

FILED
OFFICE OF THE CITY CLERK
6 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY
2003 DEC -4 PM 6:11

Mark P. Wall
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. 12565 C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS FOR CHECK CASHIERS AND OR CHECK CASHING BUSINESSES WITHIN ALL ZONING DISTRICTS WHERE CONSULTATIVE AND FINANCIAL SERVICES ARE EITHER ALLOWED BY RIGHT OR CONDITIONALLY PERMITTED (WHICH INCLUDES COMMERCIAL ZONES C-5, C-10, C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, C-55, AND C-60, ALL INDUSTRIAL ZONES, SPECIAL ZONES S-1, S-2, S-3, S-16, AND S-19), AND SUSPENDING CONFLICTING PROVISIONS, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION

WHEREAS, the City of Oakland does not currently, separately regulate check cashier or check cashing businesses and does not differentiate between banks, credit unions, and other consultative and financial services activity thereby permitting check cashier and check cashing businesses, as described below, to be instituted wherever consultative and financial services activity are permitted to be instituted; and

WHEREAS, current zoning allows Consultative and Financial Services in certain commercial, industrial, and special zones either by right or with a Conditional Use Permit; and

WHEREAS, on November 18, 2003 the Oakland City Council adopted Ordinance No. 12558 C.M.S. imposing a 45 day moratorium prohibiting the permitting or approval of any new, modified, or expanded check cashier or check cashing business as defined in the ordinance; and

WHEREAS, the City Council requested the Planning Commission to initiate a review of the regulatory mechanisms available to regulate check cashiers and or check cashing businesses with the goal of adopting needed changes to the current regulations, including changes to the Planning Code to protect the public health, safety, or welfare from negative effects of check cashier or check cashing businesses; and

WHEREAS, the moratorium adopted by the Oakland City Council will expire on January 2, 2004; and

WHEREAS, the Oakland Planning Commission will not be able make a thorough review and recommendation to the Oakland City Council prior to the expiration of the moratorium; and

WHEREAS, the Oakland City Council will also be on Holiday recess from December 22, 2003 until January 4, 2004; and

WHEREAS, as a result, the Oakland City Council will not be able to adopt permanent regulatory mechanisms prior to the expiration of the moratorium; and

WHEREAS, in the absence of interim or permanent regulations the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted may result in displacement and availability of full service banking institutions creating a cycle of indebtedness and financial vulnerability for low-income citizens; and

WHEREAS, issuance or approval of any building, planning, or other permit for such check cashier and or check cashing business (newly instituted, modified, or expanded) without any land use review and the imposition of appropriate conditions of approval would result in a current and immediate threat to the public health, safety, or welfare; and

WHEREAS, an updated Land Use and Transportation Element and the Estuary Policy Plan contain goals, objectives, and policies that promote: maintaining and enhancing the vitality of existing neighborhood and commercial areas- Objective I/C1.1 Attracting New Businesses; Policy N1.6 Reviewing Potential Nuisance Activities; Policy 5.1 Environmental Justice; and

WHEREAS, such businesses may potentially conflict with some of the polices and objectives of the Land Use and transportation Element and Estuary Policy Plan ; and

WHEREAS, the establishment of check cashiers and or check cashing businesses without City review could adversely affect the health, safety, and welfare enjoyed by persons in the commercial areas and neighborhoods by causing visual blight that would negatively affect the quality of life of the surrounding residents, and would disrupt the orderly development of the surrounding neighborhood; and

WHEREAS, the failure of the City to properly regulate check cashing businesses in areas otherwise not subject to the Conditional Use Permit process can undermine the City's efforts to improve the urban design and function of the areas at issue; and

WHEREAS, check cashiers and or check cashing businesses are not currently effectively regulated by the Planning Code in all zones, but for the reasons set forth above there is an urgent need to regulate them; and

WHEREAS, until such time that the City institutes land use controls over such check cashier and or check cashing businesses, the community is in jeopardy that said businesses could be instituted prior to the imposition of controls necessary for the protection of the public health safety and welfare; and

WHEREAS, the City of Oakland has recently received a request to establish such activities and there is therefore an urgent need to impose restrictions to avoid a direct threat to the health, safety and welfare of the surrounding community; and

WHEREAS, the adoption of a Conditional Use Permit process for check cashiers and or check cashing businesses would allow the needed regulatory review; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Council to be necessary for preserving the public peace, health, or safety and to avoid a direct threat to the health, safety, and welfare of the community in proximity to such businesses, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and emergency.

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15307, and 15308 of the State CEQA Guidelines.

SECTION 3. For the term of this Ordinance, as set forth in Section 6 hereof, "Check Cashiers and Check Cashing Activities" shall be defined to include:

(1) A person or entity that, for compensation, engages in whole or in part in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. A "check cashier" also includes the business of deferred deposits whereby the check cashier refrains from depositing a personal check written by a customer until a specific date pursuant to a written agreement as provided in Civil Code sec. 1789.33.

(2) "Check cashier" or "check cashing business" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check cashier" or "check cashing business" also does not include a retail seller engaged primarily in the business of selling consumer goods, such as consumables to retail buyers, that cashes checks or issues money orders for a minimum flat fee, not exceeding \$2.00, as a service to its customers that is incidental to its main purpose or business.

SECTION 4. During the term of this ordinance as set forth in Section 6 hereof, no Check Cashier and/or Check Cashing Activity or any other activity, that includes as an element of the activity an activity that meets the definition of Check Cashier or Check Cashing business as defined in Section 3 above and located in any zoning district where Consultative and Financial services, as defined by the Oakland Planning Code, are either allowed by right or conditionally permitted (which includes without limitation COMMERCIAL zones C-5, C-10, C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, C-55, AND C-60, All INDUSTRIAL Zones, SPECIAL ZONES S-1, S-2, S-3, S-16, AND S-19), shall be issued a building, zoning or other permit by any department, agency, employee or agent of the City of Oakland to allow for any check cashier and or check cashing without first applying for and obtaining a Minor Conditional Use Permit.

SECTION 5. For the term of this ordinance as set forth in Section 6 hereof, no building, zoning or other permit that has been issued for any Check Cashiers and Check Cashing Activity, for which rights to proceed with such activity have not vested pursuant to the provisions of State law shall proceed, and no building, zoning or other permit for any Check Cashiers and Check Cashing Activity, shall be issued by any department, agency, employee or agent of the City of Oakland to allow for such activity, until such activity has complied with the requirements of section 4 above.

SECTION 6. The interim controls imposed by this ordinance shall remain in place and be effective for a continuous one year from the effective date of this ordinance, or until the City Council adopts permanent controls, whichever occurs first.

SECTION 7. For the term of this ordinance, as set forth in Section 6 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

SECTION 8. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 216 of the Charter of the City of Oakland.

SECTION 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

SECTION 10 If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

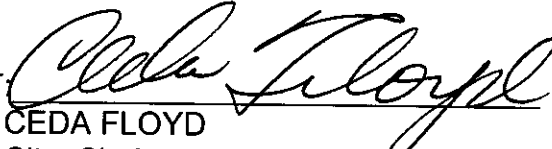
In Council, Oakland, California, December 16, 2003, Passed By The Following
Vote:

AYES- 8

NOTES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

mpw

OFFICE OF THE CITY CLERK
OAKLAND

2003
-4 PM 6:11

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS FOR CHECK CASHIERS AND OR CHECK CASHING BUSINESSES WITHIN ALL ZONING DISTRICTS WHERE CONSULTATIVE AND FINANCIAL SERVICES ARE EITHER ALLOWED BY RIGHT OR CONDITIONALLY PERMITTED (WHICH INCLUDES COMMERCIAL ZONES C-5, C-10, C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, C-55, AND C-60, ALL INDUSTRIAL ZONES, SPECIAL ZONES S-1, S-2, S-3, S-16, AND S-19), AND SUSPENDING CONFLICTING PROVISIONS, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION

NOTICE AND DIGEST

By this ordinance, the Oakland City Council adopts interim controls, for a one-year period, to regulate the establishment of check cashiers and or check cashing businesses by requiring a minor conditional use permit.

NOTICE OF PUBLICATION

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS FOR CHECK CASHIERS AND OR CHECK CASHING BUSINESSES WITHIN ALL ZONING DISTRICTS WHERE CONSULTATIVE AND FINANCIAL SERVICES ARE EITHER ALLOWED BY RIGHT OR CONDITIONALLY PERMITTED (WHICH INCLUDES COMMERCIAL ZONES C-5, C-10, C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, C-55, AND C-60, ALL INDUSTRIAL ZONES, SPECIAL ZONES S-1, S-2, S-3, S-16, AND S-19), AND SUSPENDING CONFLICTING PROVISIONS, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION.

NOTICE AND DIGEST

By this ordinance, the Oakland City Council adopts interim controls, for a one-year period, to regulate the establishment of check cashiers and or check cashing businesses by requiring a minor conditional use permit.

Notice of Publication

This Ordinance may be enacted as an Emergency Ordinance under the provisions of Section 213 of the Oakland City Charter, effective immediately upon the Introduction and Final Adoption at the regular City Council meeting Tuesday evening December 16, 2003, at One Frank H. Ogawa Plaza, Council Chambers, on the third floor in Oakland, California.

Notice thereof is hereby published pursuant to Section 214 of the Oakland City Charter.

CEDA FLOYD, City Clerk

The Oakland Tribune, #313278
December 17, 2003

Notice

AN EMERGENCY ORDINANCE PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS FOR CHECK CASHIERS AND OR CHECK CASHING BUSINESSES WITHIN ALL ZONING DISTRICTS WHERE CONSULTATIVE AND FINANCIAL SERVICES ARE EITHER ALLOWED BY RIGHT OR CONDITIONALLY PERMITTED (WHICH INCLUDES COMMERCIAL ZONES C-5, C-10, C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, C-55, AND C-60, ALL INDUSTRIAL ZONES, SPECIAL ZONES S-1, S-2, S-3, S-16, AND S-19), AND SUSPENDING CONFLICTING PROVISIONS, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION.

NOTICE AND DIGEST

By this ordinance, the Oakland City Council adopts interim controls, for a one-year period, to regulate the establishment of check cashiers and or check cashing businesses by requiring a minor conditional use permit.

Notice of Publication

This Ordinance was enacted as an Emergency Ordinance under the provisions of Section 213 of the Oakland City Charter, effective immediately upon the Introduction and Final Adoption at the regular City Council meeting Tuesday evening December 16, 2003, and passed to print 8 Ayes, at One Frank H. Ogawa Plaza, Council Chambers, on the third floor in Oakland, California.

Notice thereof is hereby published pursuant to Section 214 of the Oakland City Charter.

CEDA FLOYD, City Clerk

The Oakland Tribune, #313451
December 20, 2003