



OFFICE OF THE CITY MANAGER

CITY HALL

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CITY COUNCIL STAFF REPORT

Meeting: November 1, 2016

Subject

Extension of the moratorium on the establishment, expansion, or relocation of payday lending and check cashing businesses within the City of Cupertino and introduction of an ordinance amending Chapter 19.08, Definitions, of the Municipal Code to add definitions of "financial institutions" and "banks" that expressly exclude payday lending and check cashing businesses with the intent to disallow such uses from operating with the City of Cupertino. (Application No(s): MCA-2016-04; Applicant(s): City of Cupertino; Location: City-wide)

Recommended Action

1. Adopt Ordinance No. 16 – 2156, "An Interim Urgency Ordinance of the City Council of the City of Cupertino extending a Temporary 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." (Attachment A)
2. Conduct the first reading of Ordinance No. 16 - 2157, "An Ordinance of the City Council of the City of Cupertino Amending the Cupertino Municipal Code, Title 19, Zoning, Section 19.08.030, entitled "Definitions" to add the definition of "financial institutions" and "banks" to expressly exclude payday lending and check cashing businesses with the intent to disallow such uses from operating with the City of Cupertino." (Attachment B)

Background

Payday loans are lending transactions in which a borrower provides a lender with a postdated 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 loan businesses are not currently defined separately from other types of financial institutions or banks under the City's Municipal Code, but have been considered analogous to these types of uses.

According to research shared by the Coalition Against Payday Predators (CAPP), payday lenders target people in desperate need of cash with ads for short-term credit products for use in emergencies with unusually high fees that end up trapping them in a cycle of crippling debt and poverty (see Attachment C.) Data from the California Department of Business Oversight's 2016 Annual Report shows that:

- Nearly 60% of borrowers earn less than \$30,000 per year;
- Payday loans carry average APRs of 366%;
- 76.2% of payday loan transactions are made to returning borrowers;
- 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.

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 within their communities. The CAPP is urging local agencies to adopt ordinances 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.

On September 20, 2016, Council enacted Interim Urgency Ordinance No. 16-2152, 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 (Attachment D.) The Urgency Ordinance expires on November 4th.

The Planning Commission reviewed recommendations for narrower definitions of "banks" and "financial institutions" which prohibit payday lenders and check cashing businesses from operating in Cupertino on October 11, 2016. The Planning Commission adopted Resolution No. 6818 on a 4-0 vote (Sun absent), recommending that the City Council approve the proposed draft ordinance (Attachment E.) They also suggested that the City explore prohibiting title lenders and other fringe financial services.

Discussion

Extension of Urgency Ordinance

The current moratorium on payday lending and check cashing businesses expires on November 4, 2016, prior to Municipal Code amendments addressing this issue going into effect. The urgency ordinance may be extended for a period of 10 months and 15 days per Govt. Code § 65858(a), and could be further extended if necessary. Therefore, staff recommends an extension of Urgency Ordinance No. 16-2152 for 10 months and 15

days beyond November 4, 2016, or until the effective date of the regular ordinance, which is also on this Agenda. The extension provides a stop-gap measure to prevent new businesses until the regular ordinance is effective.

Municipal Code Amendment

In order to prohibit the establishment, expansion or relocation of payday lending and check-cashing businesses in zoning districts where financial institutions and banks are allowed within the City, staff recommends that definitions for “financial institutions” and “banks,” which specifically exclude payday lending and check cashing businesses, be added to the Zoning Code with this Municipal Code Amendment. By excluding such uses from the definitions, payday lending and check cashing businesses would be disallowed from operating within the city.

Currently, there are no payday lenders operating in the City.

Other

No changes are recommended to disallow title lending or fringe financial services at this time, as requested by the Planning Commission, given this was not in the scope of the project. Upon direction of the Council, staff could present additional amendments to the Municipal Code, at a later date, should the Council wish to address these issue.

Noticing and Public Outreach

In compliance with the Government Code, the following noticing has been conducted:

- Legal notice in the newspaper
- Display ad in the newspaper
- Public hearing notices/agenda on the City’s website and at City Hall/Community Hall.

The CAPP has sent a letter of support for the changes recommended to the Municipal Code (Attachment F.) No other communication has been received on this issue as of the date of production of this staff report.

Sustainability Impact

No impact.

Fiscal Impact

No impact.

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Approved for Submission by: David Brandt, City Manager

Attachments:

- A. Draft Interim Urgency Ordinance No. 16-2156
- B. Draft Ordinance No. 16-2157
- C. Letter from CAPP (March 2016)
- D. Urgency Ordinance No. 2152
- E. Planning Commission Resolution No. 6818
- F. Letter of Support from CAPP (October 2016)