

## CITY OF CUPERTINO

### URGENCY ORDINANCE NO. \_\_\_\_\_

#### **AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO ESTABLISHING A MORATORIUM ON THE ESTABLISHMENT, EXPANSION, OR RELOCATION OF PAYDAY LENDING AND CHECK CASHING BUSINESSES WITHIN THE CITY OF CUPERTINO PENDING COMPLETION OF AN UPDATE TO THE CITY'S ZONING CODE.**

The City Council of the City of Cupertino does hereby ordain as follows:

SECTION 1. Authority. This Ordinance is adopted pursuant to the provisions set forth in Government Code sections 36937(b) and 65858(a), (b) and pursuant to other applicable law.

SECTION 2. Findings. In adopting this Ordinance, the City Council finds:

A. The inability of low-income consumers with poor credit history to obtain certain services from federally-insured banks has resulted in a two-tiered financial services industry. More financially-stable consumers are generally able to use traditional banks, which charge low fees for checking and issue loans regulated by the federal government, while lower-income, financially-vulnerable consumers often have to rely upon the alternative financial services (AFS) industry for the same services. Payday lending and check cashing businesses are part of the growing AFS industry.

B. Payday lending businesses typically offer small, 14-day loans for which they charge effective interest rates upwards of 460% annual percentage rate (APR). California law currently caps individual payday loans at \$300, from which a 15% fee can be deducted. As a result, payday lending businesses in California generally charge \$45 for a two-week \$300 loan. According to a 2007 survey conducted by the California Department of Corporations, 48% of payday loan borrowers in California take out payday loans at least once per month. Because payday loan consumers tend to engage in cyclical borrowing, research has demonstrated that the typical borrower ultimately pays \$800 for a \$300 loan.

C. Check cashing outlets cash checks for a large fee, a significant percentage of the amount of the check, or deposit funds onto prepaid debit cards that incur a per-transaction fee. The fees withdrawn from cashed checks are generally

significantly higher than the fees that would be charged by most federally-insured banks.

D. With limited state and federal legislation restricting payday lending and check cashing, the growth of these industries has been extremely rapid. Since 1997, when payday lending became legal in California more than 2,000 payday lending businesses have been established. In 2010, California payday lenders issued \$12 million in loans to 1.6 million borrowers. The check cashing industry has experienced similarly rapid growth. A study by the Consumer Federation of America found that the check cashing industry doubled in size between 1994 and 2000, and again between 2000 and 2005.

E. The proliferation of these businesses has had significant detrimental effects on the financial stability of low-income communities throughout California and low-income neighborhoods in the surrounding cities. These businesses operate almost exclusively low-income neighborhoods and prey upon the most financially vulnerable community members, drawing them into a cycle of debt or causing them to lose a significant share of their income to exorbitant fees for simple financial transactions.

F. The City of Cupertino Zoning Code (Cupertino Municipal Code Chapter 14) does not adequately regulate the establishment, expansion, or relocation of payday lending and check cashing businesses within the City of Cupertino.

G. In light of the foregoing, the City Council finds that the establishment, expansion or relocation of payday lending and check cashing businesses within the City of Cupertino presents a current and immediate threat to public health, safety and welfare. The City Council further finds that a temporary moratorium on the establishment, expansion or relocation of payday lending and check cashing businesses within the City of Cupertino is warranted so that the City Council may review and consider possible amendments to the City of Cupertino Zoning Code to address this threat on a permanent basis.

H. Government Code sections 36937 and 65858 authorize the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time.

I. Failure to adopt this moratorium could impair the orderly and effective implementation of contemplated amendments to the Municipal Code.

J. The proposed Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 3. Imposition of Temporary Moratorium. In accordance with the authority granted the City under Government Code sections 36937(b) and 65858(a), (b), and pursuant to the findings stated herein, the City Council hereby finds that: (1) the foregoing findings are true and correct; and (2) there exists a current and immediate threat to the public health, safety, and welfare from unregulated payday and check-cashing businesses operating in Cupertino; and (3) this Ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (4) hereby declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below:

A. Payday lending and check cashing businesses are prohibited in all zones in the city and shall not be established or operated anywhere in the city.

B. No Permits, grading permit, building permit, building plans, zone change, business license, certificate of occupancy or other applicable approval will be accepted, reviewed, approved or issued for the establishment or operation of payday lending or check cashing activities.

C. As used in this Ordinance, the terms "payday lending businesses" shall mean retail businesses owned or operated by a "licensee" as that term is defined in California Financial Code section 23001 (d), as amended from time to time.

D. As used in this Ordinance, the terms "check cashing business" shall mean retail businesses owned or operated by a "check casher" as that term is defined in California Civil Code Section 1789.31 as amended from time to time.

E. Any use or condition caused or permitted to exist in violation of any of the provisions of this Ordinance shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Article 50 of this Code.

SECTION 4. Effective Date and Duration. Pursuant to Government Code section 65858(a), this Ordinance shall take effect immediately but shall be of no further force and effect 45 days from its date of adoption unless the City Council, after notice and public hearing as provided under Government Code section 65858(a)(b) and adoption of the findings required by Government Code section 65858(c), subsequently extends this Ordinance.

SECTION 5. Report of Interim Moratorium. Pursuant to Government Code section 65858(d), 10 days prior to the expiration or any extension of this Interim Ordinance, the City Council will issue a written report describing the measures taken to alleviate the conditions which led to the adoption of this Interim Ordinance.

SECTION 6. Compliance with CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project as defined by Section 15378 of the CEQA guideline. The Ordinance has no potential for resulting in physical change to the environment either directly or indirectly. Furthermore, pursuant to Section 15060(c) (2) of the CEQA Guidelines, the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment because this Ordinance prevents changes in the environment pending the contemplated review of City of Cupertino Zoning Code amendments applicable to payday lending and check cashing businesses.

SECTION 7. Severability. The City Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 8: Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

**THE FOREGOING URGENCY ORDINANCE** was introduced and adopted at a regular meeting of the City Council of the City of Cupertino held on September 20, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Barry Chang, Mayor, City of Cupertino

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**ATTEST:**

CITY OF CUPERTINO

Grace Schmidt, City Clerk

I, GRACE SCHMIDT, CITY CLERK of the City of Cupertino, California, do hereby certify that the foregoing Urgency Ordinance was duly adopted and passed at a regular meeting of the City Council on the 20th day of September, 2016 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

Grace Schmidt, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_, City Attorney