

CITY OF CUPERTINO

URGENCY 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.

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 The fees withdrawn from cashed checks are generally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 19) 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; and before taking action on this Ordinance, using its independent judgment, finds such CEQA exemptions to apply;

SECTION 3. Extension of Moratorium. In order to protect the public health, safety and welfare, the City finds that it is necessary to extend the Urgency Ordinance and prohibitions imposed by Ordinance No. 16-2152 on the establishment, expansion, or relocation of any payday lending business or check cashing business within the City of Cupertino.

SECTION 4. Effective Period. This Ordinance is an extension of Ordinance No. 16-2152, an urgency measure adopted pursuant to the provisions of Government Code Section 65858. This Ordinance shall be in effect until the earlier of the following, and shall thereupon be repealed and of no further force or effect, unless extended by subsequent enactment of the City Council:

- i) The completion of the study, evaluation, consideration, and legislative action and effective date of the amendments to Cupertino Municipal Code, Title 19, Zoning, to address payday lending and check cashing facilities on a permanent basis, or
- ii) Ten months and fifteen days beyond November 4, 2016.

SECTION 5: Report of Interim Moratorium. Ten days prior to the expiration of Urgency Ordinance No. 16-2152, the City provided a report describing the measures taken to alleviate the urgency pursuant to Government Code section 65858(d). Further, 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. 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 7: Publication. The City Clerk is directed to cause this ordinance to be published in the manner required by law.

THE FOREGOING EXTENSION OF THE URGENCY ORDINANCE was introduced and adopted at a regular meeting of the City Council of the City of Cupertino held on November 1, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Barry Chang, Mayor, City of Cupertino

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 1st day of November, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Grace Schmidt, City Clerk

APPROVED AS TO FORM:

_____, City Attorney