

CITY OF CUPERTINO
10300 Torre Avenue
Cupertino, CA 95014

CITY OF CUPERTINO
PLANNING COMMISSION MEETING
DRAFT MINUTES

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| 6:45 P.M. | OCTOBER 11, 2016 | TUESDAY |
| CITY COUNCIL CHAMBERS | | |

The regular Planning Commission meeting of October 11, 2016, was called to order at 6:45 p.m. in the Cupertino Council Chambers, 10350 Torre Avenue, Cupertino, CA. by Chairperson Alan Takahashi.

SALUTE TO THE FLAG

ROLL CALL

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| Commissioners Present: | Chairperson: | Alan Takahashi |
| | Vice Chairperson: | Margaret Gong |
| | Commissioner: | Geoff Paulsen |
| | Commissioner: | Winnie Lee |
| Commissioners Absent: | Commissioner: | Don Sun |
| Staff Present: | Assistant Community Development Director: | Benjamin Fu |
| | Assistant to City Manager: | Jaqui Guzman |
| | Assistant City Attorney: | Colleen Winchester |

APPROVAL OF MINUTES: None

ORAL COMMUNICATIONS: None

POSTPONEMENTS/REMOVAL FROM CALENDAR: None

WRITTEN COMMUNICATIONS: There were two written communications relative to Item 1.

CONSENT CALENDAR: None

PUBLIC HEARING

- | | |
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| 1. MCA-2016-04 | Consider amendments to Chapter 19.08, Definitions of the Municipal |
| City of Cupertino | Code to add definitions of “financial institutions” and “banks” that |
| Citywide location | expressly exclude payday lending and check cashing businesses with the |
| | intent to disallow such uses from operating with the City of Cupertino. |

Jaqui Guzman, Assistant to the City Manager, presented the staff report:

- Reviewed two types of predatory lending; first is payday loans which are small short-term loans, usually 14 day loans with extremely high fees. Often times the effective interest rate is upwards of 360% per year. Check cashing businesses cash checks for a high fee, a significant percent of the check amount or they deposit the funds into prepaid debit cards that have per-transaction fees. The fees are significantly higher than would be charged at a federally insured bank.

- Often they cannot repay that loan, and have to rollover that loan, pay an additional \$45 fee and the cycle continues. What is known is typical borrowers take out a loan eight times, once they take one out; which is a fee of 120% for that \$300 loan; it is significant and traps people into the cycle. Currently there are state regulations and federal government regulations, the state caps the individual payday loan at \$300 with a 15% interest cap; but it is \$45 for a two-week \$300 loan; which is very significant. If they go down the cycle of not being able to pay it, that percentage increases and increases until you have 360% annually. The federal government does impose a cap on interest rates but only for members of the armed forces; other consumers are not protected. The Coalition Against Payday Predatory Lending (CAPP) represent over 40 community based organizations and they advocate for local restrictions on predatory lenders. Local cities that have taken action are Campbell, Gilroy, Los Altos, Morgan Hill, Sunnyvale, San Jose, as well as the County. On September 20th the City Council adopted an urgency ordinance, it was a moratorium on the establishments, expansion and relocation of payday lenders and check cashing businesses which will expire on November 4th. Currently the city's zoning code allows for these businesses under banking and financial institutions, which terms are not defined in the city's code and there has in the past been a payday loan business in the city of Cupertino, but they are no longer operating. Currently the city has no payday lenders operating in the city.
- Said they are requesting to add the definition for financial institutions and banks that expressly excludes payday lenders and check cashers. They feel now is the right time to do it since they do not have any of these businesses operating in the city and there would be no adverse effect. Alternatives for consumers needing these types of emergency loans include non-profit that provide emergency cash assistance for these types of emergencies, such as cash assistance, housing assistance, credit unions that offer low interest loans, from 8% to 15% annualized, not two week loans; and non-profits that provide financial literacy, making people aware that there are better ways to deal with the emergency situations and also to prepare for emergency situations should one arise.
- She answered questions about the history of the payday loan and check cashing businesses, which operated in Cupertino from 2005 to 2009, and the various organizations that could provide emergency cash assistance or housing assistance in Cupertino. Most of the data collected for the presentation was collected by CAPP and studies have been conducted.

Melissa Morris, Law Foundation of Silicon Valley:

- Said that most of the data provided to staff comes from the Dept. of Business Oversight's latest annual report on payday lenders which is the state agency that oversees payday lenders. There has been a lot of community outreach from non-profit agencies and social services agencies to inform the residents of Cupertino what predatory lending is and the alternatives available. The senior center also connects people with West Valley Community Services when they are aware of the emergency situations. City staff is also aware of the services that are provided; and direct people in need to the appropriate agencies for assistance

Ana Rosa Comancho, United Way Bay Area:

- Said she has been providing financial education classes through Santa Clara County for 5 years and the CAPP Coalition for 3 years; their focus is to educate the community about the harms payday lending. They also provide a helpline and can speak with her about the alternatives and budgeting and 211 where people can call for services, and based on their residence zip code are referred to services. Anything connected to payday loans is referred to her. There are no income qualifications related to services provided. Phone number provided: 408-634-9343 always open to teaching classes, many times through the libraries, different locations monthly or quarterly or twice a year.

Vice Chair Gong:

- Said the draft resolution includes payday lenders and cash checking businesses; it seems there is a potential for a loophole with the title lenders and the other fringe financial service establishments; if the other two were added, would it close the whole loop and keep out any potential businesses that try

to come under a different definition?

Jaqui Guzman:

- Said they could look into the title lender issue to see if they would qualify under the current language because they have been seen coming up but they operate again, like the payday loan operator; staff will check with the city attorney's office.

Vice Chair Gong:

- Said she would propose they specify in the draft resolution to not just include the payday lenders, cash checking, but also the other two.

Chair Takahashi:

- Said there is potential for so much equity; there could be low income seniors who live in Cupertino and have large equity to borrow against, but if they were fixed income it might potentially snowball. He said he agreed it is something that staff should look into.

Jaqui Guzman:

- Said with respect to this particular ordinance, what they have noticed is the check cashing and the ban on the payday loans; expanding the definition might not have provided adequate notice for purposes of including the title, the title notes. However that is something they can look at and see if they have to come back to the Planning Commission for that particular piece and amend the ordinance later to cover those specific types of institutions, specifically title lenders, and reverse mortgage.

Vice Chair Gong:

- In the CAPP report the two are not included and could be seen as potential loopholes which are the title lenders and other fringe financial services establishments. Perhaps the Commission could recommend that to Council to add.

Chair Takahashi opened the public hearing.

Melissa Morris, Attorney, Law Foundation of Silicon Valley:

- The Law Foundation is one among many member organizations of the Coalition Against Payday Predators which includes West Valley Community Services, United Way of the Bay Area, California Reinvestment Coalition and a number of other organizations not present.
- She thanked staff for their hard work; appreciated their careful and thoughtful approach to putting together an ordinance recommendation and the speed which they moved forward since going to Council in September.
- Payday loans are a form of loan that is advertised as a short term loan for emergencies, but it is not the way it gets used; 64% of the total fees in California charged by payday lenders are charged to borrowers who take out 7 loans or more. There are more payday loan borrowers who take out 10 loans or more per year than take out one loan a year, so it is not a product being used for one-time emergencies. It is being used in many cases to address long-term income shortfalls but instead of addressing that shortfall, it just drives borrowers deeper and deeper into debt. Of the repeat borrowers in California, nearly 50% took out their second loan the same day they paid off their prior one. Even though rollovers of loans are technically prohibited, what happens is the borrower pays off the loan and takes a new loan the same day because once they pay off their loan they don't have enough money to pay their rent, groceries, or child care. The average annual percentage rate for a payday loan in California amortized the way other loans are, is 366%. It is an incredibly expensive loan and although cities are preempted by state law from limiting the interest rate from capping the interest for these types of loans, cities can through their police power limit the placement of payday lenders. That is a tool that can be quite effective; 74% of all payday loan borrowers nationally take out storefront payday loans only.

- She encouraged the Commission to move forward with the staff recommendation; and said she appreciated the inclusion of car title loans and other fringe financial services in the discussion as well.

Liana Molina, Director of Community Engagement, California Reinvestment Coalition:

- CRC is a statewide non-profit financial justice organization based in San Francisco, which works with other agencies statewide to advocate for fair and affordable financial access, particularly for low income communities and communities of color across California. They are present to support staff recommendation around restricting future development of any types of payday, car title, check cashing. Said they appreciate the car title inclusion because they know the payday lenders are moving more toward the larger sum, more expensive car title and instalment loans. Said they have worked with a number of jurisdictions across the state ranging from Sacramento to San Francisco, Oakland, Fresno and Long Beach. It is a good public policy, they know the harm that payday loans pose to folks on the financial margins and can be detrimental and very hard to rectify for people, and to the extent the city can provide certain protections for neighborhoods to ensure that people aren't specifically target it is really helpful. She encouraged support of the recommendation.

Ana Rosa Camancho, United Way Bay Area:

- Said she taught financial education and managed the helpline.
- Said what she has seen with the payday loans is individuals don't sometimes have a lot of the resources, much of it is education and what Sunnyvale did is that at any of the storefronts they also have the resources for the community; they have a brochure they can use so that they know there are community resources. Said when she came to the meeting she stopped at City Hall and they have the brochures for the 211; they are also at the local libraries throughout the county. Much of it is education for individuals to know there are resources out there. The classes explain how specifically the payday loans work and the alternatives to payday lending; much of it is with savings and calling the non-profits that are there to support the individuals. When they are trapped they can see that getting a loan is an avenue but once they start getting 1, 2 and 3, they realize how harmful it is. She said she had an individual who said after her second loan knew it was harmful for her family and it was like an immediate solution but in 2 weeks it was a domino effect that was harming her family and she was not getting out of the situation. Said she supported staff recommendation to ban the establishments of payday lending in Cupertino.

Chair Takahashi closed the public hearing.

Com. Paulsen:

- Expressed his appreciation to Ms. Camancho for taking the initiative in writing her letter, and coming from San Francisco to attend the meeting.

Vice Chair Gong:

- Said that it appeared Cupertino was not the normal target of the payday lenders; it was more egregious to her that the senior citizens were being targeted. She said she supported the proposal. She suggested adding a course for senior citizens and families in the Fall and Spring coursework and perhaps Ana Rosa would teach it or someone from her office as part of the offerings for Cupertino citizens.

Com. Lee:

- Said she felt they should prohibit payday loans and check cashing businesses in Cupertino.

MOTION: Motion by Com. Paulsen, second by Com. Lee and unanimously carried 4-0-0, Com. Sun absent, to approve the Municipal Code Amendment per the draft resolution; That within the meaning of Public Resources Code Sections 21080e and 21082.2 within the record or provide at the public hearing this matter that the Planning Commission hereby finds and determines as follows: That payday lenders are predatory businesses that target people in desperate need of cash and charge unusually high interest rates and exorbitant fees that end up trapping borrowers in a cycle of crippling debt and poverty; and state law regulates maximum loan amounts, fees and other aspects of how a payday lenders operate. However, local jurisdictions can back local policies to restrict payday loan businesses who are operating within their communities through the use of its power. Therefore approval of the resolution is recommended; recommend that the City Council adopt the proposed ordinance which is attached and incorporate it as Exhibit A.

OLD BUSINESS: None

NEW BUSINESS: None

REPORT OF THE PLANNING COMMISSION

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| <u>Environmental Review Committee:</u> | No meeting. |
| <u>Housing Commission:</u> | No meeting. |
| <u>Economic Development Committee Meeting:</u> | No meeting. |
| <u>Mayor's Monthly Meeting With Commissioners:</u> | No report. |

REPORT OF THE DIRECTOR OF COMMUNITY DEVELOPMENT: None

ADJOURNMENT:

- The meeting was adjourned to next Planning Commission meeting on October 25, 2016 beginning at 6:45 p.m.

Respectfully Submitted:

/s/Elizabeth Ellis
Elizabeth Ellis, Recording Secretary