SENT VIA E-MAIL: planning@cupertino.org.

October 11, 2016

Members of the Planning Commission
City of Cupertino
10350 Torre Ave.
Cupertino, CA 95014

Re: Item 1 (October 11, 2016)—Payday Lending

Dear Members of the Planning Commission:

We write on behalf of the Coalition Against Payday Predators (CAPP), [1] a broad coalition of individuals and over 40 community-based organizations who support policy reforms regarding payday lending and local restrictions on payday lenders in Santa Clara County. CAPP believes that sensible regulation of payday lending will lead to greater economic security and prosperity. **We support staff's recommendation of a ban on the establishment of payday lenders in Cupertino.**

Payday Loans and Payday Lending[2]

Payday loans are lending transactions in which a borrower provides a lender with a post-dated check and receives immediate cash from the lender. The borrower's check includes not only the principal loan amount, but also any interest and fees charged by the lender. The lender then cashes the borrower's check on the borrower's next payday unless the loan has been repaid by that date.

Payday loans, sometimes called deferred deposit transactions or cash advances, comprise one corner of a larger universe of "alternative" or "fringe" financial services, which also includes check cashing services, pawn brokers, and rent-to-own stores.[3] In California,

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[1] CAPP's core leaders include the Law Foundation of Silicon Valley, Asian Law Alliance, West Valley Community Services, United Way of Silicon Valley, Working Partnerships USA, the Opportunity Fund, and Sunnyvale Community Services. CAPP's efforts are funded in part by a grant from the Silicon Valley Community Foundation.

[2] The text of this section is taken largely from a memo submitted by CAPP to the City of Cupertino in March 2016; staff include a copy of that memo in the agenda packet.

[3] *See, e.g.,* Sharon Hermanson and George Gaberlavage, "The Alternative Financial Services Industry," AARP Public Policy Institute (Aug. 2001) (available at http://www.aarp.org/research/credit-

payday loans are small-dollar loans; state law caps them at $300.[4] However, these loans, including the relatively large fees associated with them, must be repaid quickly; the average term of a payday loan is 16 days.[5] Due to this short repayment timeframe, their average APR[6] is 366 percent.[7]

Payday lending is widespread in California. In 2015, payday lenders issued over 12 million payday loans.[8] Although payday loans are advertised as short-term credit products for use in emergencies, data show that most payday loan borrowers are unable to repay their loans in lump sum and that payday loan borrowers are indebted for an average of five months per year.[9] Further, the average payday loan borrower takes out eight loans per year, "often renewing an existing loan or taking out a new loan within days of repaying the previous one."[10] In 2015, there were more payday loan borrowers who took out 10 payday loans than there were payday loan borrowers who took out only a single loan.[11] Sixty-four percent of the total fees collected by the payday lending industry in California were collected from borrowers who took out 7 or more payday loans in a year.[12] Nearly half of all repeat payday loans made to repeat borrowers were made to the borrower *the same day* that the borrower paid his or her prior loan.[13]

Payday lenders and other fringe financial services tend to be more densely concentrated in lower-income areas and communities of color.[14] One study found that "[e]ven after controlling for income and a variety of other factors, payday lenders are 2.4 times more concentrated in African American and Latino communities. On average, controlling for a variety of relevant factors, the nearest payday lender is almost twice as close to the center of an African American or Latino neighborhood as a largely white neighborhood."[15] In

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debt/credit/aresearch-import-198-IB51.html). The San Francisco Municipal Code also uses the term "fringe financial services" to refer to these types of establishments. San Francisco Muni. Code § 790.111.

4 Cal. Fin. Code, § 23035, subd. (a).

5 California Department of Business Oversight, *Summary Report: California Deferred Deposit Transaction Law—Annual Report and Industry Survey* (2016) 6 (available at http://www.dbo.ca.gov/Licensees/payday_Lenders/payday_lenders.asp).

6 The APR, or Annual Percentage Rate of Interest, was developed by Congress "as a standard measure that calculates the simple interest rate on an annual basis (including most fees), accounts for the amount of time the borrower has to repay the loan, and factors in the reduction in principal as payments are made over time." Center for Responsible Lending, "APR Matters on Payday Loans" (June 23, 2009) (available at http://www.responsiblelending.org/payday-lending/research-analysis/apr-matters-on-payday-loans.html).

7 DBO, *supra* note 5 at 7.

8 *Id.* at 6.

9 The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (Jul. 2012), 6 (available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf).

10 *Id.* at 9.

11 DBO, *supra* note 5 at 7.

12 *Id.* at 8.

13 *Id.* at 7.

14 *See, e.g.*, Brookings Institution, "From Poverty, Opportunity: Putting the Market to Work for Lower Income Families," (2006) (available at http://www.brookings.edu/reports/2006/07poverty_fellowes.aspx).

15 Wei Li, *et al.*, "Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California," Center for Responsible Lending (Mar. 26, 2009), 25 (available at http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf).

2015, approximately 60 percent of California payday loan borrowers had incomes of $30,000 per year or less.[16]

Local, State, and Federal Policy Efforts

CAPP and its allies throughout California have been advocating for stronger consumer protections for payday loan borrowers, as well as local land use policies that limit the proliferation of payday lenders.

In California, payday lenders are governed by the Deferred Deposit Transaction Law (Fin. Code, §§ 23000 et seq.) and by regulations promulgated by the Department of Business Oversight (Cal. Code Regs., tit. 10, ch. 3). These laws govern the maximum loan amounts, fees, and other aspects of how payday lenders operate. Because California has adopted this comprehensive regulatory scheme, local jurisdictions are prohibited from regulating the terms of payday loans under the legal doctrine of preemption.

However, local jurisdictions *are* legally permitted to enact local policies that combat the proliferation of payday lenders in their communities and the overconcentration of these types of businesses in low-income and minority neighborhoods. Silicon Valley voters are in favor of such local measures according to a 2010 poll, which found that an overwhelming majority of respondents supported restrictions on payday lenders, and over half believed that such restrictions were appropriate actions for city government.[17]

In Santa Clara County, the cities of Los Altos, Gilroy, and Morgan Hill, as well as the County itself, have all imposed permanent moratoria on payday loan stores. While existing stores may continue operation, they may not expand or move, and no new payday loan stores may locate in those cities. San Jose, Sunnyvale, and Campbell also cap the number of payday loans stores and limit their placement. Several cities (and the County) imposed temporary moratoria on payday lenders while they considered the policy options for longer term regulation of payday lenders.

Although check cashing outlets are a different type of "fringe financial service" that are licensed differently than payday lenders, they often exist in the same store fronts with payday lenders, and many cities have elected to regulate payday lenders and check cashers together.

Recommendations

Cupertino does not currently have any payday lenders, and the Council adopted a temporary moratorium on the establishment of payday loan stores on September 20, 2016. Now is an ideal time for the City Council to act to prevent payday loan stores from

[16] DBO, *supra* note 5 at 8.
[17] Goodwin & Simon Strategic Research, *San José Payday Loan Store Restrictions Survey* (Dec. 2010) (available at http://www.responsiblelending.org/california/ca-payday/research-analysis/San-Jose-Payday-Lending-Voter-Poll-Memo.pdf).

opening in the City. We support staff's recommendation to move forward with a ban on payday lenders in Cupertino.

Thank you for your time and careful attention to this important policy question. If you have any questions about the CAPP Coalition or about our position, please contact Melissa Morris at 408-280-2429 or melissam@lawfoundation.org.

Many thanks,

Melissa A. Morris
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/s/

Maria Noel Fernandez
Director of Organizing and Civic Engagement, Working Partnerships USA

/s/

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Director of Community Engagement, California Reinvestment Coalition

cc: Angela Munuhe, Deputy City Attorney
Jaqueline Guzmán, Assistant to the City Manager
Mayor and City Councilmembers