



**OFFICE OF THE CITY MANAGER**

CITY HALL

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**CITY COUNCIL STAFF REPORT**

Meeting: September 20, 2016

Subject

A moratorium on the establishment, expansion, or relocation of payday lending and check cashing businesses within the City of Cupertino.

Recommended Action

Adopt 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.

Background

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.

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.

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 The fees withdrawn from cashed checks are generally significantly higher than the fees that would be charged by most federally-insured banks.

Advocates argue that these businesses 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. With limited state and federal legislation restricting payday lending and check cashing, the growth of these industries has been extremely rapid. The State currently regulates maximum loan amounts, fees, and other aspects of how payday lenders operate. However, local jurisdictions can legally enact local policies to restrict payday loan businesses from operating in their communities.

### Discussion

In March, the Public Interest Law Firm (PILF) of the Law Foundation of Silicon Valley wrote a letter to Mayor Chang on behalf of the Coalition Against Payday Predators (CAPP) requesting that the City consider an ordinance to prevent the proliferation of payday lenders in Cupertino. No payday lenders currently operate in the City.

According to the CAPP letter, payday lenders target people in desperate need of cash with ads for short-term credit products for use in emergencies. Unfortunately, data shows that:

- Payday loans carry average APRs of over 360%;
- Payday loan borrowers are indebted for an average of five months per year; and
- The average payday loan borrower takes out eight loans per year.

These high fees trap the most vulnerable members of our community in a cycle of crippling debt and poverty.

The PILF is working with CAPP, to provide information about and recommendations for an ordinance to prevent the proliferation of payday lenders. Locally, the cities of San José, Sunnyvale, Gilroy, Morgan Hill, Campbell, and Los Altos, as well as the County of Santa Clara, have already adopted regulations concerning payday lenders.

Cupertino's Zoning Code does not currently define or regulate payday loan businesses separately from other uses. Based on our Zoning Code, payday loan and check cashing businesses are allowed. In fact, one such payday lender operated a store in the City from 2005-2009.

Staff recommends Council adopt an interim urgency ordinance 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. This will give staff time to continue studying the issue, develop recommendations, and go through the appropriate legislative process to amend the City's Zoning Code, including public noticing and a public hearing.

### Sustainability Impact

No impact.

Fiscal Impact

No impact.

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Prepared by: Jaqui Guzmán, Assistant to the City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

A – Draft Interim Urgency Ordinance

B – Letter on behalf of CAPP (March 3, 2016)