows Chillicothe, Ohio, a small city of roughly 30,000 people in Central Ohio that relies on manufacturing, service sector jobs and a dwindling farm economy.

Surrounding communities, both in the farming districts to the northwest and the Appalachian areas to the southeast use Chillicothe, as a retail service center. Twelve payday lenders now operate in Chillicothe, only two shy of the number of banks there. At the present rate, Chillicothe will have an inverted ratio of payday lenders to banks, of the type typically found now only in the Deep South and ghetto areas of big cities.

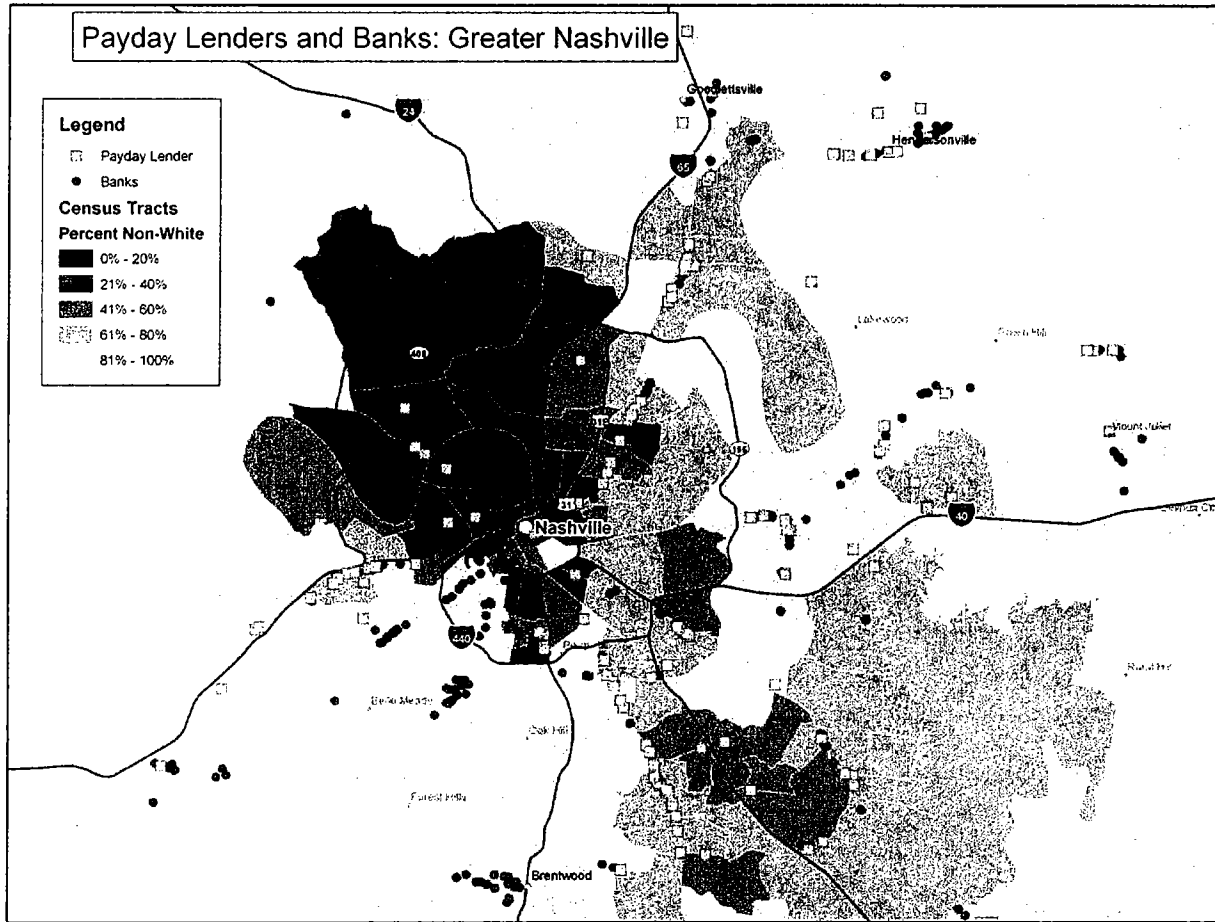
Neighboring Washington Court House already has more payday lenders than banks. Many small towns in Ohio, such as Steubenville, Marietta, Mansfield, Alliance, Heath, Bellefontaine, Middletown and Portsmouth also have a nearly even ratio of banks to payday lenders.



### Nashville, TN.

Nashville, Tennessee may be typical of large cities in the South. Payday lenders in Nashville tend to be most heavily concentrated in and around black neighborhoods and poor neighborhoods, especially where strip malls exist on heavily traveled commercial thoroughfares. However, payday

lenders are almost completely absent from middle class, white neighborhoods in the Southwestern suburbs. In the map below notice the disparity between the number and density of bank branches in the 95%, White, middle class suburb of Brentwood and the more diverse and working class parts of Nashville.



### Jacksonville, FL

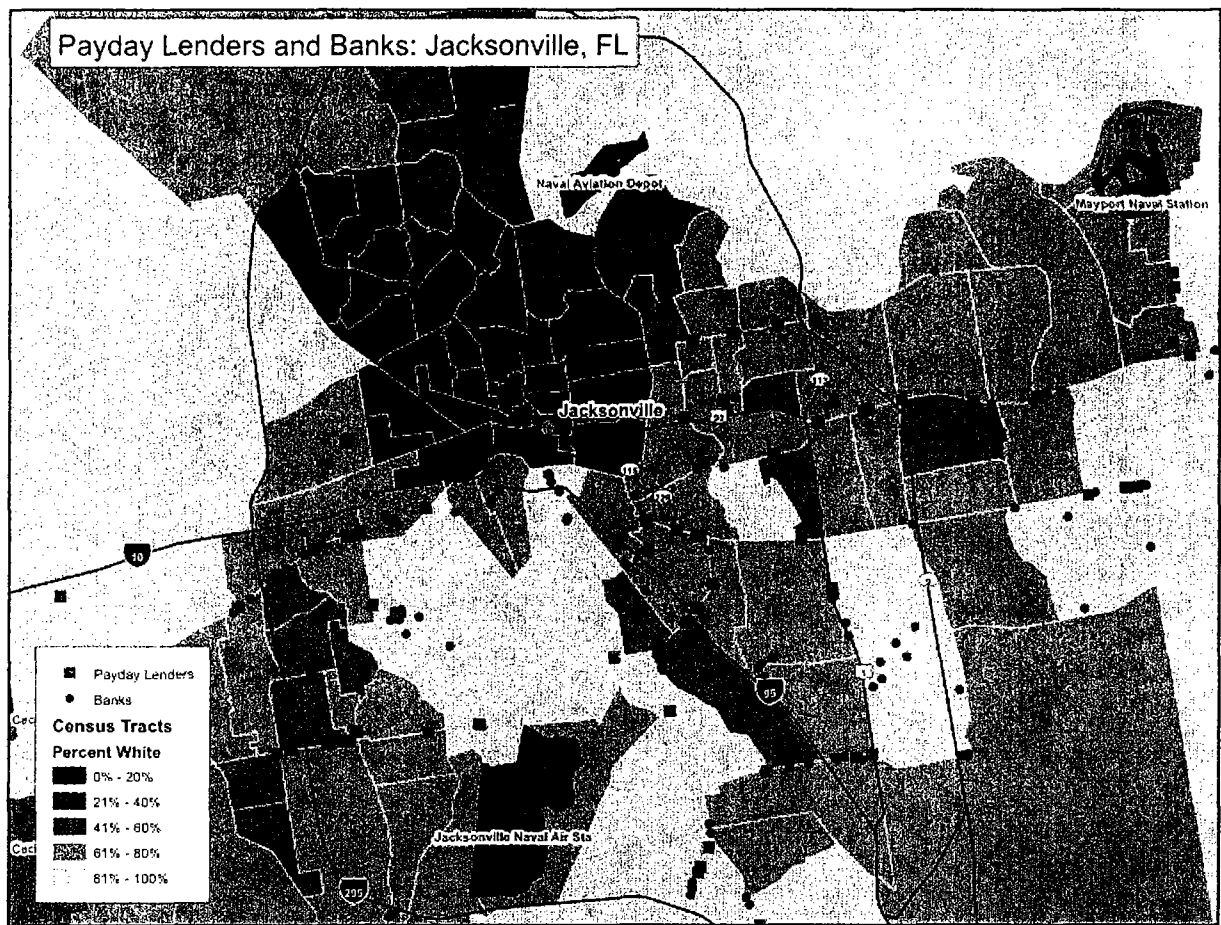
In Florida and other parts of the country, payday lenders are disproportionately located in counties with military installations. This phenomenon is shown by mapping and demographic studies contained in *Predatory Lending and the Military: The Law and Geography of "Payday" Loan in Military Towns*, 66 *Ohio State Law Journal* 653 (2005), Stephen Graves, Ph.D., Associate Professor of Geography, California State University Northridge and Christopher L. Peterson, J.D., Assistant Professor of Law, University of Florida College of Law.

Jacksonville, Duval County, Florida is home to Jacksonville Naval Air Station and Mayport Naval Base and was the home of two recently closed facilities at Whitehouse Field and Cecil Field Naval Air Station. Duval County ranks first in the state for payday lending. Hillsborough County, Florida which is home to MacDill Air Force Base has the second highest payday lender density statewide.

Professors Graves and Peterson found that ZIP code data confirmed payday lenders disproportionately

target sailors and Marines stationed in Jacksonville. "For example, out of 916 ZIP codes statewide, ZIP code 32210, which is adjacent to the Naval Air Station in Jacksonville, ranks first in the state for total number of payday lenders (11) and ranks 15th worst in a composite measurement of payday lender density relative to bank density and population. Moreover, ZIP code 32205, which is a commercial district near the base, has the second worst composite density of payday lenders in the state. Together, these two ZIP codes have approximately 87,000 people; 24 banks and 22 payday lenders; 15.2 more than are statistically justified by the local population."

Similarly they found that airmen stationed at MacDill Air Force Base in Tampa were targeted by payday lenders." About 5 miles up US 92 from MacDill Air Force Base is a group of Tampa ZIP codes containing over 50 payday lenders, 33 more than we would predict given the population in the part of Tampa." See Summary of Florida Results, page 1.



## **How to Pass an Ordinance**

This section has been written to educate advocates on how to get an ordinance presented to local government officials and get it passed. A six step process is proposed. Following this section is information that can be given independently to a government official.

### **Step 1 - Learn all you can about payday lenders in your area.**

Before you can approach an elected official for help in curbing payday lending in your city or town, you will have to do a little legwork and answer a few questions. How many outlets are there within your community limits? Your state licensing agency should be able to answer this question for you. Once you obtain a list from your state licensing agency of all the licensed check cashers/payday lenders in your area (ask for it in city order if possible) you can compare that list to your local government licensing. You will often find that they do not match and local check cashers/payday lenders do not have the required local license. Or you might find that local check cashers/payday lenders have the required local license, but are not licensed with your state licensing agency. This issue will need to be resolved. You may be able to get some outlets closed immediately due to improper licensure.

Obtain a map of your local community by district, neighborhood, or other division of your community. This is usually available on-line on your community's web site. Try to also obtain the population of and income level for each district. This information may be old, dating back to the last census, but may be the best available information in the local community. This will help you understand and show your local government officials the clustering of payday lenders within your community.

In what areas of town are most payday lenders located? The easiest way to get addresses for payday lenders is through your local or state licensing agency. As a double check look in your yellow pages. These businesses often advertise under more than one heading. Try check cashing, loans, payday loans, and financing.

Are outlets in close proximity to one another? Look for strings on major streets in lower income neighborhoods. Pay attention to their proximity to low-income housing, community colleges, or any other place you think lenders may be targeting vulnerable clients.

Find out if adjacent suburbs or nearby towns have passed ordinances relating to payday lending. This may add motivation for you to pass an ordinance, as lenders who cannot open outlets in an adjacent incorporated area will move into your community and open more outlets there.

Is their appearance gaudy or rundown? What types of businesses surround payday lenders? This will help determine if payday lenders are contributing to neighborhood blight.

### **Step 2 - Choose the type of ordinance that fits your community and will help you accomplish your goals.**

A number of local constraints on payday lenders have been used throughout the country. More often, cities have used a combination of constraints in an ordinance to achieve their goals. Types of ordinances includes:

a. Moratorium During Study Period – Suggest passing a moratorium before the word gets out you are considering a payday lending ordinance. Otherwise lenders will rush to open outlets before your doors are “closed”, or before the process becomes more difficult.

b. Permanent Moratorium – Existing outlets can be grandfathered in forever, or phased out over time.

c. Limits on Density and/or Distance – Limits allow only a certain number of outlets per number of residents; grandfather existing outlets and make a waiting list for others. Consider setting the density level three times higher than currently exists in your community. For example, if the current density is 1 store per 3,000 residents, the ordinance should limit density to 1 store per 10,000 residents. Prescribing how far outlets must be from each other can also regulate density; ranges that have been used are 600 ft. to one mile. Consider an ordinance combining both density and distance.

d. Special Zoning – Limit payday lending outlets to special zoning districts or a limited number of existing zoning districts.

e. Special/Conditional Use Permit – Requires special non-conforming use permits for payday lending outlets. Some cities also require public hearings in conjunction with issuance of special permits.

f. Prohibition – Place an immediate moratorium on new outlets and set a deadline for closure of existing outlets.

Other ordinances include restrictions on use of neon signs, hours of operation, size/type of building the outlet must occupy, distance of outlets from schools, military bases, certain types of housing etc. All existing outlets will have to be grandfathered in. The one feature of payday loans that generally cannot be regulated by local ordinance are, interest rate limitations. Examples of ordinance types can be found in Appendix 1.

### **Step 3 - Learn what system your city or town has in place for passing ordinances.**

Call your local planning and zoning offices, listed in the local community’s governmental pages of your phone book. In most communities you will start the process by finding a sponsor such as the mayor or an elected city or county official. Sometimes you must start work with a planning commissioner. Usually citizens cannot present ordinances without an official government sponsor.

Ask your sponsor if an ordinance has been proposed before and defeated. If so, research the ordinance and why it was defeated. That will help determine a successful strategy for getting a future ordinance passed.

Find out if your payday loan ordinance must first be presented to a planning or zoning board in your local jurisdiction. Does this group hold public hearings where people can testify or is the ordinance presented to the committee for their discussion only? How many readings of a proposed ordinance are required and can multiple readings occur at the same meeting?

If the ordinance will go directly before the city council/board of supervisors, ask if a public hearing will be part of the agenda. If so, it is imperative that you gather a variety of advocates, citizens and victims to testify. The payday loan industry will show up in force.

**Step 4 - Talk to your local mayor, neighborhood, city or county elected official.**

See if the representative you have chosen is supportive of the issue. If not, talk to the person who represents a low income neighborhood where a large number of payday loan stores are located.

Talk to your local mayor and determine the best approach to getting an ordinance passed. The mayor knows the political climate of the community and can give you ideas of how to best proceed. In some cases it may be better to work with county government instead of a local governmental body. Call your local city government office to obtain a list of council/board members, their aides and their contact information. Call or email your local representative and ask for a meeting to present your idea for a new city ordinance and draft if available.

Ask if they are aware of the number of payday lenders in town. Present the information you have gathered. Find out if they are sympathetic to your cause. Ask if they would be willing to sponsor an ordinance for the community and present the facts you have gathered.

Ask your sponsor who else in the governing body would be supportive of the ordinance. Talk to those members well in advance of any hearing and give them talking points that will support your position.

**Step 5 - Get a temporary moratorium in place immediately!**

Once you get a sponsor, ask him/her to pass a measure imposing a six-month to two-year moratorium on new payday lenders at the next possible council meeting. Often, when payday lenders learn that you are working on a more restrictive ordinance there is a rush to open outlets before they lose the chance or the application process becomes more difficult.

**Step 6 - Find some advocates and payday loan victims to testify at your planning, zoning or council hearing.**

Presenting a variety of views at a public hearing will give more credence to the issue than testimony from your group alone. Seek out other groups in your community who support your position. Sympathetic groups may include those who work with minority, low income, elderly, military, or refugee populations. Places where you might find payday lending victims include: outside payday lending stores, local legal services office or at an unemployment office, social services office, local credit counseling agency, bankruptcy attorneys, Habitat for Humanity affiliates, the unemployment office, food banks and soup kitchens, churches that provide emergency assistance, and any large membership organizations with low and moderate income members (local chapters of NAACP, AARP, Latino organizations, etc.).

Ask around to see if you can find a builder, developer or investor to speak about how payday loan stores contribute to blight. Also, contact your local law enforcement authorities to see if they have established or could establish a relationship between higher instances of crime near payday loan stores.



## **Step 7 - Be prepared to counter payday loan industry and council member arguments.**

These will probably include:

- **A certain type of business cannot be singled out for special zoning restrictions. That's illegal/unfair/restricting free commerce.** Certain types of business are probably already restricted in the community. Among them may be liquor stores, bars, strip clubs, and adult bookstores.
- **Payday Lenders contribute to the local economy by providing jobs and 410(k) benefits to their employees.** The amount these storefronts add to local economies is miniscule compared to the amount of money they take out of communities (see Financial Quicksand CRL Report for exact dollar amounts being extracted from your state <http://www.responsiblelending.org/issues/payday/>). The vast majority of these storefronts are owned by major corporations whose corporate offices are located out of state.

## **Step 8 – Ask your local officials to support state legislative reforms.**

City Councils, City Commissions or County Boards of Supervisors can adopt resolutions calling on the state legislature to repeal payday loan laws or enact rate caps to protect borrowers from triple-digit interest rates and to enact other consumer protection. Local governments can also include payday loan reform in their legislative agendas that form the basis for lobbying by the unit of local government. This shines a local spotlight on the case for reform, and brings influential local governments to work with reformers at the state legislature.

In Virginia, a number of cities, including Saunton, have adopted local resolutions calling for a 35% annual rate cap for payday loans. Other cities and counties in Virginia are considering similar actions. (See appendix for Saunton resolution.). The Ohio Coalition for Responsible Lending is promoting a similar local government resolution in support of state legislation to cap rates at 36% APR and “other measures to break the cycle of chronic borrowing payday lending creates.” The York County Board of Supervisors in Virginia put a payday loan state bill on the County’s legislative agenda, calling for a state bill to “cap rates at 36% annual interest.”

## **Assistance for Government Officials**

This section will assist government officials to better understand the type of ordinance that might be best for their community and past legal challenges to those ordinances. The following appendices supplement it:

- Appendix 1 - List of Payday Lender Ordinances
- Appendix 2 - Legal Challenges to Local Payday Lender Ordinances
- Appendix 3 – Ordinance and Resolution Examples

### **Step 1 - Learn what you can about payday lenders in your town.**

Identify consumer advocates and nonprofit groups doing economic justice work in your community. Utilize these resources to gain a broader depth of knowledge about the negative social and economic impacts of payday lending.

### **Step 2 - Choose the type of ordinance that fits your community and what you want to accomplish.**

You may want to have staff review similar ordinances that have passed in other communities around the country. Planning staff will have a good idea of what types of ordinances your charter allows and what might work best in your community. Review options for having the ordinance drafted.

### **Step 3 - Have your city or county attorney review the ordinance.**

You may want to have legal staff contact Lynn Drysdale at [Lynn.Drysdale@jaxlegalaid.org](mailto:Lynn.Drysdale@jaxlegalaid.org) for a consultation. There is always the potential for legal challenges with any type of ordinance. A number of relevant cases are reviewed in Appendix 2.

### **Step 4 – Prepare the document and prepare for the vote**

Revise the ordinance if necessary. Contact local advocates to arrange for their presence at any public hearing held before the final vote. Ask them to bring victims, advocates, media, and government officials from other communities near yours who have successfully passed similar ordinances.

### **Step 5 - What else can cities do?**

City or county governing bodies can adopt resolutions calling on the state legislature to close the payday lending loopholes by having all small lenders meet the same small loan usury cap, usually about 36%, repeal laws that allow payday lending, or to enact rate caps to protect borrowers from triple-digit interest rate caps or other consumer protection. Local governments can also include payday lending reform in their legislative agendas which form the basis for lobbying by the unit of local government. This shines a local spotlight on the case for reform, brings influential local government bodies into the fight, and authorizes lobbyists for local governments to work with reformers at the state legislature.

Several cities in Virginia are passing formal resolutions asking that the state General Assembly cap payday interest rates at 36% APR. The first city was Staunton, Virginia followed by Harrisonburg, Shenandoah, Blacksburg, Lexington, and Winchester Virginia. Rate cap resolutions are a great way to put pressure on your state legislature. They focus on the rate cap solution, the only proven way to rein

in this industry. The vice-mayor of Harrisonburg was quoted as saying, "Four times prime rate sounds like a good cap to me. I think that covers a lot of risk."

### **Summary -**

Double digit growth of usurious payday lending outlets continues to be a problem across America. Passing local ordinances to restrict growth and activities of payday lenders in your community is a step forward in addressing this problem.

Ideally state legislatures should pass effective laws to protect consumers from triple digit loans that quickly become debt traps, but that is not the case in many states. Local governments are left to address the problem of payday lenders on their own. West Valley City, Utah, a large suburb of Salt Lake City, was one of the pioneers in using local ordinances to control growth and density. Payday lenders who wish to do business in the city are now placed on a waiting list for years. Since 1996, the year their ordinance was passed, no new payday loan stores have been allowed to open. Growth has bumped lenders to adjacent cities that are now passing similar ordinances.

Local attention to the issue of payday lending has many benefits. Media coverage of council hearings regarding zoning ordinances helps publicize the problem to city residents. Coverage also educates citizens and local community leaders on the pitfalls of payday loans and the problems associated with having numerous, often gaudy, outlets through out their town. Above all, coverage starts to build critical mass for a united front against payday lending in your state. This in turn pressures state lawmakers to pass more restrictive laws that provide uniformity across your state. Oregon is a shining example of this success.

Payday lending is now prohibited in 13 states and the District of Columbia. Until all other state legislatures join this movement it is important to keep the issue of usury and usurious loans in the news. Passing a local community ordinance to restrict, prohibit, or otherwise regulate payday lenders in your community keeps the dangers of payday lending in the forefront and helps build momentum for other steps.

## APPENDIX 1 - List of Payday Lender Ordinances

JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Peoria, AZ	Density	1,000 feet between outlets	
Phoenix, AZ	Density	Proposed zoning rule first considered at Planning Commission meeting on 11/9/05: check-cashing stores must be at least 1,000 ft. apart	Chapter 2, Rules of construction and definition, section 201
Pima County, AZ	Permit/Density	New payday lenders not allowed to locate within 1,320 ft (one quarter mile) of existing operations or 500 ft. of homes or residentially zoned property. Also requires a special use permit.	
Tempe, AZ	Density	One quarter mile between outlets	
Tucson, AZ	Density	One mile of separation between payday lending stores and 500 feet between payday lending stores and neighborhoods	Ordinance no. 10252
South Tucson, AZ	Zoning/Density	Limited to three business zones. Cannot open within 1,000 feet of existing operations or within 500 feet of houses.	City Council Ordinance No:05-03 amending Chap. 24, Article I SEC. 24-1, Article IV
North Little Rock, AR	Moratorium	24 month moratorium on establishment of new check cashing businesses beginning 9/10/07	Zoning ordinance #7985
Montebello City, CA	Moratorium	Six month moratorium beginning 4/25/07	
Oceanside, CA	Permit	Requires special operating permit, payday lenders classified as adult businesses, not permitted within 1,000 feet of similar businesses or within 500 feet of home, church, park or school.	
Oakland, CA	Permit	Special Use Permit, must not be closer than 1,000 ft. from another check casher/payday lender; must be at least 500 ft. away from: -Community education civic activities (schools) -State or federally chartered banks, savings associations, credit unions, or industrial loan companies -Community assembly civic activities (churches) or -Liquor stores (excluding full service restaurants or liquor stores with 25 or more full time employees).	Oakland Planning Code 17.102.430
Sacramento, CA	Prohibition	Not allowed in an area zoned for commercial mixed- use development.	17.130 special districts
Santa Monica, CA	Permit	Conditional use permit.	Intern survey
South Gate, CA	Conditional use	Limits hours of operation from 7 a.m. to 10 p.m. Minimum security requirements include burglar alarm, operating public address system, and full time security guard who must be approved by police chief.	

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Washington, DC	Interest rate restriction	9/07 – repealed ordinance that exempted consumer loans from interest rate cap Payday lenders can now charge no more than 24% APR on payday loans. Ordinance will go into effect in early 2008.	Washington, DC
Ft. Lauderdale, FL Pembroke Pines, FL	Permit	City Zoning Code does not prohibit or permit check cashing services – decision on a case-by-case basis. (Requires public hearing?) Special use permits.	Notes*
Belleville, IL	Density	City limits number of outlets in city to three.	
Bellwood, IL	Licensing	Requires special licensing process.	City Ordinance 117.999
Chicago, IL	Zoning Change	Change zone classification from a service district to special use, which would require public hearing.	Notes*
Glendale Heights, IL	Permit	Special Use Permits	Title 4, chapter 1
Blue Springs, KS	Density and Permit	Requires hearing and conditional use permit, 200 ft. between the business and residential lot, 1000 ft. from a school or park facility, 1000 ft. from another loan service, pawn shop or precious metal or gem dealer, 1000 for from city limit, conditional use permits limited to 1/4500 residents	
DeSoto, KS	Prohibition	Prohibits payday lenders from the city.	
Kansas City, KS	Land Use	Prohibits payday lending or check cashing outlets on parkways or boulevards	
Shawnee, KS	Moratorium and Density	Bans new cash-advance businesses on the eastern side of city. No new cash-advance outlets within on e mile of another cash-advance business	
Superior, MN	Permit	Special Use Permits 2,500 ft. required between payday lenders.	
Arnold, MO	Permit	Conditional Use Permit for “small loan business”. Limits business to certain commercial areas.	
Berkeley, MO	Licensing	Creates a classification for payday institutions different from” financial institutions”.	Notes*
Fairview Heights, MO	Density	City limits number of payday lenders to two.	
Gladstone, MO	Density	One mile between outlets, 200 ft. from residential area, outlet must be in a multi-tenant commercial building housing at least four separate entities	

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
City of North Kansas City, MO	Permit	Conditional use permit. Restricts payday lenders and check cashers from doing business in certain zones. Restricts amount of signage allowed in windows.	
Oak Grove, MO	Permit	Passed – density of 1 store per 5000 residents. Proposed – special use permits with certain restrictions	
St. John, MO	Licensing	Creates a separate license category for payday lending.	Notes*
St Joseph, MO	Density	Per capita limit of one store per 15,000 residents	
St. Louis County, MO	Permit	Conditional Use Permit for each location. Requires public hearing for each request.	
Clark County, NV	Permit/ Density	Same as for city of Las Vegas.	
Henderson, NV	Permit	Essentially banned in Downtown Redevelopment Area. In 2004, began requiring a Conditional Use Permit for all new payday loan centers and declared several zoning categories off limits to them. New rules considered: separation requirements from schools, residential areas, and other check-cashing businesses.	
Las Vegas, NV	Permit/ Density	Special use permit requirement. May not be within 200 ft. of residences. Must be 1,000 ft. from other financial institutions, auto title loan businesses, and pawn shops. Restricted hours.	Title 19.06
North Las Vegas, NV	Moratorium	A 6 mo. moratorium on new payday lenders started in July 05. Considering restrictions similar to Las Vegas.	
Lakemore, OH	Density/ permit	Ordinance defines number of terms and limits location of payday loan business. They cannot be within 750 ft. of any other payday loan or similar business.	Ordinance No 1365-2006
Beaverton, OR	Loan restriction	Same as Portland, OR	Title 7, chap. 7.12
Bend, OR	Loan restriction	Same as Portland, OR	
Eugene, OR	Loan restriction	Same as Portland, OR	Council ordinance #20372, code sec. 3.550-3.560
Gresham, OR	Loan restriction	Same as Portland, OR	Chap 9, Art. 9.90
Oregon City, OR	Loan restriction	Same as Portland, OR	Ord. 06-1005
Portland, OR	Loan restrictions	Lenders may not renew loan unless borrower has paid at least 25% of principal prior to renewal. Borrower may cancel loan within 24 hours with certain restrictions. After max number of rollovers, lender shall allow borrower to convert to payment plan prior to default. Passage of 2007 Oregon state law capping rates at 36% had no effect on local ordinances.	Chapter 7.26
Troutdale, OR	Loan restriction	Same as Portland, OR	Chap 5.06.050-070
Woodburn, OR	Loan restriction	Same as Portland, OR	

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Pittsburg, PA	Density	500 ft. from residence, 1000 ft. from a similar business	Notes*
Columbia, SC	Permit	Special use permit required	Notes*
Easley, SC	Temporary suspension	Voted to suspend the issuance of business licenses to any new payday loan, cash advance, title loan, pawn broker, bail bondsman or similar types of businesses until Dec. 11, 2007	
American Fork, UT	Density	One store per 10,000 residents	
Draper, UT	Zoning/ permit	Prohibits payday lenders from locating in any of 10 of 11 commercial zones. Location in the one zone where payday lenders are allowed requires a conditional use permit.	Chapter 9-11, commercial zoning
Midvale, UT	Density	One outlet per 10,000 residents	5.20.210
Orem, UT	Density	One outlet per 10,000 residents, minimum ½ mile between outlets	Ord. 0-07-0037 Sec. 22-14-21(A)
Salt Lake County (unincorporated)	Moratorium	Six month moratorium while final ordinance is being drafted	
Sandy, UT	Density	Minimum 1000 feet between outlets; one outlet per 10,000 residents.	
South Salt Lake City, UT	Density	Restricts businesses to 600 ft. from the nearest residential zone (some exceptions). Restricts the number of facilities to 1 for every 5,000 people. Prevents all check cashing establishments from certain districts of city.	5.48.240 5.48.200
South Jordan, UT	Density	Outlets must be a minimum of one mile apart.	
Taylorsville, UT	Density	Only one outlet per 10,000 residents.	
West Jordan, UT	Density	Minimum 1000 feet between outlets, One outlet per 10,000 residents.	Chapter 17
West Valley City, UT	Density	600 ft. between payday lending outlets. One outlet per 10,000 residents.	City Code Section 7-1-103, Subsection 30
Chesterfield, VA	Conditional Use	Conditional use process that allows a site-specific review by the Board of Supervisors.	
Chesterfield County, VA	Zoning	Limited to certain commercial zones	
Norfolk, VA	Permit	Payday loan and/or auto title loan establishments must receive permission from the city council in the form of "special exception use" permits	Chapter 6 - 4
Henrico Co (Richmond, VA)	Moratorium	Established "sunset" period to phase out locations	
Langley, VA	Zoning	Outlets allowed only in an enclosed mall with C3 commercial zoning.	
Burlington, VT	Prohibition	Zoning does not include check cashing.	Notes*

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Green Bay, WI	Density	Prevents stores from opening within 5000 feet of each other	Sec. 13-1606(v), Code of Ordinances
Madison, WI	Density	Prevents stores from opening within 5,000 feet of each other	City Code 28.03-28.08
Milwaukee, WI	Permit	Special use permits, 1,500 ft. from similar business; 150 ft. from single or two-family zoned property.	Milwaukee Code of Ordinances, Sec. 295-311-2-h
Racine, WI	Zoning/ permit	Makes payday loan stores a conditional use, and sets distance requirement of 2500 feet between stores and 250 feet from residential districts.	Sec. 114-468(28), Code of Ordinances
Superior, WI	Zoning/density	2,500 ft. separation; commercial highway locations only.	
Wauwatosa, WI	Moratorium	Within 300 feet of residentially zoned parcels and 1500 feet. of similar businesses	Sec. 24.46.100, Code of Ordinances

As of November 2007 draft ordinances are currently being considered by:

- Glendale, AZ
- Marana, AZ
- Oceanside, CA
- San Francisco, CA
- Fort Mill, SC
- Salt Lake City, UT

If you have additional information on these or other local payday loan ordinances, please email [linda@crossroads-u-c.org](mailto:linda@crossroads-u-c.org).



## **APPENDIX 2 – Legal Challenges to Local Payday Lender Ordinances**

Often advocates find that local governments are much more approachable and willing to enact consumer protection payday loan legislation than state and federal legislators. Potential reasons for this phenomenon are that often local residents are unable to participate in statewide or national legislative actions in distant locations logistically in accessible to most citizens. Local legislation is also more widely covered by local press, putting civic leader under much more of a microscope than state legislators.

The main challenges to local legislation tend to be based upon preemption arguments (express, implied and/or conflict). Samples of specific preemption arguments involve arbitration clauses or price controls. Challenges can also be based upon procedural irregularities. Advocates can look to home rule provisions for support of local legislation and can fashion legislation that addresses gaps in state and federal legislation. Local governments generally have more leeway in enacting local land use and zoning legislation. A discussion of arguments used to defeat and support local ordinances and a discussion of home rule, land use and zoning principles follow. Lastly, a sample of court decisions addressing challenges to local ordinances regarding credit products is included below.

### **Preemption Arguments**

Lenders argue that local ordinances are “preempted” from enacting ordinances by pre-existing state or federal law. There are three types of preemption: 1) express or complete preemption, 2) field or implied preemption and, 3) conflict preemption. Express preemption is when the federal or state law explicitly recites intent to preempt state or local law. Field preemption applies when federal or state laws are so pervasive, that there is no room left for states or local governments to supplement them. Conflict preemption occurs when it is impossible to comply with both federal or state law and the local law, for example when a local law prohibits what a federal or state law allows.

### **Express or Complete Preemption**

Express preemption is often found in language contained in the “policy and legislative intent” section of the state or federal law. This language clearly prohibits enactment of ordinances or other laws to the contrary or gives exclusive jurisdiction in all matters addressed by the law to the state or federal government. The legislature usually claims the need for uniformity in the subject matter throughout the state or country.

An example of a price control express preemption is found in Florida Statutes. §125.0103:

Except as hereinafter provided, no county, municipality, or other entity of local government shall adopt or maintain in effect an ordinance or a rule, which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency unless specifically provided by general law.

### **Implied or Field Preemption**

If there is no express preemption, there may be field or implied preemption. Implied preemption occurs when preemption is not specifically stated but the state or federal legislative scheme is so pervasive that it is deemed to “occupy the entire field of potential regulation” creating a danger of conflict between local and state laws.

Implied preemption is actually a decision by the courts to find preemption when there is no explicit legislative directive. The courts are understandably reluctant to “find” a state or federal government intent to prevent a local elected governing body from exercising its local or “home rule” powers. (*See Home Rule below*). If a state or federal legislative body can easily create express preemption by including clear language in a statute, there is little justification for the courts to interject such an intent into a statute. In the absence of express preemption, normally a court will only find implied preemption if there is a direct conflict between the state or federal law and a local law or they can reasonably find the legislative scheme is so pervasive that there is little or no room left for enacting additional laws covering the area. The court usually finds strong public policy reasons for finding such an area to be preempted by federal or state law. With implied preemption courts tend to limit the preemption to the specific area where the federal or state legislature has expressed a will to be the sole regulator.

### **Conflict Preemption**

Even if there is no express or implied preemption, portions of a local ordinance that expressly conflict with state or federal law are unenforceable. It is well established that no local ordinance may specifically conflict with a federal or state law. A conflict exists when a local ordinance directly prohibits what the state has expressly licensed, authorized or required, or authorizes what the state has expressly prohibited. It is not necessarily a conflict when an ordinance imposes requirements not provided by state or federal laws. Instead, an ordinance conflicts with a federal or state law when the ordinance and the state or federal law cannot coexist. Put another way, legislative provisions conflict when in order to comply with one law you must violate another.

An ordinance is not superseded or preempted by a federal or state law where their subjects are at most only incidentally related. The fact that an ordinance covers a topic that relates to, but is not specifically covered by a subsequently enacted federal or state law dealing with the same topic, does not make the ordinance in conflict with, or repealed by, the state or federal law. Where the statute is silent, the ordinance may speak. So long as the ordinance is within the scope of municipal power and does not exceed or is not inconsistent with the new state or federal law, there is no conflict which would render the ordinance void. Courts are reluctant to find conflict unless there is a direct conflict between local legislation and state or federal law and generally indulge every reasonable presumption in favor of an ordinance's constitutionality.

Generally speaking, a properly enacted ordinance will be presumed to be valid until the contrary is shown, and a party who seeks to overthrow such an ordinance has the burden of establishing its invalidity.

## **General Strategies for Avoiding Successful Preemption Challenges**

Draft your ordinance to complement preexisting state or federal law. A local ordinance has a greater chance of avoiding a successful conflict preemption challenge if the ordinance references the potentially conflicting state or federal law as its guideline. Local authorities should determine what the state or federal law covers and how it operates so they can determine how to draft an ordinance in terms meant to “complement” the state or federal law in the area they regulate.

Draft your ordinance to fit within the exception provided to state or federal law. State and federal laws may contain gaps in coverage in the subject matter the local government seeks to regulate. For example, a state or federal law may reserve certain subjects for local regulation; draft the ordinance to fit within those subjects. Even if the state or federal law does not specifically reserve subjects for local regulation, attempt to draft the ordinance so it falls outside of the category of state or federal laws that are expressly preempted. If the ordinance deals with an area traditionally left to local governments, such as zoning, the courts may be less inclined to find preemption.

Use a statement of legislative purpose. If a state or federal law expressly preempts local ordinances enacted for a specific purpose, include a statement of legislative purpose in an ordinance to show the ordinance is enacted for a different purpose.

## **Home Rule**

Home Rule is the principle of local self-government arising from a state constitutional grant of a charter or right to draft a charter that creates a structure and powers for city or county governments. The specific character of home rule varies by state. Some home rule states allow a “structural home rule” permitting communities to incorporate and create local governments. Another form of home rule is often called “functional home rule” where city or county governments can exercise power in such areas as public works, social services, and local economic development.

Advocates of the expansion of home rule claim that local control makes government more responsive, allows for flexible and innovative approaches to local problems, and relieves state legislatures of addressing local issues. Detractors claim few issues are strictly local in nature, especially as the populations of central cities decline and metropolitan areas become more important. They argue greater local autonomy may thwart cooperation among neighboring local governments and create disputes over policies involving overlapping federal, state and local jurisdictions.

An example of home rule is found in the Jacksonville, Duval County, Florida Municipal Charter. The consolidated county and city government:

- (a) Shall have and may exercise any and all powers which counties and municipalities are or may hereafter be authorized or required to exercise under the Constitution and the general laws of the State of Florida, including, but not limited to, all powers of local self-government and home rule not inconsistent with general law conferred upon counties operating under county charters by s. 1(g) of Article VIII of the State Constitution; conferred upon municipalities by s. 2(b) of Article VIII of the State Constitution;

conferred upon consolidated governments of counties and municipalities by section 3 of Article VIII of the State Constitution; conferred upon counties by ss. 125.85 and 125.86, Florida Statutes; and conferred upon municipalities by ss. 166.021, 166.031, and 166.042, Florida Statutes; all as fully and completely as though the powers were specifically enumerated herein.

(b) With respect to Duval County, except as expressly prohibited by the Constitution or general laws of the State of Florida may enact or adopt any legislation concerning any subject matter upon which the Legislature of Florida might act; may enact or adopt any legislation that the council deems necessary and proper for the good government of the county or necessary for the health, safety, and welfare of the people; may exercise all governmental, corporate, and proprietary powers to enable the City of Jacksonville to conduct county and municipal functions, render county and municipal services and exercise all other powers of local self-government; all as authorized by the constitutional provisions mentioned in subsection (a) and by ss. 125.86(2), (7), and (8) and 166.021(1) and (3), Florida Statutes

### **Regulating by Land Use and Location Restrictions**

Local governments have historically had jurisdiction to regulate local land use and planning ordinances couched in zoning terms. Many states have adopted comprehensive land use plans that act as a guide for cities. Often there are state and federal limitations regarding land use in special geographic locations such as coastal areas. Many cities have successfully enacted land use ordinances that limit the saturation of title and payday lenders and excluded them from certain areas of town unless allowed after a request for an exception or “variance” to local zoning laws or unless allowed by request for a “special use permit.”

A variance is a device that permits a property owner to do something on the land which is prohibited by zoning laws. Variances are awarded to avoid practical difficulties or unnecessary hardships in individual cases. Generally speaking the difficulties or hardships must be a function of the nature of the land and not personal issues.

A special use permit allows the property owner to put property to a use expressly permitted by the law after obtaining a special permit. Special uses are specifically permitted under certain circumstances specified by the local government in the zoning law. This amounts to a finding that the use permitted is harmonious with neighborhood character and ought to be allowed. Special use permits are referred to by a variety of terms in local practice and court decisions. These terms include special exception use, special permit, special exception permit, conditional use permits, and special exceptions.

An example of a special use is the use of a home office or home occupation in an area zoned for single-family use. An ordinance may permit single-family homes without seeking a special use permit in a residential district and allow a home occupation upon the successful request for a special use permit. This means the local government body has concluded this special use is harmonious with the residential

district, but that conditions may need to be imposed on the use to ensure that the size, layout, parking, and lighting do not adversely affect the residential neighborhood.

Generally local government staff will review the application for a variance, permit for special use or use by exception and make a recommendation to a local board which ultimately makes the decision or makes a recommendation to the city's governing body. Decisions granting or denying an application are "quasi-judicial" in nature. This means the local governmental authorities are required to explain the basis for their actions. The explanation must show the decision was not arbitrary and was based upon factors set out in the ordinances as the bases for granting or denying an application. The decision must also be based upon facts presented to the authority at a public hearing and on the record. If these decisions are reviewed by the court, the court must determine if the decision is supported by "substantial evidence."

### **Specific Judicial Challenges and Legislative Actions against Local Legislation**

#### **Milwaukee, Wisconsin Title and Payday Loan Ordinance**

The court in *Title Lenders, Inc. d/b/a USA Payday Loans v. Board of Zoning Appeals*, Milwaukee County, Circuit Court, Case No. 04-000115, July 29, 2004. reviewed the City of Milwaukee Board of Zoning's decision to deny Loan Max's application to open a title loan business in an area where other title and payday loan businesses were already located. The Alderman for that area opposed the request based not upon inconsistencies with the local land use plan but because he objected to the interest rates charged. The City zoning board considered: 1) protection of public health, safety and welfare, 2) protection of property, 3) traffic and pedestrian safety and, 4) consistency with the comprehensive plan.

When Loan Max sought judicial review of the Board's decision, the court was bound by these standards: 1) whether the Board kept within its jurisdiction, 2) whether it proceeded on a correct theory of law, 3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment and, 4) whether the Board might reasonably make the order or determination in question, based on the evidence.

The Board denied the special use permit because the payday loan entity: 1) attracts clientele that are in financial trouble or unable to manage money; 2) may attract robbers and other criminals to the area and, 3) did not comport with the efforts of the Department of City Development to develop the area. The Board was also concerned that there was another payday loan agency in the immediate area. The Court upheld the denial of the special use permit.

#### **Madison, Wisconsin Payday Loan Ordinance**

The Payday Loan Store filed an equal protection and due process violation claim against Madison, Wisconsin as a result of its ordinance prohibiting payday lenders from operating between the hours of 9:00 p.m. and 6:00 a.m. The District Court in *The Payday Loan Store of Wisconsin, Inc. d/b/a Madison's Cash Express v. City of Madison*, 333 F.Supp.2d 800 (W.D.Wis. 2004) upheld the ordinance finding the city was attempting to regulate location and hours of operation and not the financial terms or conditions of the loans and, therefore, was acting within its authority as a local government to regulate the "good order of the city and for the health, safety and welfare of the public."

### Philadelphia, Pennsylvania Predatory Lending Ordinance

In June, 2001, Pennsylvania Governor Tom Ridge signed a state law explicitly overriding the Philadelphia Predatory Lending Ordinance. The state law specifically prohibits local governments from regulating sub-prime lending practices in Pennsylvania. The rationale was to guarantee lenders would face a uniform set of regulations throughout the state.

The ordinance regulated mortgage lending practices on loans of less than \$100,000 that otherwise are covered under the federal Home Ownership and Equity Protection Act. The new state law claimed a well-developed sub-prime market was important and provided benefits and placed some restrictions on these loans. The state law provided protections already contained in HOEPA and did not require mandatory pre-loan counseling required by the ordinance when consumers obtained sub-prime loans.

### Oakland, California Predatory Lending Ordinance

The California Constitution has a home rule provision: Article XI, Section 7 “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinance regulation not in conflict with general law.” Charter cities such as Oakland, California may adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a “municipal affair” rather than one of “statewide concern.” Cal.Const., Art. XI, §5, Oak.City Charter, §106. Pursuant to California law “A conflict exists if the ordinance duplicates or is coextensive with a state law, is contradictory or inimical to the state law, or enters an area either expressly or impliedly fully occupied by general law.

The Court struck down Oakland’s predatory lending ordinance because even though the state Legislature did not expressly preempt the field of mortgage lending, the Court found field preemption by implication because the state law “fully occupied the field” of regulation of predatory practices in home mortgage lending. The Court found local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute.

Factors California Courts consider as indicia of legislative intent to “fully occupy a field of regulation” are: 1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern, 2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action or, 3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. *American Financial Services Association v. City of Oakland, et al.*, 34 Cal.4th 1239 (2005)

### Jacksonville, Florida Payday Loan Ordinance

The City of Jacksonville enacted a payday loan ordinance reducing the interest rate to 36% per annum and adding consumer protections not provided by the Florida Deferred Presentment Act. The ordinance also included distance requirements between payday lenders and area military bases. All sections, except those relating to zoning, were overturned by the Court in a summary final judgment. The Court found the interest rate sections of the ordinance created unlawful price controls which conflicted with a state law that expressly preempted local price control legislation. The Court also found

express preemption by applying the Florida mortgage predatory lending law to payday loan transactions. The Court found the mortgage law prohibited enactment or enforcement of local laws regulating all financial entities licensed by the Florida Office of Financial Regulation. The Court also found that the Florida Deferred Presentment Act implicitly preempted the field of payday loan legislation and, if not, there was a direct conflict between the local ordinance and state payday lending law because the local ordinance reduced the rates lenders were allowed to charge by state law.

The Court also found the arbitration provisions were preempted by the Federal Arbitration Act (FAA), rendering arbitration agreements valid and enforceable, finding the FAA's breadth is consistent with Congress's liberal federal policy favoring agreements to arbitrate. Under the FAA, which applies in both state and federal courts, states may not "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."

The Court disregarded the City's argument that payday lending involves relatively small loans and does not encompass loans that involve interstate commerce, finding that Courts, not legislators, determine when a transaction involves interstate commerce. The Court found a legislative body may not simply declare that certain categories of transactions do not involve interstate commerce. *Advance America, Cash Advance Centers of Florida, Inc. v. The Consolidated City of Jacksonville, Florida*, In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 16-2005-CA-7025-MA, summary judgment order entered June 1, 2005. After the summary judgment order was entered the City repealed the entire ordinance including the zoning provisions which were upheld by the Court.

#### St. Ann, Missouri Ordinance Prohibiting Payday Lenders Within the City Limits

Sunshine Enterprises was licensed by the state to operate a business providing unsecured, under-\$500 loans, but was denied a merchant's license by the City of St. Ann pursuant to a city ordinance prohibiting the operation of short-term loan establishments within the city. The ordinance defined a short-term loan establishment as a business engaged in providing short-term loans to the public as a primary or substantial element of its operations and prohibited their operations in all zoning districts of the City of St. Ann. Sunshine challenged the city's ordinance as being a complete prohibition, rather than a regulation, and therefore in conflict with state law. The Court held cities may not enact ordinances that conflict state statutes or regulations. The Court found while ordinances that are regulatory are allowed, those that prohibit activities permitted by state law are in conflict and invalid. Because the state law allowed the operation of lending businesses and the Court determined that Sunshine's primary business was lending, Sunshine was in compliance with state law and its operations could not be prohibited by the city ordinance. The Court held that it was the city's burden to show that the ordinance did not conflict with state law, and the City of St. Ann was unable to do so. *State of Missouri, ex rel. v. Sunshine Enterprises of Missouri, Inc. d/b/a Sunshine Title and Check Advance*, Case Number: SC83502, Appeal from the Circuit Court of St. Louis County, January 8, 2002.

#### St. Louis, Missouri Title Loan Ordinance

Missouri Title Loans appealed the denial of a permit to operate a title lending business within an area of St. Louis zoned for limited commercial purposes. The ordinance set requirements for businesses to satisfy for operation in this particular commercial zone. The St. Louis Board found that Missouri Title Loans did not satisfy those requirements. The ordinance provided the commercial district's purpose was to establish and preserve the commercial and professional facilities found useful in close

proximity to residential areas, so long as the uses were compatible with the residential uses. The types of businesses allowed in the commercial district included general office uses, financial institutions, and other similar uses.

Title Loans challenged the denial of its permit by stating that it was a financial institution as defined in the St. Louis code. The Court looked to the definition of "financial institution" and determined by state law that Title Loans was not a bank, savings and loan association, or similar to one, and therefore did not qualify as a financial institution for the purposes of the ordinance. Title Loans further alleged that it intended to use the property for general office purposes allowing it to qualify for the permit. The Court held "general offices," as used in the code, referred to general business offices where employees do not engage in regular contact with the public, and the operations of Title Loans did not fit this category.

Title Loans further argued that it qualified for a conditional use permit as allowed under a separate section of the code, claiming that it would satisfy the required standards. The code would allow a business to operate under a conditional basis if the business would contribute to the general welfare and convenience of the location, would not reduce or impair property values, and would not impact the adjacent uses or community facilities in a negative way. The Court accepted testimony from numerous sources that Title Loans would not satisfy the standards and would have an adverse impact on property values and the ability to attract other businesses to the area. Because the evidence supporting the denial of the permit was competent and substantial, the Court upheld the Board of Adjustment's decision and denied the permit. *Missouri Title Loans, Inc. v. City of St. Louis Board of Adjustment*, Case Number: ED77866, Appeal from the Circuit Court of the City of St. Louis, decided May 1, 2001.

#### Cleveland and Dayton, Ohio Predatory Lending Ordinances

The Ohio Supreme Court struck down the Cleveland and Dayton, Ohio predatory lending ordinances in *American Financial Services Association, et. al. v. City of Cleveland*, 858 N.E.2d 776 (Ohio 2006). The American Financial Services Association (AFSA) claimed these ordinances were preempted by or in conflict with the Ohio predatory lending law which mirrored the federal Home Ownership and Equity Protection Act in providing consumer protections in high cost or high interest loans. The ordinances lowered the thresholds for loans included in the ordinance effectively applying restrictions and protections to more loans.

The Court was asked to determine: 1) if the state predatory lending law which did not expressly preempt local ordinances constitutes such a wide ranging law so as to preempt the entire field of consumer lending regulation and bar local governments from adopting local ordinances regulating lending practices enforceable as "general laws" and, 2) does the "home rule" provision of the Ohio Constitution permit a municipality to impose on local consumer lending institutions regulatory requirements that are different from or more restrictive than the state predatory lending law as long as the local requirements are not *in conflict with* the state requirements?

Ohio's home rule law provides "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." In their respective briefs, the key issue argued by the industry group and Cleveland was what standard the Court should apply in determining whether a local ordinance is or is not "in conflict" with the provisions of the state statute. The AFSA argued an "implied permission" standard applied claiming when the state enacts a law that sets specific



numerical limits or spells out specific procedural requirements for a certain type of conduct or activity, the state law is *presumed to permit* conduct or activity that falls within the prescribed numerical limits and/or does not violate the prescribed procedure. In this case, AFSA claimed imposing the restrictions on more loans improperly included them for restrictive regulations not imposed by state law. They claimed the ordinance was unconstitutional and invalid because the city ordinance clearly “prohibits that which the state law permits.”

The City of Cleveland responded that a more demanding “affirmative permission” standard should be applied. Under this standard, a local ordinance may only be voided for direct conflict with a state law if the local ordinance affirmatively permits something that the state law plainly prohibits, or the local ordinance prohibits something that the state law explicitly permits.

Cleveland argued both the state law and the Cleveland predatory lending ordinance were written in prohibitive (rather than permissive) form – meaning the text of both laws lists predatory terms and conditions that may not be imposed on borrowers. In terms of “home rule” analysis, Cleveland claimed the language of the state law could not be read to “permit” specific actions prohibited by the city ordinance because the state law did not permit anything, it only listed prohibitions.

AFSA also argued that the state express preemption of all regulatory authority over commercial lending activity should be read broadly to cover all lending activity because the state law sets forth a detailed statewide regulatory scheme for oversight of mortgage and home improvement lending, including civil fines, rescission of loan contracts and other remedies that borrowers may pursue in state courts and that statewide laws provide a more necessarily uniform statewide regulation of the mortgage loan industry.

Cleveland argued because the constitution granted municipal governments power to adopt and enforce police regulations within their own borders, no state law could take away that power. In the absence of a clear and explicit contradiction between the terms of a state law and a local ordinance the Court must uphold the ordinance.

The Ohio Supreme Court answered both questions above in the affirmative and found the state law was a general law as it affected the ordinances at issue, found the ordinances conflicted with the state law and deemed the ordinances unenforceable.

## **APPENDIX 3 – Resolution and Ordinance Examples**

### **Density – West Valley City, UT**

West Valley City Code  
Section 7-1-103  
Subsection 30

30) “Check Cashing” 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 600 feet 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 West Valley 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.

### **Land Use - Jacksonville, FL**

#### ORDINANCE 2005-1012-E

AN ORDINANCE CONCERNING CONSUMER PAYDAY LOANS AND LENDING PRACTICES; MAKING FINDINGS; ESTABLISHING A NEW PART 3 (PAYDAY LOAN PRACTICES) OF CHAPTER 200 (SMALL LOAN AND CONSUMER FINANCING AND PAWNBROKERS), ORDINANCE CODE, TO ESTABLISH OBLIGATIONS, RESPONSIBILITIES, LIABILITIES AND CIVIL AND CRIMINAL REMEDIES IN THE PAYDAY CONSUMER LOAN BUSINESS; AMENDING CHAPTER 656 (ZONING CODE), ORDINANCE CODE, SECTION 656.401, (PERFORMANCE STANDARDS AND DEVELOPMENT CRITERIA), CREATING A NEW SUBSECTION 656.401(ii) TO PROVIDE DISTANCE REGULATIONS AND TO DEEM LEGALLY NONCONFORMING USES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, there exist business lending practices, commonly referred to as “payday” lending practices, whereby lending businesses advance money on paychecks of low and financially challenged persons, subject to very high interest rates; and

WHEREAS, payday lending practices in general have proven to be detrimental to numerous individuals including military service members who use these loans as a way of overcoming immediate needs for cash; and

WHEREAS, payday lending practices often have an unreasonable adverse effect upon the elderly, the economically disadvantaged, and other citizens of Jacksonville; and payday lending involves relatively small loans and certain payday lenders have attempted to use forum selection clauses contained in payday loan documents in order to avoid the courts of the State of Florida, and such practices are unconscionable and should be prohibited; and

WHEREAS, the regulation and monitoring of the practices of payday lenders would serve an

important public interest; and requiring payday lenders to provide both the Division of Consumer Affairs and the Council with demographic information on the individuals taking out payday loans to ensure better tracking and public education in the future would be in the public interest; now, therefore, BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Legislative Findings

The City Council finds as follows:

- (a) There exist business lending practices involving deferred presentment of checks, commonly referred to as “payday” lending practices, whereby lending businesses advance money on paychecks of low and financially challenged persons, subject to very high interest rates; and
- (b) Payday lending practices in general are recognized and have proven to be detrimental to the elderly, the economically disadvantaged, and to military service members and other citizens who have chosen these loans as a way of overcoming immediate needs for cash; and
- (c) Payday lending practices often have an unreasonable adverse effect upon the elderly, the economically disadvantaged, military service members, and other citizens of Jacksonville; and
- (d) Payday lending involves relatively small loans and does not encompass loans that involve interstate commerce; and certain payday lenders have attempted to use forum selection clauses contained in payday loan documents to avoid the courts of the State of Florida, and such practices are unconscionable and should be prohibited; and
- (e) That the monitoring of the practices of payday lenders would serve an important public interest; and requiring payday lenders to provide both the Department of Consumer Affairs and the Council with demographic information on the individuals taking out payday loans to ensure better tracking and public education in the future would be in the public interest; and
- (f) That companies both subject and not subject to state and federal regulatory policies are engaging in the practice of payday lending without following the Florida Deferred Presentment Act, Chapter 560, Part Four, Fla. Stat. (“FDPA”); that various payday lenders have created certain schemes and methods in order to attempt to disguise these transactions or to cause these transactions to appear to be products other than loans and/or loans made by a national or state bank, chartered in another state in which this type of lending is unregulated, even though the majority of the revenues in this lending method are paid to the payday lender; and
- (g) The Council intends to take action where permissible and require lenders to follow the Florida Deferred Presentment Act and to take action to prevent abusive payday lending practices that harm military and civilian families; and
- (h) Payday lenders shall not use forum selection clauses and/or mandatory, unilateral arbitration clauses in order to avoid the courts of the State of Florida. Such clauses are unconscionable and shall be deemed unenforceable.
- (i) Payday lenders shall not require electronic access to a borrower’s account in a financial institution as a condition of entering into a deferred presentment transaction.

Section 2. Chapter 200 amended to create a new Part 3, Payday loans. Chapter 200 (Small Loan and Consumer Financing and Pawnbrokers), Ordinance Code, is amended to create a new Part 3 (Payday Loan Practices) to read as follows:

CHAPTER 200. SMALL LOAN AND CONSUMER FINANCING AND PAWNBROKERS.

\* \* \*

PART 3. PAYDAY LOAN PRACTICES.

Sec. 200.301. Application.

This Part shall apply throughout Duval County with respect to:

- (a) all transactions in which any person who, for a fee, service charge, administrative charge, or other consideration, accepts a check dated on the date it was written and agrees to hold it for a period of

days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.

(b) any person who facilitates, enables, or acts as a conduit for another person, who is or may be exempt from licensing, who makes deferred deposit loans.

This Part is supplemental to all other laws or ordinances, and in no way impairs or restricts the authority granted to the Florida Department of Financial Services, or any other regulatory authority with concurrent jurisdiction over the matters stated in this chapter. This Part shall apply to the above transactions, notwithstanding the fact that any transaction contains one or more other elements, but shall not apply to the transactions of federally-chartered depository banks.

Sec. 200.302 Definitions. In addition to the definitions otherwise provided in this Part and unless otherwise clearly indicated by the context, for purposes of this Part:

(a) Affiliate means a person who directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a deferred presentment provider.

(b) Business day means the hours during a particular day during which a deferred presentment provider customarily conducts business, not to exceed 15 consecutive hours during that day.

(c) Days means calendar days.

(d) Deferment period means the number of days a deferred presentment provider agrees to defer depositing or presenting a payment instrument.

(e) Deferred presentment provider means a person who engages in a deferred presentment transaction.

(f) Deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check or agreement to provide access to a drawer's account in a financial institution and agreeing to hold that person's check or maintain rights to access a drawer's account for a period of time prior to presentment, deposit, or redemption.

(g) Drawer means any person who writes a personal check and upon whose account the check is drawn or any person who enters into a deferred presentment transaction.

(h) Rollover means the termination or extension of an existing deferred presentment agreement by the payment of any additional fee and the continued holding of the check, or the substitution of a new check drawn by the drawer pursuant to a new deferred presentment agreement.

(i) Fee means the fee authorized for the deferral of the presentation of a check pursuant to this part.

(j) Termination of an existing deferred presentment agreement means that the check that is the basis for an agreement is redeemed by the drawer by payment in full in cash, or is deposited and the deferred presentment provider has evidence that such check has cleared. A verification of sufficient funds in the drawer's account by the deferred presentment provider shall not be sufficient evidence to deem the existing deferred deposit transaction to be terminated.

(k) Extension of an existing deferred presentment agreement means that a deferred presentment transaction is continued by the drawer paying any additional fees and the deferred presentment provider continues to hold the check for another period of time prior to deposit, presentment, or redemption.

(l) Payday lender is a person or company who makes or facilitates a deferred presentment transaction, such that the person or company provides currency or a payment instrument in exchange for a person's check or agreement to provide access to a drawer's account in a financial institution and agrees to hold that person's check for a period of time prior to presentment, deposit, or redemption or facilitates this process.

Sec. 200.303 Prohibitions - Generally.

(a) Contractual provisions – venue. A payday lender shall not include in any loan contract made with a resident of this county, any provision by which the laws of a state other than Florida shall govern the terms and enforcement of the contract, nor shall the loan contract designate a court for the resolution of disputes concerning the contract other than a court of competent jurisdiction in and for the county in which the borrower resides or the loan office is located.

(b) Contractual provisions – dispute resolution. An arbitration clause in a payday loan contract shall not be enforceable if the contract is unconscionable. In determining whether the contract is unconscionable, the court shall consider the circumstances of the transaction as a whole, including but not limited to:

- (i) The relative bargaining power of the parties;
- (ii) Whether arbitration would be prohibitively expensive to the borrower in view of the amounts in controversy;
- (iii) Whether the contract restricts or excludes damages or remedies that would be available to the borrower in court, including the right to participate in a class action;
- (iv) Whether the arbitration would take place outside the county in which the loan office is located or any other place that would be unduly inconvenient or expensive in view of the amounts in controversy; and
- (v) Any other circumstances that might render the contract oppressive.

(c) Loan Disguises. A payday lender shall not use loan disguises or agency or partnership agreements between in-state entities and out-of-state banks, whereby the in-state agent holds a predominant economic interest in the revenues generated by payday loans made to Duval County residents to avoid compliance with this Chapter. Any such disguise, agency or partnership agreement by a payday lender shall be deemed a scheme or contrivance by which the agent seeks to circumvent state law and the usury statutes of this state and, therefore, are illegal.

(d) Threats. A payday lender shall not threaten to use or use the criminal process in this or any other state to collect on a deferred payment loan or use any civil process to collect the payment of a deferred payment loan not generally available to creditors to collect on loans in default.

(e) A payday lender shall not require electronic access to a drawer's account in a financial institution as a condition of entering into a deferred presentment transaction.

Sec. 200.304 Prohibitions. In addition to the other obligations and duties required under this chapter, the following prohibitions apply to any payday lender:

(a) Lending rate. A payday lender shall not charge interest and administrative or service charges or costs (cumulatively, "the rate") that, when added together, are in excess of 36% per annum (defined as a 365 day year) on the amount of cash delivered to the consumer. The rate charged on the outstanding balance after maturity shall not be greater than the rate charged during the loan term. Charges on loans shall be computed and paid only as a percentage of the unpaid principal balance. Principal balance means the balance due and owing exclusive of any interest, service or other loan-related charges.

(b) Garnishment. A payday lender is prohibited from garnishment of any military wages or salaries.

(c) Collections – Combat duty. A payday lender is prohibited from conducting any collection activity against a military customer or his or her spouse when the military member has been deployed to a combat or combat support posting for the duration of the deployment.

(d) Contact with Commanding Officer. A payday lender is prohibited from contacting the commanding officer of a military customer in an effort to collect on a loan to a military member or his or her spouse or dependent;

Sec. 200.305 Limitations.

(a) **Insufficient Fund fees.** If there are insufficient funds to pay a check on the date of presentment, a payday lender may charge a fee, not to exceed the lesser of \$15 or the fee imposed upon the licensee by the financial institution. Only one such fee may be collected with respect to a particular check even if it has been re-deposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(b) **Unearned Interest.** When a loan is repaid before its due date, unearned interest charges must be rebated to the consumer based on a method at least as favorable to the consumer as the actuarial method.

(c) **Special Repayment Agreements.** Payday lenders shall comply with and be bound by the terms of any repayment agreement that it negotiates through military counselors or third-party credit counselors.

(d) **Military Statements and Proclamations.** Payday lenders shall honor any statement or proclamation by a military base commander that a specific payday lender branch location has been declared off limits to military personnel and their spouses.

Sec. 200.306 **Disclosures.** The following disclosures shall be made in writing by a payday lender:

(a) A notice that the lender is prohibited from garnishment of any military wages or salaries;

(b) A notice that the lender is prohibited from conducting any collection activity against a military customer or his or her spouse when the military member has been deployed to a combat or combat support posting for the duration of the deployment;

(c) A notice that the lender is prohibited from contacting the commanding officer of a military customer in an effort to collect on a loan to the military member or his or her spouse;

(d) A notice that the lender agrees to be bound by the terms of any repayment agreement that it negotiates through military counselors or third-party credit counselors;

(e) A notice that the lender agrees to honor any statement or proclamation by a military base commander that a specific payday lending branch location has been declared off limits to military personnel and their spouses.

Sec. 200.308 **Advertising Disclosure Requirements for Lenders Promoting Payday Loan Services.**

(a) **Definition.** For purposes of this section "unit of advertising space" shall mean any real property, space, facility or instrumentality, or any portion thereof, owned or operated by the City of Jacksonville, or which is located or operates on real property owned or operated by the City of Jacksonville, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the City of Jacksonville which allows the placement or display of advertisements, but not including any real property, space or facility leased from the City of Jacksonville for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency.

(b) **Requirements.** Any lender, bank or other financial institution that provides payday loan or grant services and which promotes its payday loan or grant services, however described or designated, via a unit or units of advertising space, and which, because of the application of other state or federal law, is exempt from the fee limitations of Jacksonville, and charge interest, fees and other charges greater than those authorized in Jacksonville, shall comply with the following disclosure requirements with respect to a unit or units of advertising space:

(1) Advertisements shall disclose, in clear and prominent letter type, in a print color that contrasts with the background against which it appears, of at least a 20-point type size:

- i. The maximum annual percentage rates (APR) of the institution's payday loans, computed in accordance with regulations adopted pursuant to the federal Truth-in-Lending Act; and
- ii. Any membership fees, finance charges, annual fees, transaction fees, lender's fees or any

other possible charges that may be incurred by a consumer in relation to the institution's payday loans, including any interest, fees and other charges due at the time of any loan renewal;

- iii. The state in which the lender/financial institution is chartered;
- iv. The fact that the consumer will be required to supply personal information to receive the institution's payday loan, including information regarding his or her personal financial history;
- v. The fact that a fee schedule for all charges related to the institution's payday loans will be provided to all consumers before execution of a binding agreement;
- vi. Contact numbers, including the Florida Department of Financial Services Consumer Hotline, and the City of Jacksonville's Consumer Affairs Division, identifying the local, state and federal agencies, where a consumer/applicant can direct complaints against the lender/financial institution;
- vii. The name of the lender/financial institution offering the payday loan.

Sec. 200.310. Distance requirements. Consistent with Section 656.401(ii), Ordinance Code, no payday, check cashing or deferred deposit loan business or their agents or facilitators shall be located within 600 feet of any other check cashing business or within five (5) miles of any active military installation. 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. Payday, check cashing or deferred deposit loan businesses lawfully operating within their current zoning district on August 23, 2005 shall be deemed legally nonconforming uses until the business is transferred or sold to another owner, or otherwise loses legally nonconforming status in accordance with Chapter 656.

#### Sec. 200.311 Enforcement

(a) Provisions Supplemental. The remedies provided herein are cumulative and supplementary and apply to licensees and unlicensed persons to whom this Act applies and who failed to obtain a license.

(b) Rights to relief forfeited. The violation of any provision of this Act, or regulation there under, except as the result of accidental or bona fide error of computation, shall render the applicable loan void, and the lender shall have no right to collect, receive or retain any principal, interest, or other charges whatsoever with respect to the loan.

(c) Civil remedies. Any person or entity found to have violated this ordinance shall be liable to the consumer for actual, consequential, and punitive damages, plus statutory damages of \$500 for each violation, plus costs, and attorneys fees. Each day of violation shall be a separate violation.

A consumer may sue for injunctive and other appropriate equitable relief to stop any person or entity from violating any provisions of this Act.

The consumer may bring a class action suit to enforce this Act.

The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

(d) Criminal violations. Any person, including members, officers, and directors of the person or entity who knowingly violates this act is guilty of a Class D offense.

Sec. 200.312. Severability. If any portion of this ordinance is determined to be invalid for any reason by a final non-appealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.

Sec. 200.313. Reporting. Not later than the first day of July, 2006, and on a quarterly basis thereafter, (no later than October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup>, and July 1<sup>st</sup> of each year), any person offering, providing, or facilitating a payday loan in Duval County shall submit to the City's Division of

Consumer Affairs and the Chief of Legislative Affairs, the residential zip code of each consumer who lives within the city boundaries and has entered into a payday loan during the immediately preceding quarter. The Consumer Affairs Division shall track and evaluate all information and provide education to consumers as needed.

Section 3. Chapter 656 (Zoning Code), Ordinance Code, Section 656.401, (Performance standards and development criteria), is amended to add a new subsection (ii) to read as follows:

CHAPTER 656. ZONING CODE.

\* \* \*

PART 4. SUPPLEMENTARY REGULATIONS.

Sec. 656.401. Performance standards and development criteria. It is the intent of the City of Jacksonville that these supplementary regulation standards and criteria be read in addition to, rather than in lieu of, any other requirement in this Chapter. The following uses, whether permitted or permissible by exception, must meet the criteria listed under each use as a prerequisite for further consideration under this Zoning Code.

\* \* \*

- (ii) Payday, check cashing or deferred deposit loan businesses
  - (1) General requirements.
    - (a) No payday, check cashing or deferred deposit loan business, as defined in Chapter 200, Ordinance Code, no payday, check cashing or deferred deposit loan business or their agents or facilitators shall be located within 600 feet of any other check cashing business or within five (5) miles of any active military installation. 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. Payday, check cashing or deferred deposit loan businesses lawfully operating within their current zoning district on August 23, 2005 shall be deemed legally nonconforming uses until the business is transferred or sold to another owner, or otherwise loses legally nonconforming status in accordance with Chapter 656.

Section 4. Effective Date. This Ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

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Office of General Counsel  
Prepared by: Steven E. Rohan

**Resolution – Staunton, VA**

RESOLUTION  
OF  
THE COUNCIL OF THE CITY OF STAUNTON, VIRGINIA  
TO REQUEST THAT THE  
GENERAL ASSEMBLY  
AND  
GOVERNOR OF VIRGINIA  
TAKE ACTION TO PREVENT EXPLOITATIVE PAYDAY LENDING PRACTICES  
IN THE COMMONWEALTH



WHEREAS, the Council of the City of Staunton, Virginia, represents the citizens of the City of Staunton, Virginia;

WHEREAS, the Council of the City of Staunton, Virginia, senses from the citizens of the City of Staunton significant concern over what are perceived to be some exploitative payday lending practices in the City of Staunton and elsewhere in the Commonwealth, including practices which may exploit dedicated, brave women and men who are called for deployment as part of the armed forces of our Nation both in the United States and various parts of the world in the cause of freedom and security of our Nation;

WHEREAS, the Council of the City of Staunton, Virginia, shares these same significant concerns and wishes to express the collective sentiments of the People of the City of Staunton, Virginia, that the General Assembly and Governor of Virginia, ought to take action to prevent further exploitative payday lending practices; and

WHEREAS, it is vital that the General Assembly and the Governor of Virginia give their earnest attention to these matters at the next regular session of the General Assembly and enact laws that will prevent further exploitative payday lending practices.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that the General Assembly and the Governor of the Commonwealth of Virginia are requested to take action in connection with the next regular session of the General Assembly of Virginia to enact laws that will prevent further exploitative payday lending practices, including but not limited to:

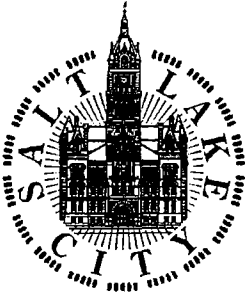
1. Enactment of an annual interest rate cap of 36% for any consumer loans made in the Commonwealth of Virginia;
2. Prohibition of the use of a personal check or other method by a creditor to gain access to a consumer's bank account or method to gain title to a consumer's motor vehicle as collateral for a payday loan; and
3. Enactment of supplementary and complementary provisions which mirror the provisions of what is commonly referred to as the Talent-Nelson Amendment (Senate Amendment 4331), entitled "Terms of Consumer Credit Extended To Service Member's Dependent" and referenced on page S6352 of the June 22, 2006 Congressional Record-Senate, a copy of which is annexed to and incorporated by reference in this Resolution.

Adopted this 13th day of September 2007

Lacy B. King, Jr., Mayor

Attest: Deborah A. Lane, Clerk of Council

Exhibit C  
Department Comments



# Memorandum

Planning Division  
Community & Economic Development  
Department

**To:** Mary De La Mare-Schaefer, Community & Economic  
Development Department Interim Director

**From:** Everett Joyce, Senior Planner  
Nole Walkingshaw, Senior Planner

**Date:** May 28, 2008

**CC:** Esther Hunter, Senior Advisor to Mayor

Brad Larsen, Fire Department

Dave Askerlund, Police Department

Barry Walsh, Transportation

Paul Nielson, City Attorney

Robert Lucas, Business Licensing

Craig Spangenberg, HAZE

Craig Smith, Engineering

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

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**Discussion:**

The proposed text amendment is meant to determine a suitable definition of "Check Cashing/Payday Loan" 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 or the use of qualifying provisions "footnotes", under the Tables of Permitted and Conditional Uses. 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.

Your comments and/or suggestions regarding this are appreciated thank you for taking the time to review this information. Please respond to either Everett Joyce at [everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com) or Nole Walkingshaw at [nole.walkingshaw@slcgov.com](mailto:nole.walkingshaw@slcgov.com) by Friday June 13, 2008.

**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 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 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>			<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	<u>P</u>	

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	<u>P</u>			

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																	<u>P</u>

<b>CITIES THAT REGULATE PAYDAY LENDING BUSINESSES THROUGH ZONING ORDINANCES</b>				
<b>CITY</b>	<b>DISTANCE BETWEEN SIMILAR BUSINESSES</b>	<b>POPULATION RATIO?</b>	<b>RESTRICTED TO CERTAIN ZONES?</b>	<b>CONDITIONAL USE?</b>
<b>Draper</b>	1,000 feet	No	One Commercial Zone.	Yes
<b>Midvale</b>	600 feet	1 per 10,000	Commercial Zones	Yes
<b>Sandy (Under Consideration)</b>	1 mile	1 per 10,000	Some Commercial Zones	Yes
<b>South Jordan</b>	1 mile	No	Community Commercial (Large-scale) Zone	Yes
<b>South Salt Lake</b>	600 feet (Between Businesses and from Residential Zones)	1 per 5,000	Commercial Corridor	Yes
<b>Taylorsville</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes
<b>West Jordan</b>	1,000 feet (Also from pawn shop or bail bond businesses)	Maximum limit of 12 allowed within city boundaries	Some Commercial Zones	Yes
<b>West Valley City</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes

**Walkingshaw, Nole**

**From:** Stanger, Sandra  
**Sent:** Friday, September 14, 2007 3:31 PM  
**To:** Walkingshaw, Nole  
**Subject:** FW: Check Cashing

Hi Nole. You requested this information back in June. Dave Doepner, our crime analyst, has put together the data below. Please let me know if we can be of further assistance.

Thanks!

Sandra Stanger  
 GRAMA Coordinator/Paralegal  
 SLCPD  
 ext. 3871

(Yes, the same Sandra Stanger who used to be in the City Atty's Office) :-)

**From:** Doepner, Dave  
**Sent:** Friday, September 14, 2007 2:31 PM  
**To:** Stanger, Sandra  
**Subject:** RE: Check Cashing

Sandra,

This is one of the Old requests I've finally made progress on. This one is for Nole Walkingshaw from the SLC Zoning Division.

I pulled Dispatch Initial Call data for an area approximately 1/2 block diameter surrounding the target addresses. Data was for a full year and I have all the details associated with the extract still available. For each area I have isolated the call activity at the Check Cashing address as well as the total for the area. A percentage of all activity in the area has been calculated as well. That ranges from 97% of all activity to 0%. This is not a "Hard and Fast" measure of the impact of the business on the area, but just an index. It could easily be the Check Cashing business is isolated from everything else in the community or it could be near another very busy location. The now-closed location at 350 E 200 South is competing against the Albertsons Grocery and the calls registered at the Public Safety Building. It is also possible that other activity is being called in from the specific addresses noted on that initial sheet. It is not uncommon to see a single address be used for multiple businesses. I will be happy to pursue any additional research on this and it should go more quickly now the data has been obtained and initial formatting has been done.

Between the count of calls and the percentage we may have something that can be the start of a more detailed examination.

If you will pass this along to Mr. Walkingshaw, I would appreciate it.

Check Cashing Calls for Service Summary		
location	Total	% in Area
1055 W 1700 S	17	63.0%
1055w_1700s Area Totals	27	
1244 S REDWOOD RD	1	0.9%
1244S_redwood Area Totals	114	
1290 S 300 W	5	2.1%
1290S_300W Area Totals	243	
1355 S 4700 W	17	89.5%
1355S-4700W Area Totals	19	
1423 S 300 W	3	5.2%
1423S_300w Area Totals	58	
1465 S STATE ST	57	56.4%
1465S_State Area Totals	101	
1645 W 700 N	15	44.1%
1645w_700N Area Totals	34	
169 E 900 S	5	7.2%
169e_900s Area Totals	69	
170e_900s	0	0.0%
170e_900s Area Totals	83	
1726 W NORTH TEMPLE ST	32	86.5%
1726W_NTemple Area Totals	37	
180 S 300 W	11	8.0%
180s_300w Area Totals	137	
1850 S Redwood Rd	0	0.0%
1850S_redwood Area Totals	44	
2150 S 1300 E	36	97.3%
2150s_1300e Area Totals	37	
231 E 400 S	13	6.8%
231e_400s Area Totals	191	
274 E 900 S	2	3.9%
274e_900s Area Totals	51	
350 E 200 S	11	7.2%
350e_200s Area Totals	152	
369 S MAIN ST	5	2.1%

9/14/2007

369S_Main Area Totals	242	
370 S STATE ST	45	28.7%
370s_state Area Totals	157	
409 E 400 S	9	5.2%
409E_400S Area Totals	172	
65 N 1000 W	2	3.7%
65n_1000w Area Totals	54	
665 S STATE ST	11	13.9%
665s_state Area Totals	79	
675 E 2100 S	68	86.1%
675e_2100s Area Totals	79	
797 N REDWOOD RD	21	15.9%
797N_redwood Area Totals	132	
819 W NORTH TEMPLE ST	232	35.4%
819W-NTemp Area Totals	656	
<b>All Check Cashing Addresses</b>	<b>618</b>	<b>20.8%</b>
<b>Area Totals</b>	<b>2968</b>	

Dave Doepner

**From:** Brede, Richard  
**Sent:** Wednesday, June 27, 2007 9:49 AM  
**To:** Doepner, Dave  
**Cc:** Stanger, Sandra  
**Subject:** FW: Check Cashing

Dave, any resulting information that we provide on this should also be cc'd to Sandra Stanger (GRAMA coordinator). Other requests will be routed through her office, but this one is a City department request so she'll only need the courtesy copy at this point.

Thanks,

*Sgt Rich Brede  
Salt Lake City Police Department  
Homeland Security / Intelligence Unit  
801-799-3181*

---

**From:** Ross, Michelle  
**Sent:** Monday, June 25, 2007 7:43 AM  
**To:** Brede, Richard  
**Subject:** FW: Check Cashing

Rich,

Nole Walkingshaw from our Zoning Division is checking up on this. Is someone available to get this info?

Thanks,  
Michelle

---

**From:** Walkingshaw, Nole  
**Sent:** Friday, June 22, 2007 9:11 AM  
**To:** Ross, Michelle  
**Subject:** Check Cashing

Michelle,

I am researching an Ordinance change which may define "Check Cashing" or "Payday Loan" companies, and I was curious to see if the Police Dept. had any reports or information about these businesses, and possible impacts such as increased crime, nuisances, or excessive reports?

Thank you, if I should ask someone else please let me know.

Nole

Here is a list of locations in SLC; if that helps.

9/14/2007



CHECK CASHING  
BUSINESSES LOCATED  
IN SALT LAKE CITY

ID#	Business Name	Address	Ownership	Telephone	Approve Date
20052242	1st Choice Money Center	274 East 900 South	RFG Utah LLC	623-1711	12/15/05
20060293	1st Choice Money Center	1244 So Redwood Road	RFG Utah LLC	623-1711	07/09/06
Term	Access 2 Cash - Terminated 11/14/06	65 North 1000 West	RRZ Financial Services	886-2662	01/06/05
20062020	All Types Checkcashing	369 S Main St	Rhonda/Robert Hovselh-pine	328-2274	12/21/06
20042406	Buckeye Checksmart	832 W North Temple St	Buckeye Check Cashing of Utah	(614) 798-5900	01/13/05
20051793	Check N Go	1423 South 300 West #A	Great Plains Specialty Finance inc	486-4438	09/23/05
20061977	Check N Go	1645 West 700 North	Great Plains Specialty Finance inc	384-7974	11/21/06
20041646	Checkmate Payday Loans & Check Cashing	1290 South 300 West	LMSA Financial Corp Arizona	478-0728	10/21/04
20000623	Checkmax	1726 W North Temple #C	David Ha Truong	994-0616	03/31/03
20030175	Easy Money	350 East 200 South	Reed Bensen	359-2212	01/30/03
Term	ELITECASHADVANCE	2150 South 1300 East #500	ELITCASHADVANCE	(888) 920-5111	
money trf	Envios Yosi	169 East 900 South	Envios Yosi	wrong #	
money trf	Envios Yosi	170 East 900 South	Rubissel Tovar	870-0597	
20051583	Five Star of Salt Lake City	1850 S Redwood Rd	Tall Hol LLC	972-3808	08/26/05
19941424	Money Mart	370 S State St	Jeffrey Weiss	532-5765	12/05/94
20000854	Money Mart Express Inc	1355 S 4700 W #200	Money Mart Express Inc.	933-4520	02/15/05
20061098	Money Menders	231 East 400 South #112	Savage Holdings Inc	386-0558	06/14/06
20030650	Money Talk	180 South 300 West	Alice Marie Folau	wrong #	04/08/03
19981254	Nationwide Budget Finance	685 S State St	Western Budget Finance	575-8172	12/09/98
20060441	Perulawn Care Services	1465 S State St #1	Carlos Roman	604-0578	03/24/06
19971132	Quick Loan	675 East 2100 South #0	Quick Loan Inc.	485-8181	07/25/97
19990585	Rent A Center Inc #02310	797 N Redwood Rd	Rent A Center Inc	521-8001	04/05/99
19990844	Rent A Center Inc #02313	409 East 400 South	Rent A Center Inc	532-2002	3/30/05
20051279	Quick Title Loans	1055 West 1700 South	Quick Tow Towing	619-7010	07/11/05

Nole Walkingshaw  
Salt Lake City Planning and Zoning  
Senior Planner/Zoning Administration  
801-535-7128

## Walkingshaw, Nole

---

**From:** Harpst, Tim  
**Sent:** Thursday, May 29, 2008 8:28 AM  
**To:** Walkingshaw, Nole  
**Subject:** RE: Proposed Check Cashing/ payday Loans text amendment

Nole - I have no comments regarding the proposed text amendment. It (they) does not seem to affect any transportation-related matters.

Thanks,  
Tim

### Timothy P. Harpst, P.E., PTOE Transportation Director

Salt Lake City Transportation Division Phone: 801 535-6630  
349 South 200 East, Suite 450 Fax: 801 535-6019  
Salt Lake City, Utah 84111 email: [tim.harpst@slcgov.com](mailto:tim.harpst@slcgov.com)

---

**From:** Walkingshaw, Nole  
**Sent:** Wednesday, May 28, 2008 9:44 AM  
**To:** Harpst, Tim; Niermeyer, Jeff; Graham, Rick; McKone, Dennis; Burbank, Chris; Boskoff, Nancy; Riley, Maureen; Clark, Luann; Goff, Orion; Creswell, Lyn; Baxter, DJ; Rutan, Ed; Limburg, Garth; De La Mare-Schaefer, Mary  
**Cc:** Paterson, Joel; Joyce, Everett  
**Subject:** Proposed Check Cashing/ payday Loans text amendment

Hello All,

I have attached a memo discussing the proposed text amendment regulating "Check Cashing/Payday Loans" businesses. Your comments are appreciated; please respond by June 13, 2008.

A paper copy has not been routed in an effort to save paper.

Thank you,  
Nole Walkingshaw

Nole Walkingshaw  
Salt Lake City Planning and Zoning  
Senior Planner  
801-535-7128

## Walkingshaw, Nole

---

**From:** Walsh, Barry  
**Sent:** Thursday, May 29, 2008 11:45 AM  
**To:** Walkingshaw, Nole; Hunter, Esther; Nalder, Kevin; Askerlund, Dave; Nielson, Paul; Lucas, Robert; Spangenberg, Craig; Smith, Craig  
**Cc:** De La Mare-Schaefer, Mary; Paterson, Joel; Joyce, Everett; Young, Kevin; Butcher, Larry  
**Subject:** RE: Proposed text amendment "Check Cashing/ Payday Loans"  
**Categories:** Program/Policy

May 29, 2008

Nole Walkingshaw, Planning  
Everett Joyce, Planning

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

The division of transportation review comments and recommendations are as follows:

The proposal presents no issues for transportation, in that it does not address parking or traffic impacts. Those issues are covered under the standard retail and office uses for parking calculations and access which apply uniformly in the zoning ordinances.

Sincerely,

Barry Walsh

Cc Kevin Young, P.E.  
Craig Smith, Engineering  
Larry Butcher, Permits  
File

---

**From:** Walkingshaw, Nole  
**Sent:** Wednesday, May 28, 2008 9:47 AM  
**To:** Hunter, Esther; Nalder, Kevin; Askerlund, Dave; Walsh, Barry; Nielson, Paul; Lucas, Robert; Spangenberg, Craig; Smith, Craig  
**Cc:** De La Mare-Schaefer, Mary; Paterson, Joel; Joyce, Everett  
**Subject:** Proposed text amendment "Check Cashing/ Payday Loans"

Hello All,

I have attached a memo discussing the proposed text amendment regulating "Check Cashing/Payday Loans" businesses. Your comments are appreciated; please respond by June 13, 2008.

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Thank you,  
Nole Walkingshaw

Nole Walkingshaw  
Salt Lake City Planning and Zoning  
Senior Planner  
801-535-7128

8/27/2008

**Walkingshaw, Nole**

---

**From:** McCandless, Allen  
**Sent:** Thursday, May 29, 2008 2:58 PM  
**To:** Joyce, Everett; Walkingshaw, Nole  
**Cc:** Riley, Maureen; Bingham, Jay; Wolfe, Brad  
**Subject:** FW: Proposed Check Cashing/ payday Loans text amendment  
**Categories:** Program/Policy  
**Attachments:** CheckCashing Ord Proposal routing cabinet memo 5 23 08.doc

Everett and Nole,

Thank you for sending the proposed text amendment for, "Check Cashing/Payday Loans." I understand that there are three proposed definitions for Check Cashing/Payday Loans. I also understand the City will decide in what zones these uses would be allowed.

The draft sent to the airport shows that in the A (Airport) table of Special Purpose Districts these uses would not be permitted. After discussing with airport staff, we agree with the proposal as shown on your draft to not allow the Check Cashing/Payday Loans in the A-Airport district. We see no need for Check Cashing/Payday Loans uses to be located in airport buildings, or on airport property. We see no benefit for airport customers. –

*Allen McCandless*

---

**From:** Riley, Maureen  
**Sent:** Wednesday, May 28, 2008 9:46 AM  
**To:** Bingham, Jay; McCandless, Allen  
**Subject:** FW: Proposed Check Cashing/ payday Loans text amendment

This is interesting. It looks like it's focus is on the actual facilities, though, and not the practices of check-cashing companies. Anyway, let me know if either of you has any concerns.

Maureen

---

**From:** Walkingshaw, Nole  
**Sent:** Wednesday, May 28, 2008 9:44 AM  
**To:** Harpst, Tim; Niermeyer, Jeff; Graham, Rick; McKone, Dennis; Burbank, Chris; Boskoff, Nancy; Riley, Maureen; Clark, Luann; Goff, Orion; Creswell, Lyn; Baxter, DJ; Rutan, Ed; Limburg, Garth; De La Mare-Schaefer, Mary  
**Cc:** Paterson, Joel; Joyce, Everett  
**Subject:** Proposed Check Cashing/ payday Loans text amendment

Hello All,

I have attached a memo discussing the proposed text amendment regulating "Check Cashing/Payday Loans" businesses. Your comments are appreciated; please respond by June 13, 2008.

A paper copy has not been routed in an effort to save paper.

Thank you,  
 Nole Walkingshaw

Nole Walkingshaw  
 Salt Lake City Planning and Zoning  
 Senior Planner  
 801-535-7128

8/27/2008

**Walkingshaw, Nole**

---

**From:** Butcher, Larry  
**Sent:** Tuesday, February 26, 2008 12:44 PM  
**To:** Walkingshaw, Nole; Hartmann, Teena  
**Cc:** LoPiccolo, Kevin; Goff, Orion  
**Subject:** RE: Check Cashing Places  
**Categories:** Program/Policy

I agree with Nole. I think the nature of the use is in the financial category. We may have financial advisors in a standard office setting but the Check Cashing/Payday Loan operations conduct transactions that may require payments with interest just like the listed financial institutions.

Larry

---

**From:** Walkingshaw, Nole  
**Sent:** Tuesday, February 26, 2008 9:40 AM  
**To:** Hartmann, Teena; Butcher, Larry  
**Cc:** LoPiccolo, Kevin  
**Subject:** RE: Check Cashing Places

Teena,

I believe that the Pay Day loan companies fit closer into the Financial Institution category than Retail service est., based on the underlined phrase. I have a meeting with the administration next Monday to discuss a possible ordinance regulating these businesses. In the draft ordinances one zoning related the other business license related we define "Check Cashing/Payday Loans".

Thoughts?

Nole

**"Financial institution"** means a building, property or activity, the principal use or purpose of which is the provision of financial services, including, but not limited to, banks, facilities for automated teller machines (ATMs), credit unions, savings and loan institutions, stock brokerages and mortgage companies. "Financial institution" shall not include any use or other type of institution which is otherwise listed in the table of permitted and conditional uses for each category of zoning district or districts under this title.

**"Retail services establishment"** means a building, property or activity, the principal use or purpose of which is the provision of personal services directly to the consumer. The term "retail services establishment" shall include, but shall not be limited to, barbershops, beauty parlors, laundry and dry cleaning establishments (plant off premises), tailoring shops, shoe repair shops and the like. Retail services establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.

---

**From:** Hartmann, Teena  
**Sent:** Tuesday, February 26, 2008 9:20 AM  
**To:** Walkingshaw, Nole; Butcher, Larry  
**Subject:** Check Cashing Places

I think I need an interpretation. They are not financial, banks, offices, retail. What should we be looking at? In the past, we see them as "retail service"; do you have a better interpretation?

8/27/2008

Exhibit D  
Legislative Intent

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## L E G I S L A T I V E   A C T I O N

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**DATE:** March 2, 2007  
**TO:** City Council Members  
**FROM:** City Council Member Nancy Saxton  
**RE:** Briefing and Consideration: Legislative Action Regarding Payday-Loan Businesses  
**CC:** Cindy Gust-Jenson, Lynn Creswell, Louis Zunguze, Ed Rutan, Orion Goff, Edna Drake, Gary Mumford

---

I would again appreciate the City Council's support for a Legislative Action to prepare an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check-cashing service," and perhaps consider expanding the ordinance to cover the ratio of businesses to the number of people serve and where those businesses should be allowed.

In previous City Council discussions in November and January, Council Members seemed comfortable considering regulating the distance between businesses providing payday-loan check-cashing services. Council Members noted that the business is legal in Utah and 31 other states. However, I would like to note that several cities in Salt Lake County have adopted regulations defining how many payday-loan, check-cashing businesses can locate in those cities and where they can locate.

I would like to propose the following motion:

That the City Council direct the City Attorney's Office with a recommendation from the Planning Commission to prepare an ordinance to regulate payday-loan check-cashing businesses in the following manner:

- Through a distance requirement that would prevent those businesses from concentrating in locations throughout the City.
- Through design guidelines.
- Through a requirement that would establish a ratio between the number of businesses and the City's total population.
- Through determining where are the most appropriate areas for payday-loan check-cashing businesses to be and whether they should be permitted or conditional uses in those locations.

The motion provides the City Council with three options:

- Not adopting the Legislative Action.
- Adopting the Legislative Action with all the proposed regulatory methods.

- Adopting the Legislative Action with one or more of the proposed regulatory methods.

Council Members may recall that at its November 7, 2006, meeting the Council agreed to calendar this proposal for a briefing and discussion. The discussion would take place after receiving an opinion from the City Attorney's Office about the best methods available for municipalities to regulate the number of payday loan businesses.

The City Attorney's Office determined that amending the City zoning ordinance – as other cities in Salt Lake County have – is the best course for municipalities in our area to take in the regulation of this legal business. The City Council discussed the proposal further at its January 9 meeting and agreed to consider the proposal formally.

Again, I am seeking your help to regulate the businesses in this industry primarily because I believe their presence is detrimental to the aesthetic appeal of our City's neighborhoods, commercial and otherwise, as people walk our sidewalks, and they detract from efforts to improve commercial areas.

I do not seek to abolish payday-loan check-cashing businesses, but I believe they are too concentrated in some City areas; they generate little pedestrian energy or activity; and their presence does not seem conducive to fostering commercial activities that help communities grow.

A few things that have happened should be noted since this proposal first was raised. First, according to the most recent information available from the Business License Office, the number of businesses engaged in payday lending in Salt Lake City has declined from 24 to 21, if a business that lends money against vehicle titles is excluded. (Please see attachment). That means that, if the 2000 Census population estimate of 181,743 is used, the ratio of payday lending businesses to the City's population is one per 8,654 people instead of one per 7,572 residents when 24 businesses were operating.

Second, the Utah Legislature added regulations (SB 16) to payday lending businesses, and industry officials indicated that the industry would voluntarily alter some practices. (Please see attachment).

Third, the Sandy City Council will consider adding zoning regulations for payday-lending businesses in the coming week, according to a news story. If Sandy, and Salt Lake City adopt regulations, the number of municipalities with some regulation of the industry will rise to nine. Seven cities: South Salt Lake, West Valley City, Taylorsville, West Jordan, South Jordan, Draper and Midvale already have imposed limits on payday lending businesses. Cottonwood Heights also is exploring whether to adopt an ordinance to regulate payday lending businesses.

Finally, the City Council raised two issues during the January discussion: Why should a business be singled out for regulation when other, larger companies provide the same product, and does Salt Lake City regulate other businesses in a similar manner?

Taking the second issue first, Council Members may recall that Deputy Planning Director Cheri Coffey responded to a question about pawn shops by saying that the City has a distance requirement, restricts pawn shops to certain zones, and lists pawn shops as



a conditional land use. On the first issue, if the City Council is concerned about differentiating between the banking industry and payday lending businesses, the Council could consider definitions similar to the following in West Jordan's zoning ordinance:

**Check cashing credit service** means an establishment engaged in providing credit intermediation and related activities that facilitate the lending of funds issuance of credit, or any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. Typical uses include check cashing services, payday advances/loans, short term loans, deferred deposit loans, and Title loans. This definition excludes kiosks, banks and financial institutions, and investment companies.

**Bank or financial institution** means an organization involved in deposit banking, finance, investment, mortgages, trusts and the like. Typical uses include commercial banks, credit unions, finance companies, and savings institutions. This definition also includes automated teller machines. This definition excludes check cashing credit services, bail bonds, and pawn shops.

I agree with my colleagues that the City Council should not prevent people from seeking a payday loan from a business primarily established for that purpose, or from a full service bank that provides the service to those who have their pay automatically deposited into an account there, or from the Internet. Doing that is a function of the state and federal governments. But seven cities in Salt Lake County have adopted restrictions on payday lending businesses in part because of concerns about the effect payday lending businesses have on how they want to look and how they want to develop economically. I believe the Salt Lake City Council should adopt the Legislative Intent so this City can fashion something that benefits our residents.

<b>CITIES THAT REGULATE PAYDAY LENDING BUSINESSES THROUGH ZONING ORDINANCES</b>				
<b>CITY</b>	<b>DISTANCE BETWEEN SIMILAR BUSINESSES</b>	<b>POPULATION RATIO?</b>	<b>RESTRICTED TO CERTAIN ZONES?</b>	<b>CONDITIONAL USE?</b>
<b>Draper</b>	1,000 feet	No	One Commercial Zone.	Yes
<b>Midvale</b>	600 feet	1 per 10,000	Commercial Zones	Yes
<b>Sandy (Under Consideration)</b>	1 mile	1 per 10,000	Some Commercial Zones	Yes
<b>South Jordan</b>	1 mile	No	Community Commercial (Large-scale) Zone	Yes
<b>South Salt Lake</b>	600 feet (Between Businesses and from Residential Zones)	1 per 5,000	Commercial Corridor	Yes
<b>Taylorsville</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes
<b>West Jordan</b>	1,000 feet (Also from pawn shop or bail bond businesses)	Maximum limit of 12 allowed within city boundaries	Some Commercial Zones	Yes
<b>West Valley City</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes

CHECK CASHING  
BUSINESSES LOCATED  
IN SALT LAKE CITY

<u>ID#</u>	<u>Business Name</u>	<u>Address</u>	<u>Ownership</u>	<u>Telephone</u>	<u>Approve Date</u>
20052242	1st Choice Money Center	274 East 900 South	RFG Utah LLC	623-1711	12/15/05
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20061977	Check N Go	1645 West 700 North	Great Plains Specialty Finance inc	364-7974	11/21/06
20041646	Checkmate Payday Loans & Check Cashing	1290 South 300 West	LMSA Financial Corp Arizona	478-0728	10/21/04
20000623	Checkmax	1726 W North Temple #C	David Ha Truong	994-0616	03/31/03
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money trf	Envios Yosi	170 East 900 South	Rubissel Tovar	870-0597	
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20051279	Quick Title Loans	1055 West 1700 South	Quick Tow Towing	619-7010	07/11/05

**deseretnews.com**

Deseret Morning News, Thursday, February 22, 2007

## **Payday loan industry to alter ways 'voluntarily'**

**By Lee Davidson**

Deseret Morning News

Amid increasing scrutiny by lawmakers and the press nationally, the payday loan industry announced Wednesday voluntary changes it says will better protect and educate customers and help them avoid being trapped into long-term debt.

"We have listened to concerns raised about our industry and have developed innovative solutions to address them," said Darrin Andersen, president of the payday loan industry's Community Financial Services Association of America.

Among voluntary changes it announced are banning ads that promote payday loans for frivolous purposes; allowing customers the option of an extended payment plan at no extra cost if they cannot pay off a loan on time; and putting a warning on all ads and promotions that such loans are for short-term needs only.

Cort Walker, spokesman for the Utah Consumer Lending Association, said the state group of payday lenders supports those national actions. "These new initiatives will ensure that member companies hold themselves to a high standard of responsible service and will help customers make better financial decisions," he said.

However, industry critics say the changes are not worth much. "It amounts to saying that they have a really bad product, so be careful. I'm not sure that I see that as a big step forward," said Laura Polacheck, advocacy director for AARP Utah, which often fights the payday loan industry in the Utah Legislature.

Polacheck said the industry already generally warns that the loans are for short-term needs only, and says it has been hypocritical to say that "and then have ads promoting using them for vacations or a night on the town. At least that should stop now."

She said allowing extended payment plans could be worthwhile, depending on how they are implemented. CFSA materials said they should allow paying off a loan in four payments with no extra interest on a customer's next pay dates. Lenders would not begin collection proceedings against customers complying with such a payment plan.

But it also adds that such plans may be made available only once a year to customers. Polacheck said she worries it still might allow some to get caught in a cycle of taking out new loans to pay off old ones at triple-digit interest.

style="border:1px solid #999999;">

### **Related content**

Deseret Morning News

Nov. 13 2005:

▶ [Trapped for cash: Deeper in debt](#)

The changes come after Congress last year capped interest on payday loans for families of military members to 36 percent annually. (A Deseret Morning News probe into the industry in Utah in 2005 showed they charge an average 521 percent annual interest here for loans usually made for two weeks or until a next payday.)

Also in Utah, several cities such as Sandy and Salt Lake City are considering restricting the numbers of payday lenders they allow (as other cities such as West Valley City and Taylorsville already have).

The Utah Legislature passed a minor bill this year to allow fining payday lenders for violating state rules. More stringent bills have been introduced but have not proceeded far.

Andersen of CFSA said the new voluntary steps "are part of an ongoing effort to respond to the concerns of policy makers and protect the financial well being of our customers."

The CFSA also says it is launching a \$10 million national consumer education campaign to encourage consumers to use payday loans in responsible manners — including borrowing an amount they feel comfortable that they can repay on time.

Of note, a Morning News series in 2005 found that Utah has more payday loan stores than 7-Elevens, McDonald's, Burger Kings and Subway stores — combined. Most are concentrated in areas that are poorer, heavily Hispanic or near military bases.

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*E-mail: [lee@desnews.com](mailto:lee@desnews.com)*

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## **5 C. PLANNING COMMISSION**

**Minutes and Agendas  
Hearing October 8, 2008**

**SALT LAKE CITY  
PLANNING COMMISSION MEETING  
In Room 315 of the City & County Building  
451 South State Street, Salt Lake City, Utah  
Wednesday, September 24, 2008**

Present for the Planning Commission meeting were Chair Matthew Wirthlin, Vice Chair Mary Woodhead and Commissioners: Peggy McDonough, Babs De Lay, Kathy Scott, Susie McHugh, Tim Chambless, and Frank Algarin. Commissioner Prescott Muir was excused from the meeting.

Present from the Planning Division: Wilf Sommerkorn, Planning Director; Joel Paterson, Acting Deputy Director; Lynn Pace, Deputy City Attorney; Everett Joyce, Senior Planner; Nole Walkingshaw, Senior Planner; Michael Maloy, Principal Planner, Cheri Coffey, Planning Manager, and Tami Hansen, Planning Commission Secretary.

A roll is being kept of all who attended the Planning Commission Meeting. Chair Wirthlin called the meeting to order at 5:47 p.m. Audio recordings of the Planning Commission meetings are retained in the Planning Office for an indefinite period of time.

A field trip was held prior to the meeting. Planning Commissioners present were: Frank Algarin, Tim Chambless, Peggy McDonough, Susie McHugh, Kathy Scott, and Matthew Wirthlin. Staff members present were: Michael Maloy and Joel Paterson.

**DINNER NOTES**

Mr. Nole Walkingshaw gave a presentation regarding the new Accela database program that has been implemented throughout departments city-wide.

**APPROVAL OF MINUTES FROM WEDNESDAY, September 10, 2008.**

**5:52:01 PM Vice Chair Woodhead made a motion to approve the minutes from Wednesday, September 10, 2008 with amendments. Commissioner Algarin seconded the motion. All in favor voted, "Aye," the motion passed unanimously.**

**5:52:14 PM REPORT OF THE CHAIR AND VICE CHAIR**

Chair Wirthlin noted that he and Vice Chair Woodhead joined Mayor Ralph Becker, five members of the City Council, related city staff, and the Director of the RDA and staff, on a trip to Portland Oregon, and Seattle, Washington. He noted that it was a positive event, and much of the trips focus was to view the benefits of the street car/trolley systems that they had in each state. He noted that they also met with some developers and reviewed some of their projects and met with the Mayors of Seattle and Portland.

Vice Chair Woodhead stated that the trip was very much focused on transit-development and the notion that transit should be built first and used to focus development. She noted that both Mayors shared the political stories involved in this process.

Mr. Sommerkorn stated that he went onto Vancouver, Canada where the transit system was not as developed as some of these other communities, which was interesting because it is much denser. He noted that they focused more on walking, there were a lot of similarities to Salt Lake City, and this experience was very beneficial.

**6:00:13 PM REPORT OF THE DIRECTOR**

Mr. Sommerkorn noted the reorganization of the department had been announced to staff. He noted that staff was being reorganized into teams broken into geographic areas, which would be more specified within a week or two, and the Commission would be updated on that.

## BRIEFING

**6:01:40 PM Conditional Use Project- Issues for Further Study**—The Planning Staff will review and discuss with the Planning Commission the proposed responses to issues that were raised during the City Council's recent review of conditional use regulations. The City Council requested further study of issues that were not addressed prior to the July 22, 2008 adoption of amendments to the Zoning Ordinance relating to conditional and permitted uses. The Planning Staff is requesting comment and direction from the Planning Commission prior to submitting the responses to the City Council for its review. View: [Memorandum](#) View: [Document](#)

**6:32:55 PM Commissioner McDonough made a motion regarding the Conditional Use project – Issues for Further Study, and moved that the Planning Commission supports staff to continue the line of study that has been presented and discussed at the meeting.**

Commissioner De Lay seconded the motion. All in favor voted, "Aye," the motion carried unanimously.

## PUBLIC HEARING

**6:34:29 PM Petition 400-08-02, Driggs Avenue Street Closure at 1300 East**—the Utah Department of Transportation (UDOT) is requesting to close a portion of Driggs Avenue (approximately 2370 South and just west of 1300East). It is proposed that Driggs Avenue will terminate in a cul-de-sac at this location. The purpose of the street closure is to accommodate the reconfiguration of the east bound I-80 off ramp at approximately 1300 East. View: [Staff Report](#)

Chair Wirthlin recognized Lex Traughber as staff representative.

**Public Hearing**— Chair Wirthlin noted that there was no one present to speak.

**6:40:46 PM Commissioner De Lay made a motion regarding Petition 400-08-02, based on information in the staff report, and testimony heard at the meeting, the Planning Commission declare the subject property surplus and transmit a favorable recommendation to the City Council to close the subject street. The recommendation is subject to the following conditions:**

1. Compliance with the City Department/Division comments as attached to this staff report as Exhibit A.
2. Compliance with City Code 2.58 which regulates the disposition of City owned real property.

Vice Chair Woodhead seconded the motion. All in favor voted, "Aye," the motion carried unanimously.

**Crestview Holdings Master Plan and Zoning Map Amendment**—a request by Juston Puchar, with Crestview Holdings, for a master plan and zoning map amendment for property located between approximately 356 to 358 North Redwood Road. The proposed master plan and zoning map amendment would accommodate an eight (8) unit multi-family residential development. The property is located in City Council District One represented by Carlton Christensen.

- a. **Petition 400-08-10 Master Plan Amendment**—the applicant is requesting an amendment of the Northwest Community Land Use Plan map for the property from Parks/Open Space to Medium Density Residential.
- b. **Petition 400-08-09 Zoning Map Amendment**—the applicant is requesting amendment of the Salt Lake City Zoning Map for the property from R-1/5000 Single Family Residential to RMF-35 Moderate Density Multi-Family.

**This item was postponed indefinitely.**

**6:41:20 PM West Temple Senior Housing Master Plan Map Amendment, Zoning Map Amendment, and Planned Development**—a request by Bill Nighswonger, Executive Director of the Housing Authority of Salt Lake City, for a master plan amendment, zoning map amendment, and planned development for property located at approximately 1812 South West Temple Street. The proposed master plan amendment, zoning map amendment, and planned development petition would accommodate a proposed 95 unit senior-housing residential development. View: Staff Report

**Petition 400-08-20 Master Plan Amendment**—the applicant is requesting approval to amend the Central Community Future Land Use map for the property from Low Density Residential (1-15 dwelling units/acre) to Medium High Density Residential (30-50 dwelling units/acre).

**Petition 400-08-21 Zoning Map Amendment**—the applicants are requesting approval to change the zoning of the property from R-1/5,000 Single Family Residential District to RMF-45 Moderate/High Density Multi-family Residential District.

**Petition 410-08-51 Planned Development**—the applicant is requesting approval of a planned development containing 95 units for senior housing on the property. The proposal includes renovation and reuse of an existing single-family dwelling as an “amenity” for the project.

Chair Wirthlin recognized Michael Maloy as staff representative.

**7:00:32 PM Public Hearing**

The following person spoke or a submitted hearing card in *support* for the proposed petition: **Bill Davis** (332 West 1700 South) Chair of the Peoples Freeway Community Council.

**7:19:59 PM Commissioner Scott made a motion regarding Petitions 400-08-20, 400-08-21, and 410-08-51 based on the recommendations found in the staff report, and information heard and considered at the meeting, that the Planning Commission transmit a favorable recommendation to the City Council:**

1. To amend the Central Community Future Land Use map from Low Density Residential (1-15 dwelling units/acre) to Medium High Density Residential (30-50 dwelling units/acre) for property located at 1812 South West Temple Street.0
2. Transmit a favorable recommendation to the City Council to amend the Salt Lake City Zoning Map from R-1/5,000 Single-Family Residential District, to RMF-45 Moderate/High Density Multi-Family Residential District for property located at 1812 South West Temple Street.
3. The Planning Commission grant approval for a planned development containing 95 dwelling units for the senior housing project subject to the following conditions:



- a. **Property must be rezoned to permit construction of the planned development proposal. Failure to obtain appropriate zoning shall render the Planning Commission approval null and void.**
- b. **Approval is subject to compliance with Attachment G—Department Comments.**
- c. **Illumination of the parking lot shall be sufficient to ensure public safety; however, security lighting must be shielded to control light pollution and glare. Light pole height shall not exceed 15 feet. All lighting shall be oriented downward except for the highlighting of any building architecture and landscape features, or for low wattage decorative lighting.**
- d. **The preservation, exterior restoration, and maintenance of the Stanley F. Taylor House shall comply with Section 21A.34.020.G and applicable Residential Design Guidelines for Residential Historic Districts in Salt Lake City.**
- e. **Landscaping plans shall be revised to comply with quantity and density requirements of buffer regulations, except for buffer width reductions specified on page 4 of this staff report. In addition, vertical growth landscaping shall be increased to mitigate proposal to reduce building setbacks. Approval of the final landscaping plan shall be delegated to the Planning Director.**
- f. **Private roadway will remain at 26 feet. All building structures abutting the south property line shall be shifted northward an additional two feet to increase the landscape buffer to address privacy concerns.**

**Commissioner McHugh seconded the motion. All in favor voted, “Aye,” the motion carried unanimously.**

Chair Wirthlin announced a short break at 7:24 p.m.

Chair Wirthlin reconvened the meeting at 7:33 p.m.

7:33:38 PM **Petition 400-08-18, a legislative action initiated by the Salt Lake City Council**—a request by the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide “payday-loan check cashing services,” and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed. Everett View: [Staff Report](#)

Chair Wirthlin recognized Everett Joyce and Nole Walkingshaw as staff representatives.

Mr. Walkingshaw stated that check cashing/payday loan lending was a legislative action initiated by the City Council, it was an ordinance that was becoming more common across the Salt Lake City valley, as a way to regulate these types of businesses. He noted that prior to this, the use of a check cashing/ payday loan lending business had been considered a financial institution similar to banks or credit unions. He noted that this was a growing industry, and staff felt that this growth constituted a specific definition within the ordinance.

Mr. Walkingshaw noted that some of the options to help regulate these institutions could be population ratio caps, or spacing between each business. He noted that the first step was to establish it as a use and then distribute it as a new defined use.

Mr. Walkingshaw noted that the potential options to handle this would be to define it as a use, establish a radius since there seemed to be a development trend to cluster these types of businesses together, which tended to

have a negative appeal, but there was some findings from Congress that found that there seemed to be a practice to roll over these loans. Where a customer borrows from check cashing place one and then uses check cashing place two to pay off the loan and the first, thus a feeding cycle and pattern develops. He noted a distance radius would help break up this clustering, and staff would recommend 600 feet, though other municipalities have done more. He noted that 600 feet is a city block, which seemed reasonable.

Commissioner De Lay inquired if this new ordinance would restrict existing businesses from closing and the same type of businesses opening in a cluster of these businesses.

Mr. Walkingshaw noted that would fall within a non-conforming use and there would need to be a discussion about how to manage that.

Mr. Walkingshaw stated that the a concept of placing a cap on the total number of these businesses, which right now there were 49 of these businesses in operation, and that number comes from the state which requires a registration for these businesses. He noted now there are roughly 180,000 residences, which means that only 18 locations were actually legal. Essentially every single payday lending institute was a non-conforming use, because that ratio has been exceeded and each facility becomes a non-conforming use in association to the clustering pattern.

Mr. Walkingshaw noted that typically with non-conforming uses they would be allowed to continue, because it was a legal non-conforming use.

Mr. Pace stated that if the Planning Commission adopted only a spacing requirement, then there was no population cap, but in theory one business could move from one location into another legal location. He noted that another option could be that the Planning Commission adopted a spacing requirement as well as a cap per number of residents; language would need to be added to the ordinance to address how to deal with non-conforming uses. He noted that generally the City had allowed modification if it made the subject less non-conforming than before.

He noted that the Planning Commission could use the spacing to break up the clustering, by requiring that one of the businesses move somewhere more conforming, because it would meet the 600 foot spacing requirement, but not the population cap. Mr. Pace noted that to answer Commissioner De Lay's question, these uses run with the land, and a new owner could continue the non-conforming use.

Vice Chair Woodhead inquired if the next tenant of the building happened to be a different type of business and they were there for two years, then would the check cashing/ payday use be eliminated.

Mr. Walkingshaw noted that if the next tenant changed the use, it would be eliminated.

Commissioner McDonough inquired about how the current ordinance dealt with non-conforming uses running with the land, and if the Planning Commission could change the language so that some of the uses ran with the land and some of the uses were particular to the occupant.

Mr. Pace stated that if currently an owner had a non-conforming use they get to continue it; however, if a new owner was to come in under this ordinance, the Commission could say that a new owner's conditional use would not be tied to the land.

Commissioner McDonough inquired why these were not considered as conditional uses.

Mr. Joyce noted that they were permitted uses, because if both criteria for controlling spacing of these types of businesses were used, then there would have to be a population of over 500, 000 people to build a new one.

Mr. Pace noted that if the Commission put into effect a population cap, and then told the payday loan businesses the City would not let them move this tends to memorialize them in place and they never move to a better location—for instance this has happened with billboards, rarely they will move out of a residential areas to another area because the City has frozen them in place. He noted that in contrast if the Commission adopted a spacing requirement without the population cap, this would allow for more, but would allow the businesses over time to move to better locations, that were more appropriate.

Mr. Joyce noted that the negative impact of a conditional use versus a permitted use would be clustering, and the spacing criteria would address that.

Commissioner Scott stated that it seemed that nobody thought that these types businesses were a good idea, so the Commission could put a cap on them and minimize the damage, but what if the Commission did something radical and stated that the zoning should not include these types of businesses.

Mr. Pace stated that legally the Commission could do that, there would just need to be a rational basis for the regulation, but it was not a protected constitutional use.

Commissioner McDonough stated that she understood that differently, for instance with sexually-oriented businesses, it had been mandated.

Mr. Pace stated that sexually-oriented businesses had been determined to be businesses that involved an element of free speech, and therefore could not be outlawed completely, only the time, place, and manner could be regulated. He noted that there had been no such finding with check cashing/ payday loan facilities.

Vice Chair Woodhead stated that as far as the population cap versus the 600 foot spacing, was there a number of these businesses now that were in inappropriate or bad locations.

Mr. Joyce stated that it was more a clustering issue, rather than a location issue. He noted that he and Mr. Walkingshaw did map out the 49 facilities that exist and there were quite a few that would be affected by a spacing regulation alone.

Chair Wirthlin inquired why staff had chosen the 600 foot spacing, and would there be legal issues if the Commission increased this to 1,000 feet.

Mr. Pace noted that as long as the Commission had a rationale basis for the 1,000 feet the Commissioner could do it. He also noted that there was an impact from these businesses being clustered as far as increased crime, and economic issues, and as long as the Commission had a reasonable standard the spacing could be increased.

Commissioner De Lay inquired if these types of business could be banned.

Mr. Pace noted that was a more aggressive direction to take, but as long as the Commission gave solid reasons as to why it was appropriate it could be done.

Commissioner De Lay stated that South Salt Lake City agreed to cap their bars and taverns, so it could be done.

Vice Chair Woodhead stated that by banning them, it does not mean they will go away.

Mr. Pace stated that there was nothing in the ordinance that required existing businesses to go away.

Vice Chair Woodhead stated that essentially doing this would leave the situation the same, with nowhere for the businesses to go.

**Public Hearing**—Chair Wirthlin opened the public hearing portion of the petition and noted here was no one present to speak, he then closed the public hearing.

Commissioner McDonough stated that she agreed that a cap would tend to nestle these businesses in place for a long period of time. She noted that she would be inclined to consider a more restrictive distance requirement.

Commissioner McHugh stated that in the future, especially in the Northwest Quadrant, under a new ordinance with capping restrictions, it precluded them from ever going out into that area, so this could prevent problems in other areas.

Mr. Joyce stated that one of the other things staff was looking at in the zoning ordinance was which zoning districts they could go into. Right now financial institutions would be in commercial residential and all of the commercial districts.

Commissioner Algarin stated that he would like to see 1,200 foot spacing between these businesses, which would be two city blocks in any direction.

Commissioner Scott noted that there were other cities, which had had other options, for example phasing out these businesses over a long term period, or putting a cap on what the lending rate could be. She suggested putting together a subcommittee to scrutinize some alternatives, and then bring it back to the Commission at a later date.

Mr. Pace stated that the City Council felt that this issue was pressing. He noted that in terms of phasing out existing uses, there was one option available that the Commission might want to consider or mention in their comments to the City Council. He noted that under state law, non-conforming uses could be amortized, but it would have to allow the property owner enough time to recover the extent of their investment. He noted that as a city, that had never been done, but the Commission could suggest to the City Council that this would be one situation where that should be looked at.

Chair Wirthlin inquired if Mr. Pace was saying that the Commission could suggest putting a statutory timeframe in place which would give these businesses a certain number of years to recover the investment.

Mr. Joyce stated that would be variable based upon each individual investment, he noted that this would require additional staff and funds to monitor and keep this program going.

Commissioner McHugh stated that in the staff report it was noted that some of these businesses do not have licenses, and inquired if Mr. Joyce or Mr. Walkingshaw had reviewed all 49 of these businesses and validated that they were legal, meaning they had a business license for this specific type of business.

Mr. Walkingshaw stated that they determined that the existing places that they were aware of were legal.

Vice Chair Woodhead suggested keeping these types of businesses a certain distance from schools, so that as part of teaching our youth to be good financial citizens; these businesses were not visible to children right outside of their schools.

Mr. Pace stated that as part of this ordinance the Commission could suggested that the check cashing/payday loan businesses could not be within a certain distance from each other, as well as in proximately to a school.

Commissioner De Lay stated that the Commission could also include schools, churches, or state owned properties. She noted that the ordinance could include that these businesses could not be within 1,200 feet of either of these entities.

Commissioner McDonough stated that she would like to see the distance be a half mile apart.

Mr. Pace inquired about what Commissioner De Lay meant about state or city publicly owned property.

Commissioner De Lay noted that she meant government buildings.

Mr. Pace stated that Commissioner De Lay should expand on why she felt this was important. He also noted that given the survey of other cities it looked like West Jordan had a one mile spacing requirement for these businesses and Orem, had a half mile requirement. He stated that given Salt Lake City's density, if the Commission wanted to recommend a full half mile, they needed more justification as to why a half mile made sense in a dense city, such as Salt Lake City.

Chair Wirthlin noted that technically the Planning Commission was only a recommending body and did not necessarily have to provide any rational basis for anything other than forming suggestions for the City Council to use and rely on to help them make a decision.

Mr. Pace stated that this was true; however, it was important to put on the record, so that there was documented reason why the Commission ended up with a half mile or other specified distance requirements from state or city owned property.

Commissioner McDonough stated that she felt a half mile was necessary because a quarter mile was actually a stated walkable distance by planning standards, and she felt that the Commission should go with a driving distance between these businesses. She noted that a second reason, was due to the disconnect that she saw with the one business per 10,000 residence, and even with the current population in Salt Lake City, that language would only allow a total of 18 check cashing/ payday loan businesses in the entire city. She noted that if these were spread through out all of the districts, a half mile distance could be achieved.

Mr. Walkingshaw stated that where the ratio cap is placed, it starts to reinforce the clustering and prevents the businesses from moving to a different location. He noted that perhaps existing businesses should be allowed to relocate to a legal conforming location, to combat this.

Commissioner McDonough inquired if this would occur if the Commission did not recommend a cap.

Commissioner De Lay stated that her rationale for suggesting that these businesses not be placed near schools, churches, or state owned property was to insure that these businesses were not near liquor stores, children, or where there were legal proceedings/courts.

Chair Wirthlin stated that certainly the ethic that was trying to be promoted in this city was one of being responsible financial citizens. He noted that he agreed with the idea that these businesses should not be built near schools was rational, because it would send mixed financial management messages to children.

Commissioner McHugh inquired about what the Commission wanted to do about amortizing the number of these businesses.

Commissioner De Lay stated that staff was saying this would create a layer of funding and staff that they did not have, it might be mentioned to the City Council that they might want to look at funding for that idea and should be considered as a suggestion.

Commissioner De Lay inquired about the statutory timeframe regarding phasing the licensing out, along with the authority to amortization the non-conforming use of these types of businesses.

Commissioner Scott stated that it would be beneficial to look at a permanent moratorium idea.

Commissioner McHugh noted that if the Commission did not put a cap, but stated the distance of these types of businesses, in the future there could be more locations than the 49 that exist now.

Mr. Pace stated that this was correct, but a new location would only be able to be built where it had been decided it was permitted.

Commissioner McHugh stated that members of the Commission seemed fine with not having any of these types of businesses at all.

Commissioner McDonough stated that if staff could analyze under a half mile radius distance only, in all of the zones that they had suggested where these types of business were permitted, then what total maximum number would that yield. She stated that intuitively thinking it would be less than the current 49.

Mr. Joyce stated that it would not be a concrete number.

Commissioner McDonough stated that if staff identified all of the zones on a zoning map and then mapped it, by using a half mile grid of dots and superimposed the maximum amount of dots within each district, a total number could be made.

Mr. Joyce stated that staff could do that, but using a designated space grid was not concrete, because a business could relocate to the point where there were more.

Commissioner McDonough stated that she agreed, but it would give the Commission good data to make a reasonable judgment with and the error factor might only be one percent.

Vice Chair Woodhead stated that this was premised on the idea that some of the current businesses would want to move, or would go out of business and whatever replaced them would have to replace them in the greater distance.

Mr. Walkingshaw stated that he had recently read an article that showed how well these businesses were doing because of our economy and the reality that access to credit was so poor. He noted that certainly a reduction in the numbers of these types of businesses was not in the near future, and by capping the number a monopoly would be created that would affect the supply and demand economics.

Vice Chair Woodhead noted that she was referring to the current business being bad business people and might not stay in business long enough to reach their peak, make their money, and move on.

Commissioner Chambless stated that these types of businesses were becoming a growth industry.

Commissioner De Lay stated that some of these businesses had the same owner, so they are sort of chains that are being franchised.

Vice Chair Woodhead stated that some of these businesses were also owned by big banks that choose not to put their names on them.

**8:11:30 PM** Commissioner De Lay made a motion regarding Petition 400-08-18 Check Cashing/Payday Loans, based on the comments, analysis, and findings of fact listed in the staff report, the Planning Commission transmit a favorable recommendation to the City Council to adopt the proposed text amendment for Check Cashing/ Payday Loan as shown in Exhibit A—Proposed Text Amendments, with the following modifications:

1. No check cashing/ payday loan business shall be located closer than one half mile from another check cashing/payday loan business, *public and private* schools, church, government municipal building, or state owned property.

Commissioner McDonough seconded the motion.

8:12:33 PM Discussion of the motion

Commissioner De Lay amended the motion to read condition 3: The Planning Commission adopts the definition of check cashing/payday loan businesses.

Chair Wirthlin stated that as far as state owned property, the Commission had discussed schools, and he suggested that it *public and private schools* should be added.

Commissioner De Lay accepted this amendment.

***Commissioner De Lay stated that the Planning Commission should suggest that the City Council also look at phasing out these types of businesses by helping to fund a study, or by giving planning staff or the City the authority to amortize non-conforming uses of these businesses.***

Commissioner Scott inquired about the amortizing of non-conforming uses.

Mr. Pace stated that it was only a side recommendation.

Commissioner De Lay agreed and stated that it was a recommendation that the City Council should do a more in depth study of this.

Mr. Joyce inquired if the Commissioners agreed with the zoning designations.

The Commissioners agreed that the zoning designation was acceptable as is and did not need to be modified at this time.

**All in favor voted, “Aye,” the motion carried unanimously.**

*The meeting adjourned at 8:15 p.m.*

***This document, along with the digital recording, constitute the official minutes of the Salt Lake City Planning Commission held on September 24, 2008.***

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Tami Hansen

**Walkingshaw, Nole**

**From:** ced@slcgov.com  
**Sent:** Thursday, August 28, 2008 10:49 AM  
**Subject:** Amended Planning Commission Agenda: September 10, 2008

*This information was sent with automated software and is not monitored for replies. ced@slcgov.com is the group responsible for this information.*

**AMENDED AGENDA FOR THE  
 SALT LAKE CITY PLANNING COMMISSION MEETING  
 In Room 315 of the City & County Building at 451 South State Street  
 Wednesday, September 10, 2008 at 5:45 p.m.**

The field trip is scheduled to leave at 4:00 p.m. Dinner will be served to the Planning Commissioners and Staff at 5:00 p.m., in Room 126. Work Session-the Planning Commission may discuss the Accela project tracking program, project updates and other minor administrative matters. This portion of the meeting is open to the public for observation

**APPROVAL OF MINUTES FROM WEDNESDAY, August 13, 2008.****REPORT OF THE CHAIR AND VICE CHAIR****REPORT OF THE DIRECTOR**

1. **Petitions 410-06-29 & 490-07-09, Request for Time Extension: Capitol View Conditional Use/Planned Development and Subdivision**-a request by Jeremy Jones for a twelve month time extension for the approvals granted for the Capitol View project. The Planning Commission approved the project on October 10, 2007. Section 21A.54.120 of the Zoning Ordinance limits the validity of approval for conditional uses to 12 months, unless a longer time period is requested and granted by the Planning Commission. The subject property is located at approximately 690 North West Capitol Street in City Council District three represented by Eric Jergensen (Staff Contact: Lex Traugher at 535-6184 or [lex.traugher@slcgov.com](mailto:lex.traugher@slcgov.com)).

**PUBLIC HEARING**

2. **Petition 400-07-35, Christus St. Joseph Villa Master Plan Amendments**-a request by Christus Health Utah represented by Galen Ewer, CEO/Administrator for Christus St. Joseph Villa, proposes to change the land use designation in the Future Land Use Map of the Central Community Master Plan for seven parcels located adjacent to the Christus St. Joseph Villa campus at 451 East Bishop Federal Lane. The addresses of the seven parcels according to County records are 1952, 1962, 1966 South 500 East and 455, 459, 465, 475 E. Hollywood Avenue. The applicant proposes to change the land use designation on these parcels from "Low Density Residential" to "Institutional" in order to facilitate redevelopment and expansion of the Christus St. Joseph Villa campus. The applicant also proposes to amend the Blocks 4 & 5 - East Waterloo Subdivision Small Area Master Plan that was adopted in 1992 to address the future expansion needs of Christus St. Joseph Villa. The subject properties are located in City Council District 5 represented by Jill Remington Love (Staff contact: Lex Traugher at 535-6184 or [lex.traugher@slcgov.com](mailto:lex.traugher@slcgov.com)).
3. **Petitions 400-07-15 and 400-07-16 Parleys Way Wal-Mart Rezoning and Master Plan Amendment**-a request by CLC Associates, Inc. on behalf of Wal-Mart for a zoning map amendment and a master plan amendment to the East Bench Master Plan located at approximately 2705 East Parleys Way. The parcel is currently zoned Community Business (CB) and the site is developed with a noncomplying use (supercenter) in a nonconforming structure. CLC Associates, Inc. is requesting that the property be rezoned to Community Shopping (CS) to allow for the construction of a new supercenter. The property is located in City Council District Seven represented by Council Member Søren Simonsen (Staff contact: Nick Britton at 801-535-6107 or [nick.britton@slcgov.com](mailto:nick.britton@slcgov.com)).
4. **Petition 410-08-50 (PLNPCM2008-00196) Piper Down Private Club Conditional Use Expansion at approximately 1492 South State Street**-a request for approval to expand the existing private club structure and the rear outdoor dining. The private club was a previously approved conditional use in the CC zoning District). The site is located in Council District five Jill Remington-Love (Staff contact: Marilyn Lewis at 535-6049 or [marilyn.lewis@slcgov.com](mailto:marilyn.lewis@slcgov.com)).
5. **Petition 400-07-14, Declaration of Surplus Property and Alley Vacation**-a request by Vera Novak to vacate a portion of the alley abutting her property at approximately 2553 South Dearborn Street, and declare it as surplus property. The property is located in the R-177,000 - Single-family Residential Zoning District, and in Council District Seven, represented by Søren Simonsen (Staff contact: Katia Pace at 535-6354 or [katia.pace@slcgov.com](mailto:katia.pace@slcgov.com)).
6. **Petition 410-08-39 Autozone Planned Development**-a request by The Boyer Co., represented by Nate Swain, to construct a new 6,000 square foot commercial building on a pad site located at approximately 1199 East 3300 South, at the south entrance of the Brickyard Plaza, in a Community Business (CB) district. The property is located in City Council District Seven, represented by Søren Simonsen(Staff contact: Casey Stewart at 535-6260 or [casey.stewart@slcgov.com](mailto:casey.stewart@slcgov.com)).
7. **Petition 490-08-23 Ehrich's Subdivision of Block 23 Amendment**- a request by Ed and Joy Hashimoto, represented by Jason Nichols (Parsons, Behle & Latimer law firm), for a subdivision amendment to reconfigure existing residential Lots 19, 20, and ~~Canceled~~ located at approximately 305 and 315 South 1200 East. The property is located in the R-2 (residential) district. The property is located in City Council District Four, represented by Luke Garrett (Staff contact: Casey Stewart at 535-6260 or [casey.stewart@slcgov.com](mailto:casey.stewart@slcgov.com)).
8. **Petition 400-08-18, a legislative action initiated by the Salt Lake City Council**-a request by the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check cashing services," and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed (Staff contact: Everett Joyce 535-7930 or [everett.joyce@slcgov.com](mailto:everett.joyce@slcgov.com)).

Visit the Planning and Zoning Enforcement Division's website at [www.slcgov.com/CED/planning](http://www.slcgov.com/CED/planning) for copies of the Planning Commission agendas, staff reports, and minutes. Staff Reports will be posted the Friday prior to the meeting and minutes will be posted two days after they are ratified, which usually occurs at the next regularly scheduled meeting of the Planning Commission.

**MEETING GUIDELINES**

1. Fill out registration card and indicate if you wish to speak and which agenda item you will address.
2. After the staff and petitioner presentations, hearing will be opened for public comment. Community Councils will present their comments at the beginning of the hearing.
3. In order to be considerate of everyone attending the meeting, public comments are limited to two (2) minutes per person, per item. A spokesperson who has already been asked by a group to summarize their concerns will be allowed five (5) minutes to speak. Written comments are welcome and will be provided to the Planning Commission in advance of the meeting if they are submitted to the Planning Division prior to noon the day before the meeting. Written comments should be sent to: *Salt Lake City Planning Commission*

451 South State Street, Room 406  
 Salt Lake City UT 84111

4. Speakers will be called by the Chair.
5. Please state your name and your affiliation to the petition or whom you represent at the beginning of your comments.
6. Speakers should address their comments to the Chair. Planning Commission members may have questions for the speaker. Speakers may not debate with other meeting attendees.
7. Speakers should focus their comments on the agenda item. Extraneous and repetitive comments should be avoided.
8. After those registered have spoken, the Chair will invite other comments. Prior speakers may be allowed to supplement their previous comments at this time.
9. After the hearing is closed, the discussion will be limited among Planning Commissioners and Staff. Under unique circumstances, the Planning Commission may choose to reopen the hearing to obtain additional information.
10. Salt Lake City Corporation complies with all ADA guidelines. People with disabilities may make requests for reasonable accommodation no later than 48 hours in advance in order to attend this meeting. Accommodations may include alternate formats, interpreters, and other auxiliary aids. This is an accessible facility. For questions, requests, or additional information, please contact the Planning Office at 535-7757; TDD 535-6220.

8/29/2008



**6. COMMUNICATIONS TO CITY  
COUNCIL**

## ADDENDUM TWO

### Salt Lake City Council

#### AGENDA

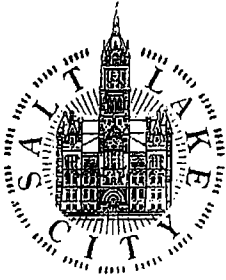
City Council Chambers  
City & County Building  
451 South State Street, Room 315  
Salt Lake City, Utah  
Tuesday May 13, 2008  
7:00 p.m.

- 
- A. **WORK SESSION: 2:00 p.m. PLEASE NOTE START TIME** Room 326, City & County Building, 451 So. State St. (Agenda items scheduled during the Council's formal meeting may be discussed during the Work Session briefing. Items from the following list that Council is unable to complete in Work Session from approximately 2:00 – 6:30 p.m. will be addressed in a Work Session setting following the Consent Agenda.)
1. The Council will interview Karla W. Padilla prior to consideration of her appointment to the Civil Service Commission (Item G3).
  - ★ 2. The Council will receive a briefing regarding regulations on Payday Lending Operations.
  3. The Council will receive a briefing regarding the Library Operating and Capital Budget for Fiscal Year 2008-2009.
  4. **The Council will hold a follow-up discussion regarding a proposed ordinance clarifying the extension of the Free Fare Zone as set forth in the approved Interlocal Agreement between Salt Lake City and Utah Transit Authority and other related matters (Item F1).**
  5. The Council will receive a briefing regarding an overview of the Mayor's recommended budget for Fiscal Year 2008-2009.
  6. The Council will receive a briefing regarding the Mayor's recommended budget for the Fire Department for Fiscal Year 2008-2009.
  7. The Council will receive a briefing regarding the Mayor's recommended budget relating to the General Fund portion of the Attorney's Office for Fiscal Year 2008-2009.
  8. The Council will receive a briefing regarding the Mayor's recommended budget relating to the Public Services Department for Fiscal Year 2008-2009.
  9. The Council will receive a briefing regarding the Mayor's recommended budget relating to the Management Services Department for Fiscal Year 2008-2009.
  10. The Council will receive a briefing regarding the Mayor's recommended budget relating to an Energy Fund for the Future for Fiscal Year 2007-2008.
  11. Council Member Martin will brief the Council on a potential economic development opportunity.
  12. The Council will consider a motion to enter into Closed Session for the purpose of strategy to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms pursuant to Utah Code Ann. § 52-4-204, § 52-4-205(1)(d), and attorney-client matters that are privileged, pursuant to Utah Code Ann. § 78-24-8.
  13. **(Tentative)** The Council will consider a motion to enter into Closed Session, in keeping with Utah Code to discuss labor negotiations, pursuant to Utah Code Ann. § § 52-4-204 and 52-4-205 (1)(b).
  14. Report of the Executive Director, including a review of Council information items and announcements.

# Check Cashing/Payday Lending City Council Briefing May 13, 2008

The following is a list of issues which require discussion on how the proposed text amendment controlling Check Cashing/Payday Loan companies will be administrated.

- Land-use argument: what are the land-use impacts associated with Check Cashing/Payday Lending facilities? How are they different from other retail services or financial institutions?
- Based on the information we received from the State of Utah there are 49 businesses registered in Salt Lake City, should Salt Lake City adopt an ordinance regulating the number of businesses allowed at a ratio of 1:10,000 there would be 31 non-conforming businesses over the allowed number of 18.
- Non-conforming uses: The proposed amendment creates two levels of non-conformance. First, by placing a Cap on the total number allowed based on a population ratio, all existing facilities are classified as non-conforming uses. The total number allowed has already been achieved. Second, by establishing a radius existing "clusters" of these businesses become non-complying and non-conforming. A set policy on how we will deal with the non-conforming issues is needed. This policy may be included in the ordinance.
- Tracking and managing locations: it may be appropriate to require a registration of the existing businesses for formal cataloging and tracking. Currently these facilities are listed in the NAISC codes with other financial institutions and the current tracking system is not specific enough for effective management. Staff is currently requesting additional information from the Utah State Department of Financial Institutions, the agency responsible for administrating the "Utah Consumer Credit Code". Our request is for specific listings and a discussion of current regulatory and enforcement practices.
- Preferred option and radius,
- New State Law, May 4, 2008 the state introduced amendments to the "Check Cashing and Deferred Deposit Lending Registration Act." Updates to the current language may be appropriate for consistency with new state language.



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

Handwritten initials "MD" in black ink.

**Date:** April 29, 2008

**CC:** Joel Paterson, Acting Assistant Planning Director

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

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**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***

***Table of Contents***

*5.49.010 Purpose*

*5.49.020 Definitions*

*5.49.030 Permits*

*5.49.040 Administrative Authority*

*5.49.050 Location and Zoning Restrictions*

*5.49.060 Payment of Principal Prior to Payday Loan Renewal*

*5.49.070 Cancellation of Payday Loan*

*5.49.080 Payment Plan for a Payday Loan*

*5.49.090 Remedies*

*5.49.100 Appeals*

*5.49.110 Complaints*

*5.49.120 Severability*

***-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

**Salt Lake City Council**

**AGENDA**

**City Council Chambers  
City & County Building  
451 South State Street, Room 315  
Salt Lake City, Utah  
Tuesday, May 6, 2008  
7:00 p.m.**

- 
- A. **WORK SESSION: 3:00 p.m. or immediately following the Redevelopment Agency Meeting; Room 326, City & County Building, 451 So. State St. (Agenda items scheduled during the Council's Formal meeting may be discussed during the Work Session briefing. Items from the following list that Council is unable to complete in Work Session from approximately 3:00 – 6:30 p.m. will be addressed in a Work Session setting following the Consent Agenda.)**
1. The Council will meet with the new Salt Lake City Library Director, Beth Elder.
  2. The Council will receive a follow-up briefing regarding an Interlocal Agreement with the Utah Transit Authority to construct a TRAX light rail line to the Salt Lake City International Airport, including the public benefit study (Item F8).
  3. The Council will receive a follow-up briefing regarding a proposed ordinance to amend the text of the Zoning Ordinance to revise the definition of restaurant, adjust parking requirements for restaurants, retail goods, service establishments, and expand alternative parking, off-site and shared parking options.(Petition No. 400-02-22 Legislative Actions from Council Member Love and Former Council Member Saxton) (Item C3).
  4. The Council will interview Paul Heath prior to consideration of his appointment to the City & County Building Conservancy and Use Committee.
  5. The Council will interview Dwight Butler prior to consideration of his appointment to the Public Utilities Advisory Committee.
  6. The Council will receive a briefing regarding a proposed resolution to extend the time period for satisfying the conditions in Ordinance No. 24 of 2006 relating to the Romney Lumber/Carson Annexation/Settlement agreement (Item F3).
  7. The Council will receive a briefing regarding a resolution to accept a petition requesting annexation of approximately 300 acres of land located between 1700 North and 2400 North and between Redwood Road, the Jordan River and 2700 West (Petition No. 400-08-03, BNA Realty Group, LLC) (Item F2).
  8. The Council will receive a briefing regarding a proposed ordinance to rezone property located at 728, 732, 752 and 766 North Redwood Road from Single Family Residential (R-1/5,000) to Community Business (CB) and amending the Zoning Map (Petition No.400-07-26; Thomas T. Phung) (Item G3).
  9. The Council will hold a follow-up briefing regarding a resolution supporting the Northwest Quadrant Community Master Plan Visioning Document (Item F1).

**CONTINUED ON NEXT PAGE**

10. The Council will receive a follow-up briefing regarding zoning text amendments to allow certain utility installations to be handled as Routine and Uncontested Matters in all Residential, Neighborhood Commercial, Mixed Use, Mobile Home Park, and Open Space Districts, and to allow utility installations as permitted uses in certain other zoning districts (Petition No. 400-06-35) (Item F7).
11. The Council will receive a briefing regarding regulations on Payday Lending Operations.
12. The Council will hold a follow-up briefing regarding an interlocal cooperation agreement with Salt Lake County regarding a water diversion structure proposed for Liberty Park.
13. **(Tentative)** Council Member Martin will brief the Council on a potential economic development opportunity.
14. The Council will consider a motion to enter into Closed Session for the purpose of strategy to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms pursuant to Utah Code Ann. § 52-4-204, § 52-4-205(1)(d), and attorney-client matters that are privileged, pursuant to Utah Code Ann. § 78-24-8.
15. **(Tentative)** The Council will consider a motion to enter into Closed Session, in keeping with Utah Code to discuss labor negotiations, pursuant to Utah Code Ann. § 52-4-204 and § 52-4-205 (1)(b).
16. Report of the Executive Director, including a review of Council information items and announcements.

**B. OPENING CEREMONY:**

City Council Member Jill Love will conduct the Formal Council Meetings during the month of May.

1. Pledge of Allegiance.
2. Mayor Becker will present the proposed Salt Lake City budget for Fiscal Year 2008-2009.
3. The Council will approve the minutes of April 15, 2008.

**C. PUBLIC HEARINGS:**

1. Ordinance: Vacate alley 1000 East and Lincoln Street, and Elm Avenue and Sugarmont Drive  
Accept public comment and consider adopting an ordinance vacating the north/south portion of the alley generally located at 1000 East and Lincoln Street, and Elm Avenue and Sugarmont Drive (Petition No. 400-07-03).  
(P 08-5)

Staff recommendation: Close and consider options.

2. Ordinance: Close and abandon alley north and adjacent to 338 - 356 West Paxton Avenue  
Accept public comment and consider an ordinance closing and abandoning the alley generally located at 338 - 356 West Paxton Avenue (Petition No. 400-07-25).  
(P 08-6)

Staff Recommendation: Close and consider options.



# Check Cashing/Payday Lending City Council Briefing May 6, 2008

The following is a list of issues which require discussion on how the proposed text amendment controlling Check Cashing/Payday Loan companies will be administrated.

- Non-conforming uses: The proposed amendment creates two levels of non-conformance. First, by placing a Cap on the total number allowed based on a population ratio, all existing facilities are classified as non-conforming uses. The total number allowed has already been achieved. Second, by establishing a radius existing “clusters” of these businesses become non-complying and non-conforming. A set policy on how we will deal with this second group is needed. This policy may be included in the ordinance.
- Tracking and managing locations: it may be appropriate to require a registration of the existing businesses for formal cataloging and tracking. Currently these facilities are listed in the NAISC codes with other financial institutions and the current tracking system is not specific enough for effective management. Staff is currently requesting additional information from the Utah State Department of Financial Institutions, the agency responsible for administrating the “Utah Consumer Credit Code”. Our request is for specific listings and a discussion of current regulatory and enforcement practices.
- Preferred option and radius,
- Land-use argument. Perception of blight, economic development detractors, clustering detracts from introducing a variety of businesses and services.

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SALT LAKE CITY  
PAYDAY LOAN/CHECK CASHING SERVICE

BL ID#	BUSINESS NAME		BUSINESS ADDRESS		CITY	ZIP	PHONE	NAICS_CODE	NAICS_DESCR
20052242	1ST CHOICE MONEY CENTER	274 E	900 S		SLC	84111	(801) 486-4438	522291	CONSUMER LENDING
20060293	1ST CHOICE MONEY CENTER	1244 S	REDWOOD	RD	SLC	84104	(801) 486-4438	522291	CONSUMER LENDING
20070397	1ST CHOICE MONEY CENTER	872 S	STATE	ST	SLC	84111	(801) 623-1711	522291	CONSUMER LENDING
20071886	1ST CHOICE MONEY CENTER	775 S	900 W		SLC	84104	(801) 623-1711	522291	OTHER NONDEPOSITORY CREDIT INTERMEDIATION
20070750	ALL AMERICAN CASH ADVANCE	1156 W	600 N		SLC	84116	(801) 357-9270	5223	ACTIVITIES RELATED TO CREDIT INTERMEDIATION
20070817	ALL AMERICAN CASH ADVANCE	250 W	2100 S		C SLC	84115	(801) 412-9900	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
20062020	ALL TYPES CHECK CASHING	369 S	MAIN	ST	SLC	84111	(801) 328-2274	522291	CONSUMER LENDING
20042436	BUCKEYE CHECKSMART	832 W	NORTH TEMPLE	ST	SLC	84116	(614) 798-5900	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
20070955	BUCKEYE CHECKSMART	1842 S	300 W		C SLC	84115	(801) 463-1800	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
20070956	BUCKEYE TITLE LOANS	1842 S	300 W		C SLC	84115	(801) 463-1800	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
19970828	CASH AMERICA PAWN OF SLC #1	789 S	STATE	ST	SLC	84111	(801) 322-3841	453310	USED MERCHANDISE STORES, ANTIQUE STORES, ETC
20061976	CHECK 'N GO	1423 S	300 W		A SLC	84104	(801) 486-4438	522291	CONSUMER LENDING
20061977	CHECK 'N GO	1645 W	700 N		K SLC	84116	(801) 364-7974	522291	CONSUMER LENDING
20041646	CHECKMATE PAYDAY LOANS AND CHECK CASHING	1290 S	300 W		SLC	84101	(801) 478-0728	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
20000632	CHECKMAX	1726 W	NORTH TEMPLE	ST	C SLC	84116	(801) 994-0616	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
19911238	EAGLE FINANCE CORPORATION	312 W	200 S		184 SLC	84101	(801) 322-2274	522291	CONSUMER LENDING
20030175	EASY MONEY	350 E	200 S		SLC	84111	(801) 359-2212	522291	CONSUMER LENDING
20060528	EZ LOAN SERVICES	145 E	1300 S		101 SLC	84115	(801) 364-2662	522291	CONSUMER LENDING
20061138	EZ LOAN SERVICES	820 E	400 S		SLC	84102	(512) 314-3465	522291	CONSUMER LENDING
19793761	GALLENSON & ASSOCIATES	166 E	200 S		SLC	84111	(801) 328-2016	522298	ALL OTHER NONDEPOSITORY CREDIT INTERMEDIATION
20071493	LOAN MART	1355 S	4700 W		200 SLC	84104	(866) 354-2274	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
20080626	LOANSMART	1445 S	STATE	ST	SLC	84115	(801) 968-4333	522291	CONSUMER LENDING
20070616	MI TIERRA MARKET, INC	402 S	900 W		SLC	84104	(801) 519-9294	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
19941424	MONEY MART	370 S	STATE	ST	SLC	84111	(801) 532-5765	522291	CONSUMER LENDING
20071972	MONEY ON THE MOVE INC.	10 W	300 S		305 SLC	84101	(801) 597-2538	52239	OTHER CREDIT INTERMEDIATION ACTIVITIES
20060483	MR. CASH LATINO	167 E	900 S		SLC	84111	(801) 359-2430	522	CREDIT INTERMEDIATION & RELATED ACTIVITIES
19981254	QC FINANCE	665 S	STATE	ST	SLC	84111	(801) 575-8172	522291	CONSUMER LENDING
19971132	QUICK LOAN	464 S	600 E		C SLC	84102	(801) 485-8181	522291	CONSUMER LENDING
20051279	QUICK TITLE LOANS	1055 W	1700 S		SLC	84104	(801) 619-7010	522291	CONSUMER LENDING
20020187	RAINCHECK #10 SLC	432 S	900 E		SLC	84102	(888) 355-7333	522291	CONSUMER LENDING
19990585	RENT A CENTER INC. #02310/CASH ADVANTEDGE	797 N	REDWOOD	RD	SLC	84116	(801) 521-8001	532299	ALL OTHER CONSUMER GOODS RENTAL
19990844	RENT A CENTER INC. #02313	409 E	400 S		SLC	84111	(801) 532-2002	453310	USED MERCHANDISE STORES, ANTIQUE STORES, ETC
19961170	UTAH TITLE LOANS	1460 S	STATE	ST	SLC	84115	(801) 463-9628	522291	CONSUMER LENDING
20031433	X-PRESS LOAN LLC	723 E	2100 S		SLC	84106	(801) 485-9777	522291	CONSUMER LENDING

OTHER

N/A SALT LAKE CITY CREDIT UNION 1380 S MAIN ST 84115 (801) 486-7255 CREDIT UNION

that the concentration of such facilities is producing undesirable secondary effects. Courts have further held that the evidence of these undesirable secondary effects need not be based upon the municipalities' own experience, and a municipality may rely upon the evidence assembled by other jurisdictions.

Pay day loan facilities do not involve activities which are entitled to free speech protection, thus the standard for regulating such facilities would presumably be lower than the standard for regulating sexually oriented businesses. Nevertheless, the City would still need to have a rational basis for such regulations, based upon findings that demonstrate the need for such regulations. For that reason, it is the opinion of this office that the City may adopt land use regulations which would prohibit the concentration of pay day lending facilities, provided that the City is able to assemble some legitimate reason for imposing such requirements. Those findings could be based upon higher incidence of criminal activity, reduced property values, or other similar concerns. As in the sexually oriented business context, the City need not assemble its own evidence on this issue, but would be entitled to rely on evidence assemble by other jurisdictions.

Some jurisdictions have adopted a cap on the total number of pay day loan facilities, based upon certain ratio of such facilities to the total population. Again, since no protected constitutional activity is involved, the standard for such regulations would presumably be a rational basis test. Thus, if the City were able to obtain some research or evidence as to the public policy justifications for such a cap, that evidence could provide the basis for findings to support the ordinance.

In summary therefore, the City may adopt land use regulations with regard to pay day loan facilities, provided that there is some evidentiary basis which would justify the adoption of such regulations.

If you have further questions concerning this matter, please let me know.

cc: Ed Rutan

design & signage (restrict/enforce ord)  
restrict to certain streets/  
zones  
check entire in centers?  
separate land use category

# SALT LAKE CITY CORPORATION


LAURA KIRWAN  
SENIOR CITY ATTORNEY

LAW DEPARTMENT

RALPH BECKER  
MAYOR

## Memorandum

To: Ed Rutan, Lynn Pace

From: Laura Kirwan 

Date: July 10, 2008

Re: Preemption Issues Related to Regulation of "Payday Lenders"

You asked me to research potential preemption issues related to the Planning Division's proposed amendments to the city code to regulate "payday lenders" or check cashing/title loan businesses. In addition to regulating these businesses through land use, the Planning Division has proposed amendments to the business licensing ordinance to directly regulate the operations of such businesses.

The Planning Division has proposed several operational regulations, including a cap on the rate of interest that may be charged; prohibiting renewal of loans unless the borrower has paid at least 25% of the principal; allowing for cancellation of loans without charge by the close of business the day after the loan is originated; requiring specific disclosures to borrowers; and setting requirements for payment plans.

Some of these operational requirements are already provided for under state law. Pursuant to the Check Cashing and Deferred Deposit Lending Registration Act, which is found in Ti. 7, Ch. 23, Utah Code Ann., payday lenders are subject to disclosure requirements and borrowers have the ability to cancel a loan without charge by the end of the following business day. However, the limitation on loan renewals and requirement for payment plans are not provided for under state law. Additionally, the proposed cap on interest rates is prohibited under state law. Section 15-1-1(1), Utah Code Ann., states, "[t]he parties to a lawful contract may agree upon any rate of interest for the loan or forbearance of any money, goods, or chose in action that is the subject of their contract." Because state law permits the parties to agree on "any rate of interest," not matter how high, a City ordinance limiting interest rates clearly contradicts state law.

Specifically, you asked whether the city's general business licensing authority set forth in Section 10-1-203(2), Utah Code Ann., confers economic regulatory authority over the operations of these types of financial institutions. The City has authority to regulate businesses through licensing, but any authority the City may have to establish operating standards for payday lenders likely is preempted by state law. Federal preemption is unlikely under the current state

of the law; however, the relationship between state and federal financial regulation underlies the state preemption issue, so I will discuss both state and federal preemption concepts.

### *Federal Preemption*

The United States utilizes a “dual banking system.”<sup>1</sup> Banks and other similar financial institutions can choose to be chartered under state or federal law. Historically, banks were almost all state chartered, with the exception of the First and Second United States Banks, which operated in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries. A national banking system promoting federally chartered banks rather than a central federal bank was created during the Civil War to help provide a financing mechanism for the war effort. The proponents of federal chartering may have believed that the state charter system would wither with time, but it did not and a dual system has been maintained.

Congressional enactments have provided for standardized regulation and oversight of federally chartered banks while still allowing states to regulate their own institutions. Federal legislation in 1993 provided for state chartered banks to operate interstate branches within certain parameters. Whether to hold a federal or a state charter is a business decision. Small local banks with no interstate branches may elect to be federally chartered, while huge multistate banks may elect to be state chartered.

Relying on the principles set out in *M’Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), courts have routinely held that state and local efforts to regulate federally chartered banks are preempted under the supremacy clause. Over time, for practical reasons, this principle has been refined to allow for state or local regulation in areas other than operational requirements, such as contract law and zoning. However, the regulation and oversight of financial operations of federally chartered banks remains off-limits to state and local regulation.

Payday lenders are primarily regulated by the states. Based on increasingly stringent state regulation, and outright bans in some states, some payday lenders attempted to sidestep state regulation by entering into agreements with federally chartered banks allowing them to operate under federal protection. A few years ago, the Office of the Comptroller of the Currency (“OCC”), the federal agency responsible for oversight of federally chartered banks, investigated and brought enforcement actions against several banks and payday lenders engaged in “rent-a-charter” arrangements, and as a result federally chartered banks have been strongly discouraged by the OCC from engaging in payday lending.<sup>2</sup>

Congress also recently adopted the Military Lending Act, 10 U.S.C. § 987, regulating payday loans to military members and capping interest rates on any loans made to military personnel at 36%. Additional efforts by Congress to crackdown on payday lenders are likely. As the law currently exists, federal preemption of the proposed city regulation of payday lenders seems

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<sup>1</sup> See *National Banks and the Dual Banking System*, September 2003, issued by the Office of the Comptroller of the Currency, Administrator of National Banks at [www.occ.treas.gov/ftp/release/2003-83a.pdf](http://www.occ.treas.gov/ftp/release/2003-83a.pdf).

<sup>2</sup> *Payday Loans: Federal Regulatory Initiatives*, Pauline Smale, Congressional Research Service, Library of Congress, Order Code RS21728, June 7, 2006.

unlikely, although there may be preemption of state law if Congress passes legislation limiting the operation of payday lenders on consumer protection grounds. Federal “truth-in-lending” law and other consumer protection laws already apply to state chartered lenders.

### *State Preemption*

Based on a review of Titles 7 and 10 of the Utah Code and a review of state case law, it is my opinion that the state has most likely preempted local authority to regulate the operation of payday lenders. Although the City has the requisite authority to regulate these businesses with regard to location and number of licenses issued, the City probably can not dictate internal operational standards.

Section 10-1-203(2) states that “the governing body of a municipality may license for the purpose of regulation and revenue any business within the limits of the municipality and may regulate that business by ordinance.” This appears to confer fairly broad authority. Moreover, Section 10-8-84 provides to cities a broad grant of “general welfare authority.” In a case involving a City criminal ordinance, the Utah Supreme Court has stated, “in the absence of express conflict, we will uphold a challenged ordinance unless there is some indication of incompatibility with the state statutory scheme.” *Salt Lake City v. Newman*, 148 P.3d 931, 934 (Utah 2006).

In this case, the operational requirements proposed by Planning are not in express conflict with state law, with the exception of the interest rate cap. However they are incompatible with, and most likely preempted by, Title 7 of the Utah Code, which is the Financial Institutions Act (the “Act”). Payday lenders are specifically regulated under the Check Cashing and Deferred Deposit Lending Registration Act, which is Chapter 23 of Title 7. In determining whether a local ordinance or act is preempted by state statute, Utah courts look first for express language in the state statute indicating the Legislature’s intent to foreclose local regulation. *Summit Water Dist. Co. v. Mountain Regional Water Special Services Dist.*, 108 P3d 119, 122 (Utah App. 2005)(citations omitted).

The Act’s legislative findings state that one of its purposes is to “preserve the advantages of the dual banking system.” Section 7-1-102(e), Utah Code Ann. (2008). Historically, municipalities have not played a role in the dual banking system, with states being the primary actors for bank regulation prior to establishment of a national banking system during the Civil War. Given the historical underpinnings of modern bank regulation, discussed previously with regard to federal preemption, this language appears to be an express statement by the Legislature of its intent that Utah continue to function on the historical model of banks regulated at either the state or federal level.<sup>3</sup> Local regulation over the establishment and operations of state-chartered financial institutions would in effect create a third banking system, requiring institutions and customers to navigate a patchwork of operational requirements.

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<sup>3</sup> See generally, *Gottling v. P.R. Inc.*, 61 P.3d 989, 992 (Utah 2002) (“The plain language of Section 34A-5-107(15) reveals an explicit legislative intention to preempt all common law remedies for employment discrimination.”)

# Utah Code -- Title 07 -- Chapter 23 -- Check Cashing Registration Act

## 7-23-101. Title.

This chapter is known as the "Check Cashing Registration Act."

## 7-23-102. Definitions.

As used in this chapter:

- (1) "Business of a check casher" means:
  - (a) cashing a check for consideration; or
  - (b) extending a deferred deposit loan.
- (2) "Check" is as defined in Section **70A-3-104**.
- (3) "Check casher" means a person that engages in the business of a check casher.
- (4) "Deferred deposit loan" means a transaction where:
  - (a) a person:
    - (i) presents to a check casher a check written on that person's account; or
    - (ii) provides written or electronic authorization to a check casher to effect a debit from that person's account using an electronic payment; and
  - (b) the check casher:
    - (i) provides the maker an amount of money that is equal to the face value of the check or the amount of the debit less any fee or interest charged for the transaction; and
    - (ii) agrees not to cash the check or process the debit until a specific date.
- (5) (a) "Electronic payment" means any electronic method by which a check casher:
  - (i) accepts a payment from a person; or
  - (ii) makes a payment to a person.(b) "Electronic payment" includes a payment made through:
  - (i) an automated clearing house transaction;
  - (ii) an electronic check;
  - (iii) a stored value card; or
  - (iv) an Internet transfer.
- (6) "Rollover" means the extension or renewal of the term of a deferred deposit loan.

Amended by Chapter 236, 2003 General Session

## 7-23-103. Registration -- Rulemaking.

- (1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or with a Utah resident unless the person:
  - (i) registers with the department in accordance with this chapter; and
  - (ii) maintains a valid registration.(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of a check casher.
- (2) (a) A registration and a renewal of a registration expires on April 30 of each year unless on or before that date the person renews the registration.



(b) To register under this section, a person shall:  
(i) pay an original registration fee established under Subsection 7-1-401(8); and  
(ii) submit a registration statement containing the information described in Subsection (2)(d).

(c) To renew a registration under this section, a person shall:  
(i) pay the annual fee established under Subsection 7-1-401(5); and  
(ii) submit a renewal statement containing the information described in Subsection (2)(d).

(d) A registration or renewal statement shall state:  
(i) the name of the person;  
(ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);

(iii) the address of the person's principal business office, which may be outside this state;

(iv) the addresses of all offices in this state at which the person conducts the business of a check casher;

(v) if the person conducts the business of a check casher in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;

(vi) the name and address in this state of a designated agent upon whom service of process may be made;

(vii) disclosure of any injunction, judgment, administrative order, or conviction of any crime involving moral turpitude with respect to that person or any officer, director, manager, operator, or principal of that person; and

(viii) any other information required by the rules of the department.

(e) (i) The commissioner may impose an administrative fine determined under Subsection (2)(e)(ii) on a person if:

(A) the person is required to be registered under this chapter;

(B) the person fails to register or renew a registration in accordance with this chapter;

(C) the department notifies the person that the person is in violation of this chapter for failure to be registered; and

(D) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (2)(e)(i)(C).

(ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this section is:

(A) \$500 if the person:

(I) has no office in this state at which the person conducts the business of a check casher;

or

(II) has one office in this state at which the person conducts the business of a check casher; or

(B) if the person has two or more offices in this state at which the person conducts the business of a check casher, \$500 for each office at which the person conducts the business of a check casher.

(iii) The commissioner may reduce or waive a fine imposed under this Subsection

(2)(e) if the person shows good cause.

(3) If the information in a registration or renewal statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:

- (a) that person is required to renew the registration; or
- (b) the department specifically requests earlier notification.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for the form, content, and filing of a registration and renewal statement.

Amended by Chapter 87, 2007 General Session

**7-23-104. Posting of fee schedules for cashing checks.**

(1) A check casher shall post a complete schedule of all fees for cashing a check in a conspicuous location on its premises that can be viewed by a person cashing a check.

(2) The schedule of fees required to be posted under Subsection (1) shall state the fees using dollar amounts.

Enacted by Chapter 144, 1999 General Session

**7-23-105. Operational requirements for deferred deposit loans.**

(1) If a check casher extends a deferred deposit loan, the check casher shall:

(a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:

(i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;

(ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and

(iii) a list of states where the check casher is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;

(b) enter into a written contract for the deferred deposit loan;

(c) conspicuously disclose in the written contract:

(i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;

(ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;

(iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;

(iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 12 weeks after the day on which the deferred

deposit loan is executed; and

(v) (A) the name and address of a designated agent required to be provided the department under Subsection 7-23-103(2)(d)(vi); and

(B) a statement that service of process may be made to the designated agent;

(d) provide the person seeking the deferred deposit loan a copy of the deferred deposit contract;

(e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:

(i) the amount of any interest rate or fee;

(ii) the date on which the full amount of the deferred deposit loan is due;

(iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;

(iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;

(v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan; and

(vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit

loan in whole or in part more than 12 weeks after the day on which the deferred deposit loan is executed; and

(f) comply with the following as in effect on the date the deferred deposit loan is extended:

(i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

(iv) Title 70C, Utah Consumer Credit Code.

(2) If a check casher extends a deferred deposit loan through the Internet or other electronic means, the check casher shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:

(a) in a conspicuous manner; and

(b) prior to the person entering into the deferred deposit loan.

(3) A check casher that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

(a) make partial payments in increments of at least \$5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and

(b) rescind the deferred deposit loan without incurring any charges by returning the

deferred deposit loan amount to the check casher on or before 5 p.m. the next business day following the deferred deposit loan transaction.

(4) A check casher that engages in a deferred deposit loan may not:

(a) collect additional interest on a deferred deposit loan with an outstanding principal balance 12 weeks after the day on which the deferred deposit loan is executed;

(b) roll over a deferred deposit loan without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;

(c) roll over a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from the day on which the deferred deposit loan is first executed; or

(d) threaten to use or use the criminal process in any state to collect on the deferred deposit loan.

(5) Notwithstanding Subsections (4)(a) and (4)(d), a check casher that is the holder of a check used to obtain a deferred deposit loan that has been dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may not be:

(a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a condition of the holder not filing a civil action; or

(b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

Amended by Chapter 87, 2007 General Session

**7-23-105.1. Electronic disbursement and collections.**

If a check casher collects payment on a deferred deposit loan through an electronic payment, the check casher shall, on the day the loan is executed:

(1) credit the amount of the deferred deposit loan through an electronic payment to the person receiving the deferred deposit loan; or

(2) make the amount of the deferred deposit loan immediately available to the person receiving the deferred deposit loan.

Enacted by Chapter 236, 2003 General Session

**7-23-106. Enforcement by department -- Rulemaking.**

(1) Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act, the department may:

(a) receive and act on complaints;

(b) take action designed to obtain voluntary compliance with this chapter;

(c) commence administrative or judicial proceedings on its own initiative to enforce compliance with this chapter; or

(d) take action against any check casher that fails to:

(i) respond to the department, in writing within 30 business days of the day on which the check casher receives notice from the department of a complaint filed with the department; or

(ii) submit information as requested by the department.

- (2) The department may:
- (a) counsel persons and groups on their rights and duties under this chapter;
  - (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to:
    - (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or abusive;
    - (ii) promote or assure fair and full disclosure of the terms and conditions of agreements and communications between check cashers and customers; or
    - (iii) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and
  - (c) employ hearing examiners, clerks, and other employees and agents as necessary to perform the department's duties under this chapter.

Amended by Chapter 87, 2007 General Session

**7-23-107. Examination of books, accounts, and records by the department.**

- (1) At least annually the department shall, for each premise engaging in the business of a check casher:
- (a) examine the books, accounts, and records; and
  - (b) make investigations to determine compliance with this chapter.
- (2) In accordance with Section 7-1-401, the check casher shall pay a fee for an examination conducted under Subsection (1).

Amended by Chapter 87, 2007 General Session

**7-23-108. Penalties.**

- (1) A person who violates this chapter or who files materially false information with a registration or renewal under Section 7-23-103 is:
- (a) guilty of a class B misdemeanor, except for a violation of:
    - (i) Subsection 7-23-105(1)(f)(i), (ii), or (iii); or
    - (ii) rules made under Subsection 7-23-106(2)(b); and
  - (b) subject to revocation of a person's registration under this chapter.
- (2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department determines that a person is engaging in the business of cashing checks in violation of this chapter, the department may:
- (a) revoke that person's registration under this chapter;
  - (b) issue a cease and desist order from committing any further violations;
  - (c) prohibit the person from continuing to engage in the business of a check casher;
  - (d) impose an administrative fine not to exceed \$1,000 per violation, except that:
    - (i) a fine imposed under Subsection 7-23-103(2)(e) shall comply with Subsection 7-23-103(2)(e); and
    - (ii) the aggregate total of fines imposed under this chapter against a person in a calendar year may not exceed \$30,000 for that calendar year; or

(e) take any combination of actions listed under this Subsection (2).

Amended by Chapter 87, 2007 General Session

**7-23-109. Civil liability.**

Nothing in this chapter is intended to limit any civil liability that may exist against a check casher for:

- (1) breach of contract;
- (2) violation of federal law; or
- (3) other unlawful act.

Enacted by Chapter 144, 1999 General Session

**7-23-110. Exemptions.**

The following are not subject to the requirements of this chapter:

- (1) a depository institution;
- (2) a depository institution holding company;
- (3) an institution directly or indirectly owned or controlled by one or more:
  - (a) depository institutions; or
  - (b) depository institution holding companies; or
- (4) a person that cashes a check in a transaction:
  - (a) that is incidental to the retail sale of goods or services; and
  - (b) for consideration that does not exceed the greater of:
    - (i) 1% of the amount of the check; or
    - (ii) \$1.

Enacted by Chapter 144, 1999 General Session

**8. ORIGINAL PETITION**

**Remarks:**

Petition No: **400-08-18**

By: **Salt Lake City Council**

Zoning Text Amendment

Date Filed: 06/19//2008

Address: **(Payday Lending)**



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## L E G I S L A T I V E   A C T I O N

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**DATE:** March 2, 2007  
**TO:** City Council Members  
**FROM:** City Council Member Nancy Saxton  
**RE:** Briefing and Consideration: Legislative Action Regarding Payday-Loan Businesses  
**CC:** Cindy Gust-Jenson, Lynn Creswell, Louis Zunguze, Ed Rutan, Orion Goff, Edna Drake, Gary Mumford

---

I would again appreciate the City Council's support for a Legislative Action to prepare an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check-cashing service," and perhaps consider expanding the ordinance to cover the ratio of businesses to the number of people serve and where those businesses should be allowed.

In previous City Council discussions in November and January, Council Members seemed comfortable considering regulating the distance between businesses providing payday-loan check-cashing services. Council Members noted that the business is legal in Utah and 31 other states. However, I would like to note that several cities in Salt Lake County have adopted regulations defining how many payday-loan, check-cashing businesses can locate in those cities and where they can locate.

I would like to propose the following motion:

That the City Council direct the City Attorney's Office with a recommendation from the Planning Commission to prepare an ordinance to regulate payday-loan check-cashing businesses in the following manner:

- Through a distance requirement that would prevent those businesses from concentrating in locations throughout the City.
- Through design guidelines.
- Through a requirement that would establish a ratio between the number of businesses and the City's total population.
- Through determining where are the most appropriate areas for payday-loan check-cashing businesses to be and whether they should be permitted or conditional uses in those locations.

The motion provides the City Council with three options:

- Not adopting the Legislative Action.
- Adopting the Legislative Action with all the proposed regulatory methods.

- Adopting the Legislative Action with one or more of the proposed regulatory methods.

Council Members may recall that at its November 7, 2006, meeting the Council agreed to calendar this proposal for a briefing and discussion. The discussion would take place after receiving an opinion from the City Attorney's Office about the best methods available for municipalities to regulate the number of payday loan businesses.

The City Attorney's Office determined that amending the City zoning ordinance – as other cities in Salt Lake County have – is the best course for municipalities in our area to take in the regulation of this legal business. The City Council discussed the proposal further at its January 9 meeting and agreed to consider the proposal formally.

Again, I am seeking your help to regulate the businesses in this industry primarily because I believe their presence is detrimental to the aesthetic appeal of our City's neighborhoods, commercial and otherwise, as people walk our sidewalks, and they detract from efforts to improve commercial areas.

I do not seek to abolish payday-loan check-cashing businesses, but I believe they are too concentrated in some City areas; they generate little pedestrian energy or activity; and their presence does not seem conducive to fostering commercial activities that help communities grow.

A few things that have happened should be noted since this proposal first was raised. First, according to the most recent information available from the Business License Office, the number of businesses engaged in payday lending in Salt Lake City has declined from 24 to 21, if a business that lends money against vehicle titles is excluded. (Please see attachment). That means that, if the 2000 Census population estimate of 181,743 is used, the ratio of payday lending businesses to the City's population is one per 8,654 people instead of one per 7,572 residents when 24 businesses were operating.

Second, the Utah Legislature added regulations (SB 16) to payday lending businesses, and industry officials indicated that the industry would voluntarily alter some practices. (Please see attachment).

Third, the Sandy City Council will consider adding zoning regulations for payday-lending businesses in the coming week, according to a news story. If Sandy, and Salt Lake City adopt regulations, the number of municipalities with some regulation of the industry will rise to nine. Seven cities: South Salt Lake, West Valley City, Taylorsville, West Jordan, South Jordan, Draper and Midvale already have imposed limits on payday lending businesses. Cottonwood Heights also is exploring whether to adopt an ordinance to regulate payday lending businesses.

Finally, the City Council raised two issues during the January discussion: Why should a business be singled out for regulation when other, larger companies provide the same product, and does Salt Lake City regulate other businesses in a similar manner?

Taking the second issue first, Council Members may recall that Deputy Planning Director Cheri Coffey responded to a question about pawn shops by saying that the City has a distance requirement, restricts pawn shops to certain zones, and lists pawn shops as

a conditional land use. On the first issue, if the City Council is concerned about differentiating between the banking industry and payday lending businesses, the Council could consider definitions similar to the following in West Jordan's zoning ordinance:

**Check cashing credit service** means an establishment engaged in providing credit intermediation and related activities that facilitate the lending of funds issuance of credit, or any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. Typical uses include check cashing services, payday advances/loans, short term loans, deferred deposit loans, and Title loans. This definition excludes kiosks, banks and financial institutions, and investment companies.

**Bank or financial institution** means an organization involved in deposit banking, finance, investment, mortgages, trusts and the like. Typical uses include commercial banks, credit unions, finance companies, and savings institutions. This definition also includes automated teller machines. This definition excludes check cashing credit services, bail bonds, and pawn shops.

I agree with my colleagues that the City Council should not prevent people from seeking a payday loan from a business primarily established for that purpose, or from a full service bank that provides the service to those who have their pay automatically deposited into an account there, or from the Internet. Doing that is a function of the state and federal governments. But seven cities in Salt Lake County have adopted restrictions on payday lending businesses in part because of concerns about the effect payday lending businesses have on how they want to look and how they want to develop economically. I believe the Salt Lake City Council should adopt the Legislative Intent so this City can fashion something that benefits our residents.

<b>CITIES THAT REGULATE PAYDAY LENDING BUSINESSES THROUGH ZONING ORDINANCES</b>				
<b>CITY</b>	<b>DISTANCE BETWEEN SIMILAR BUSINESSES</b>	<b>POPULATION RATIO?</b>	<b>RESTRICTED TO CERTAIN ZONES?</b>	<b>CONDITIONAL USE?</b>
<b>Draper</b>	1,000 feet	No	One Commercial Zone.	Yes
<b>Midvale</b>	600 feet	1 per 10,000	Commercial Zones	Yes
<b>Sandy (Under Consideration)</b>	1 mile	1 per 10,000	Some Commercial Zones	Yes
<b>South Jordan</b>	1 mile	No	Community Commercial (Large-scale) Zone	Yes
<b>South Salt Lake</b>	600 feet (Between Businesses and from Residential Zones)	1 per 5,000	Commercial Corridor	Yes
<b>Taylorsville</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes
<b>West Jordan</b>	1,000 feet (Also from pawn shop or bail bond businesses)	Maximum limit of 12 allowed within city boundaries	Some Commercial Zones	Yes
<b>West Valley City</b>	600 feet	1 per 10,000	Two Commercial Zones	Yes

CHECK CASHING  
BUSINESSES LOCATED  
IN SALT LAKE CITY

<u>ID#</u>	<u>Business Name</u>	<u>Address</u>	<u>Ownership</u>	<u>Telephone</u>	<u>Approve Date</u>
20052242	1st Choice Money Center	274 East 900 South	RFG Utah LLC	623-1711	12/15/05
20060293	1st Choice Money Center	1244 So Redwood Road	RFG Utah LLC	623-1711	07/09/06
Term	Access 2 Cash - Terminated 11/14/06	65 North 1000 West	RRZ Financial Services	886-2662	01/06/05
20062020	All Types Checkcashing	369 S Main St	Rhonda/Robert Hovseth-pine	328-2274	12/21/06
20042406	Buckeye Checksmart	832 W North Temple St	Buckeye Check Cashing of Utah	(614) 798-5900	01/13/05
20051793	Check N Go	1423 South 300 West #A	Great Plains Specialty Finance inc	486-4438	09/23/05
20061977	Check N Go	1645 West 700 North	Great Plains Specialty Finance inc	364-7974	11/21/06
20041646	Checkmate Payday Loans & Check Cashing	1290 South 300 West	LMSA Financial Corp Arizona	478-0728	10/21/04
20000623	Checkmax	1726 W North Temple #C	David Ha Truong	994-0616	03/31/03
20030175	Easy Money	350 East 200 South	Reed Bensen	359-2212	01/30/03
Term	ELITECASHADVANCE	2150 South 1300 East #500	ELITCASHADVANCE	(888) 920-5111	
money trf	Envios Yosi	169 East 900 South	Envios Yosi	wrong #	
money trf	Envios Yosi	170 East 900 South	Rubissel Tovar	870-0597	
20051583	Five Star of Salt Lake City	1850 S Redwood Rd	Tali Hoi LLC	972-3808	08/26/05
19941424	Money Mart	370 S State St	Jeffrey Weiss	532-5765	12/05/94
20000854	Money Mart Express Inc	1355 S 4700 W #200	Money Mart Express Inc.	933-4520	02/15/05
20061098	Money Menders	231 East 400 South #112	Savage Holdings Inc	386-0558	06/14/06
20030650	Money Talk	180 South 300 West	Alice Marie Folau	wrong #	04/08/03
19981254	Nationwide Budget Finance	665 S State St	Western Budget Finance	575-8172	12/09/98
20060441	Perulawn Care Services	1465 S State St #1	Carlos Roman	604-0578	03/24/06
19971132	Quick Loan	675 East 2100 South #O	Quick Loan Inc.	485-8181	07/25/97
19990585	Rent A Center Inc #02310	797 N Redwood Rd	Rent A Center Inc	521-8001	04/05/99
19990844	Rent A Center Inc #02313	409 East 400 South	Rent A Center Inc	532-2002	3/30305
20051279	Quick Title Loans	1055 West 1700 South	Quick Tow Towing	619-7010	07/11/05

**deseretnews.com**

Deseret Morning News, Thursday, February 22, 2007

## **Payday loan industry to alter ways 'voluntarily'**

**By Lee Davidson**

Deseret Morning News

Amid increasing scrutiny by lawmakers and the press nationally, the payday loan industry announced Wednesday voluntary changes it says will better protect and educate customers and help them avoid being trapped into long-term debt.

"We have listened to concerns raised about our industry and have developed innovative solutions to address them," said Darrin Andersen, president of the payday loan industry's Community Financial Services Association of America.

Among voluntary changes it announced are banning ads that promote payday loans for frivolous purposes; allowing customers the option of an extended payment plan at no extra cost if they cannot pay off a loan on time; and putting a warning on all ads and promotions that such loans are for short-term needs only.

Cort Walker, spokesman for the Utah Consumer Lending Association, said the state group of payday lenders supports those national actions. "These new initiatives will ensure that member companies hold themselves to a high standard of responsible service and will help customers make better financial decisions," he said.

However, industry critics say the changes are not worth much. "It amounts to saying that they have a really bad product, so be careful. I'm not sure that I see that as a big step forward," said Laura Polacheck, advocacy director for AARP Utah, which often fights the payday loan industry in the Utah Legislature.

Polacheck said the industry already generally warns that the loans are for short-term needs only, and says it has been hypocritical to say that "and then have ads promoting using them for vacations or a night on the town. At least that should stop now."

She said allowing extended payment plans could be worthwhile, depending on how they are implemented. CFSA materials said they should allow paying off a loan in four payments with no extra interest on a customer's next pay dates. Lenders would not begin collection proceedings against customers complying with such a payment plan.

But it also adds that such plans may be made available only once a year to customers. Polacheck said she worries it still might allow some to get caught in a cycle of taking out new loans to pay off old ones at triple-digit interest.

style="border:1px solid #999999;">

### **Related content**

Deseret Morning News

Nov. 13 2005:

▶[Trapped for cash: Deeper in debt](#)

The changes come after Congress last year capped interest on payday loans for families of military members to 36 percent annually. (A Deseret Morning News probe into the industry in Utah in 2005 showed they charge an average 521 percent annual interest here for loans usually made for two weeks or until a next payday.)

Also in Utah, several cities such as Sandy and Salt Lake City are considering restricting the numbers of payday lenders they allow (as other cities such as West Valley City and Taylorsville already have).

The Utah Legislature passed a minor bill this year to allow fining payday lenders for violating state rules. More stringent bills have been introduced but have not proceeded far.

Andersen of CFSA said the new voluntary steps "are part of an ongoing effort to respond to the concerns of policy makers and protect the financial well being of our customers."

The CFSA also says it is launching a \$10 million national consumer education campaign to encourage consumers to use payday loans in responsible manners — including borrowing an amount they feel comfortable that they can repay on time.

Of note, a Morning News series in 2005 found that Utah has more payday loan stores than 7-Elevens, McDonald's, Burger Kings and Subway stores — combined. Most are concentrated in areas that are poorer, heavily Hispanic or near military bases.

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*E-mail: [lee@desnews.com](mailto:lee@desnews.com)*

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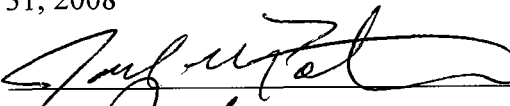
**PETITION CHECKLIST**

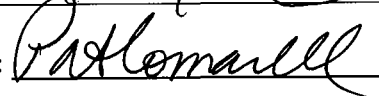
Date	Planner Initials	Supervisor Initials	Director Initials	Action Required
2008 06/19	NW	AMP		Petition Delivered to Planning
2007 6/17	NW	AMP		Petition Assigned to <u>Nate Wallingshaw</u>
2009 7/24		AMP		Planning Staff or Planning Commission Action Date
10/20/08	NW	AMP		Transmittal Cover Letter Followed Template (margins, headings, returns etc)
10/20/08	NW	AMP		Table of Contents
10-20/2008	NW	AMP		Chronology
10-24-2008	NW	AMP		Ordinance Prepared by the Attorney's Office Include general purpose statement of petition (top of ordinance) Include Strike and Bold -(Legislative Copy) (where applicable) Include Clean Copy (Ensure stamped by Attorney) Include Sidwell Numbers (where applicable) Include Legal Description-review, date and initial (where applicable) Ensure most recent ordinance used Ensure Exhibits (tables etc) are attached
11/20/08	NW	AMP		Council Hearing Notice Include Purpose of Request Include zones affected (where applicable) Include address of property (where applicable) Include TDD Language
7-8-08	NW	AMP		Mailing List of Petition and Labels, (include appropriate Community Councils, applicant and project planner) (include photocopy of labels)
9-8-08	NW	AMP		Planning Commission Notice Mailing Postmark Date Verification (on agenda) Newspaper Notice for Rezoning and Master Plan Amendments (proof of publication or actual publication)
9-24	NW	AMP		Planning Commission Staff Report
10-5-08	NW	AMP		Planning Commission Minutes and Agenda
6-19-08	NW	AMP		Yellow Petition Cover and Paperwork Initiating Petition (Include application, Legislative Intent memo from Council, PC memo and minutes or Mayor's Letter initiating petition.)
				Date Set for City Council Action: _____  Petition filed with City Recorder's Office

**COMMUNITY AND ECONOMIC DEVELOPMENT  
COUNCIL SUBMITTAL CHECKLIST**

**Petition No and Basic Information:** 400-08-18 changed to PLNPCM2008-00409, Check Cashing/Payday Lending Zoning Text Amendment

**Date:** October 31, 2008

**Supervisor Approval:** 

**Division Director Approval:** 

**Contact Person:** Nole Walkingshaw

**Phone No.** 535-7128

- Initiated by
- City Council Member
  - Property Owner
  - Board / Commission
  - Mayor
  - Other

Contact Person  
Russell Weeks

**Completed Check List attached:**

- Alley Vacation
- Planning / Zoning
- Federal Funding
- Condominium Conversion
- Plat Amendment
- Other

**Public Process:**

- |   |   |
|---|---|
| <input type="checkbox"/> Community Council (s)          | <input checked="" type="checkbox"/> City Web Site |
| <input checked="" type="checkbox"/> Public Hearings     | <input type="checkbox"/> Flyers                   |
| <input checked="" type="checkbox"/> Planning Commission | <input checked="" type="checkbox"/> Formal Notice |
| <input type="checkbox"/> Historic Landmark Commission   | <input type="checkbox"/> Newspaper Advertisement  |
| <input type="checkbox"/> HAAB review                    | <input type="checkbox"/> City Television Station  |
| <input type="checkbox"/> Board of Adjustment            | <input type="checkbox"/> On Location Sign         |
| <input type="checkbox"/> City Kiosk                     | <input type="checkbox"/> City Newsletter          |
| <input checked="" type="checkbox"/> Open House          | <input type="checkbox"/> Administrative Hearing   |
| <input type="checkbox"/> Other                          |   |

**Compatible with ordinance:**

Specific Citations: Amendments to the Zoning Ordinance and Maps are authorized under Section 21A.50 of the Salt Lake City Zoning Ordinance, as detailed in Section 21A.50.050: "A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the City Council and is not controlled by



any one standard." It does, however, list five standards, which should be analyzed prior to rezoning property (Section 21A.50.050 A-E). The five standards are discussed in detail starting on page 5 of the Planning Commission Staff Report (see Attachment 5b).

**Modifications to Ordinance:**

Definitions 21A.62.040, Table of Permitted and Conditional Use by District

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

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

Downtown Districts (21A.30.050)

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| <input checked="" type="checkbox"/> Public Hearings     | <input type="checkbox"/> Flyers                   |
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| <input type="checkbox"/> City Kiosk                     | <input type="checkbox"/> City Newsletter          |
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| <input type="checkbox"/> Other                          |   |

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

Downtown Districts (21A.30.050)

## Approvals / Input from Other Departments / Divisions

<u>Division</u>	<u>Contact Person</u>
<input checked="" type="checkbox"/> Airport:	Allen McCandeles
<input checked="" type="checkbox"/> Attorney:	Paul Nielson
<input checked="" type="checkbox"/> Business Licensing:	Robert Lucas
<input checked="" type="checkbox"/> Engineering:	Craig Smith
<input checked="" type="checkbox"/> Fire:	Dennis McKone
<input checked="" type="checkbox"/> HAND:	Luann Clark
<input type="checkbox"/> Management Services:	
<input checked="" type="checkbox"/> Mayor:	Esther Hunter
<input type="checkbox"/> Parks:	
<input checked="" type="checkbox"/> Permits / Zoning:	Larry Butcher
<input checked="" type="checkbox"/> Police:	Sgt. Rice Brede
<input type="checkbox"/> Property Management:	
<input checked="" type="checkbox"/> Public Services:	Rick Graham
<input checked="" type="checkbox"/> Public Utilities:	Jeff Niermeyer
<input checked="" type="checkbox"/> Transportation:	Barry Walsh
<input checked="" type="checkbox"/> RDA :	DJ Baxter
<input type="checkbox"/> Zoning Enforcement	

## Proposed Text Changes for Check Cashing / Payday Loan Businesses

### Petition 400-08-18

Proposed text is underlined

#### Proposed Definitions 21A.62.040

**Check Cashing/Payday Loan Business**” means a business that conducts transactions of 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 Distribution: Tables of Permitted and Conditional Use by District

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

C = Conditional Use  
P = Permitted Use

USE	CN	CB	CC	CS <sup>1</sup>	CSHBD <sup>1</sup>	CG	TC-75
<u>Check Cashing/Payday Loan Business</u>		<u>P<sup>8</sup></u>	<u>P<sup>8</sup></u>			<u>P<sup>8</sup></u>	

#### Qualifying Provision:

**<sup>8</sup>Option 1.** No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business.

**<sup>8</sup>Option 2.** No check cashing/ payday loan business shall be located closer than 600 feet from another check cashing / payday loan business and the total number of check cashing / payday loan businesses shall be limited to a ratio of one for every 10,000 residents.