

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 SEP -1 PM 6:11

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 14, 2004

RE: **AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD A NEW USE CLASSIFICATION AND AMEND RELATED CODE SECTIONS TO REGULATE CHECK CASHIERS AND OR CHECK CASHING BUSINESSES AND LIMITING WHERE SUCH ACTIVITIES MAY BE PERMITTED**

SUMMARY

The City Planning Commission and City Staff recommend the adoption of a set of permanent controls for check cashiers and check cashing businesses. This ordinance defines the use, imposes a Minor Conditional Use Permit requirement, adds special criteria (performance standards) for any such activities, and limits the zoning districts where they are allowed to operate. Attached to this report is the draft of the new ordinance. The previous staff reports and ordinances regarding the creation of the emergency ordinance and interim controls are also attached as a reference. This ordinance will only apply to proposed activities and does not affect existing legally established activities.

The proposed regulations are summarized below:

1. Create a new activity classification called Check Cashier and Check Cashing Commercial;
2. Make the activity conditionally permitted with a Minor Conditional Use Permit in certain zoning districts subject to the performance standards which dictate:
 - Minimum distances between like activities;
 - Minimum distances to certain existing sensitive uses; and
 - Additional performance standards to regulate blight, security, and adverse impacts.
3. The Conditional Use Permit process would allow additional conditions of approval to be added if needed.

FISCAL IMPACT

No direct fiscal impacts. Applicants applying for a Minor Conditional Use Permit to conduct a Check Cashier and Check Cashing activity will pay the application fees to offset staff time for review and processing. No new staff would be needed to process the anticipated applications.

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BACKGROUND

Currently check cashing activities are considered the same as banks and other financial institutions and are allowed by right in a large number of zoning districts. In response to concerns regarding negative impacts related to crime and nuisance, the Oakland City Council adopted an emergency ordinance imposing a moratorium and subsequently an interim set of controls. The proposed ordinance represents the permanent controls requested by the Oakland City Council.

On November 18, 2003, the Oakland City Council adopted Ordinance No. 12558 C. M. S. The ordinance imposed 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. Since this moratorium occurred during the holiday season there was insufficient time to create and review permanent regulations before the expiration date of January 2, 2004. On December 16, 2003, the Oakland City Council adopted Ordinance 12565 C. M. S. setting forth the interim controls for check cashier or check cashing businesses. The interim controls sunset on November 18, 2004. On July 7, 2004 the Oakland Planning Commission held a noticed meeting, reviewed the proposed ordinance and recommended that the Oakland City Council adopt the ordinance amending the Oakland Planning Code to regulate check cashing and check cashiers.

There was no written opposition to the ordinance and no one spoke against the item. One member of the public spoke in favor of the ordinance and recommended further performance standards. These were read into the record and are reflected in the current draft ordinance.

KEY ISSUES AND IMPACTS

Proliferation of Check Cashing facilities and Displacement of Charter Banks and desired commercial development

Charter banks, as used in this staff report and the proposed ordinance, include the familiar banking institutions that meet federal standards and hold a charter, plus credit unions and, to a lesser extent, industrial loan companies. The ordinance states that a "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 cash 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.

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The attached ordinance defines "Check cashier or check cashing business to mean (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.

The unchecked proliferation of check cashing facilities displaces existing charter banks in generally lower income shopping areas. Charter banks may close or choose not to open where the market share is significantly eroded. In addition, new charter banks and other desired commercial development must compete with check cashing establishments for the limited commercial space in each shopping area. Unregulated, this may result in a reduction or displacement of needed goods and services.

Staff has proposed a minimum separation of 1,000 feet between each check cashing establishment to provide for check cashing facilities as an alternative to charter banks while limiting the number of such facilities in each shopping area. In general, this requirement will limit each shopping area to one check cashing facility. This separation requirement will also allow for development of other desired commercial development. For the same reason, staff recommends a 500 foot separation between check cashing establishments and existing charter banks.

Adverse affects on the health, safety, and welfare

Patrons of check cashing facilities have been robbed after leaving check cashing facilities. Some check cashing facilities are lacking in security measures when compared to charter banks. The security staff is often not certified. Surveillance cameras may be inadequate or non-existent. Exterior lighting and other measures are not in place to protect patrons. In addition, such facilities may operate with extended hours increasing the risk to patrons. Combined, these factors may facilitate the commission of crimes at a greater rate than at charter banks.

The proposed performance standards specify minimum security features to reduce the possibility of robberies in and around check cashing establishments. The proposed performance standards would be applied as conditions of approval for any approved facility. In addition, the Conditional Use Permit process allows for additional conditions of approval as needed to address design issues and to foster security. To protect students and others from possible negative impacts by association with those who might prey on them staff has proposed a 500 foot separation performance standard between check cashing facilities and existing schools, banks, and liquor stores.

General Plan Land Use and Transportation Element conflicts

Such businesses may potentially conflict with policies and objectives of the Land Use and transportation Element of the General Plan. Specifically the following goals, objectives, and policies: maintaining and enhancing the vitality of existing neighborhood and commercial areas.

Objective I/C1.1 Attracting New Businesses;

The City will strive to attract new businesses to Oakland which have potential economic benefits in terms of jobs and/or revenue generation. This effort will be coordinated through a citywide economic development strategy/marketing plan which identifies the City's existing economic base, the assets and constraints for future growth, target industries or activities for future attraction, and geographic areas appropriate for future use and development.

As described above, a proliferation of check cashing facilities would tend to have a negative impact on the attraction of desired businesses. The existence of a number of check cashing facilities in a shopping area will tend to discourage some businesses that would provide a potential economic benefit to the city. In addition, a proliferation of such activities would physically displace needed goods and services by competing for scarce commercial property.

Policy NI.6 Reviewing Potential Nuisance Activities;

The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should monitor those that are existing. These may include isolated commercial or industrial establishments located within residential areas, Alcoholic Beverage Sales Commercial Activities (excluding restaurants), adult entertainment, or other entertainment activities.

C4.2 Minimizing Nuisances.

The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create potential nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.

See the discussion on 'Adverse affects on the health, safety, and welfare' above. In addition, poorly run establishments may generate visual blight due to litter, graffiti, or lack of facility maintenance. Proposed performance standards would attend to nuisance and blight issues.

N5.1 Environmental Justice.

The City is committed to the identification of issues related to the consequences of development on racial, ethnic, and disadvantaged socio-economic groups. The City will encourage active participation of all its communities, and will make efforts to inform and involve groups concerned with environmental justice and representatives of communities most impacted by environmental hazards in the early stages of the planning and development process through notification and two-way communication.

In the State of California the number of check cashing businesses rose from 1,467 in 1996 to over 4,000 by 2002. Approximately 57 percent of African-Americans and 49 percent of Hispanics live within close proximity of check cashing businesses and 42 percent of households with incomes less than \$25,000 live within one mile of check cashing businesses in California. A recent study by the Urban Law & Public Policy Institute and Consumer Federation of America revealed that check cashing facilities charge interest rates as high as 900 percent and that such facilities may displace the availability of full service banking institutions. In a recent study the American Association of Retired Persons indicates that customers using check cashing businesses average 13 transactions per year, per borrower, with 21 percent reporting more than 20 transactions in a year. Nearly 28 percent of consumers without a traditional checking account cash their checks primarily at check cashing institutions. A recent study by The Progressive Policy Institute revealed that a bank account with a charter bank is the first step toward giving low income Americans access to the mainstream tools for wealth creation.

Taken together, the above facts show a pattern of negative consequences of development that involves racial, ethnic, and disadvantaged socio-economic groups. Therefore, the City should only consider this type of development with the active participation of the community. The proposed Conditional Use Permit process will allow this type of participation.

POLICY DESCRIPTION

The purpose of the proposed Ordinance is to reduce crime, grime, and nuisance activities associated with unregulated check cashing facilities and prevent the over concentration and possible displacement of charter banks and other needed goods and services. The goal of adopting the ordinance is to regulate the activity. The adoption of the ordinance will tend to serve poor and disenfranchised groups and some neighborhood businesses and charter banks. The proposal will affect commercial zoning districts. The ordinance will become effective after the second reading and will displace the existing interim controls which expire on November 18, 2004, or when replaced by permanent controls. There is no ongoing maintenance or operational costs. All new check cashing activities, where permitted at all, will be subject to the issuance of a Conditional Use Permit and costs for review of each application will be borne by the applicant.

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Conditional Use Permit

The adoption of a Conditional Use Permit process for check cashiers and/or check cashing businesses would provide a process to allow the needed regulatory review of applications for check cashiers and check cashing businesses. Staff recommends that applications for such activities be reviewed through the Minor Conditional Use Permit process in the C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, and C-55 zones. In all other zones the activity would not be allowed at all.

In general, the Major Conditional Use Permit process is reserved for major nuisance causing activities that generally have the potential for creating major adverse impacts such as loitering and drug dealing. Certain large-scale projects are also subject to the Major Conditional Use Permit process. However, applications for check cashing are unlikely to meet the size threshold. Any such application that does meet the size criteria would be reviewed by the Major Conditional Use Permit process pursuant to existing regulations under Section 17.134.020 based on the size of the project rather than the activity type. The Minor Conditional Use Permit process is appropriate for land use activities with the potential for minor adverse impacts. Staff feels most adverse impacts that can be regulated by land use controls can be mitigated through standard conditions of approval discussed above and detailed in the attached proposed ordinance. Both processes allow for public input and are appealable. Minor Conditional Use Permits may be appealed to the Oakland Planning Commission and Major Conditional Use Permits may be appealed to the Oakland City Council.

Proposed performance standards

To address the issues raised above, staff proposes the normal Conditional Use Permit findings, any special regulations of the zone, and the following performance standards. These performance standards are designed to reduce proliferation, prevent the displacement of desired development, and reduce blight and nuisance:

1. That each Check Cashier and or Check Cashing activity be located no less than 1, 000 feet from the nearest Check Cashier and Check Cashing Activity within the City of Oakland.
2. That each Check Cashier and or Check Cashing activity be a minimum of 500 feet from the following existing activities that have a vested right to operate:
 - Community Education Civic Activities (schools)
 - State or federally chartered bank, savings association, credit union, or industrial loan company
 - Community Assembly Civic Activities (churches)
 - Alcoholic Beverage Sales Commercial Activity

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3. That each Check Cashier and or Check Cashing activity meets the following Performance Standards and that these performance standards are included as conditions of approval. These performance standards may be amended or expanded by Staff as they are applied to individual locations and projects and are designed to reduce blight and increase security in and around such establishments:
- A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty feet away. Exterior lighting shall be designed so as not to cast glare offsite.
 - Storefronts shall have glass or transparent glazing in the windows. No more than 10% of any window area shall be covered by signs, banners, or opaque coverings of any kind.
 - Days and hours of operation shall be Monday through Saturday, 7:00 AM to 7:00 PM. Patrons shall be discouraged from loitering prior to or after hours. At least one no loitering sign with letters at least 2" tall shall be installed and maintained where it will be most visible to pedestrians on each side of the building in which the activity is located including, but not limited to, street frontages and parking lots.
 - Graffiti shall be removed within 72 hours of application.
 - No exterior pay telephones shall be permitted.
 - Litter shall be removed at least two times daily or as needed from in front of and for twenty feet beyond the building along adjacent street(s). All "street furniture" such as crates or mattresses shall be removed daily or as needed.
 - The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies.

In general, 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. These uses may cause visual blight and allow a potential nuisance activity that would negatively affect the quality of life of the surrounding businesses and residents, and would disrupt the orderly development of the surrounding neighborhood. The failure of the City to properly regulate check cashing businesses can undermine the City's efforts to improve the urban design and function of the areas at issue. Staff proposes the requirement for a Conditional Use Permit for all check cashiers and/ or check cashing businesses to evaluate conformance with the above goals and policies.

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SUSTAINABLE OPPORTUNITIES

Economic

Adoption of the ordinance will increase sustainable opportunities in a non-direct way. Shopping centers without an over concentration of check cashing establishments will have greater diversity of goods and services that may result in a more sustainable economic base for the neighborhood and the city.

Environment

There will be little if any environmental benefit in terms of waste reduction, energy efficiency, or minimizing toxic waste generation or use of toxic materials.

Social Equity

The passage of the ordinance will have a marked benefit to neighborhoods where such activities are typically located by limiting the number of commercial facilities in a given area and imposing conditions to protect citizens in and around the facilities.

DISABILITY AND SENIOR CITIZEN ACCESS

Activities permitted by the ordinance will be subject to all applicable accessibility standards under Title 24 and the Americans with Disabilities Act and Older Americans Act. Such standards will be addressed by building inspection services during plan check and building inspection by Building Services.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the City Council approve the attached Ordinance regulating check cashing activities throughout the City of Oakland. The requested land use controls are needed to protect residents and property values. The advantage of using the Conditional Use Permit process is that it is a proactive mechanism that allows the city to approve, condition, or deny each specific application for a check cashing facility using a process that allows community input. Alternative methods such as using blight and nuisance laws are slow and reactive allowing nuisance and blight to continue until the facility is brought into compliance and possibly endangering citizens while the issues are resolved. If the City Council takes no action the existing interim controls which require a Conditional Use Permit for any new check cashing facility will sunset on November 18, 2004 after which applicants will be free to establish check

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cashing facilities anywhere other financial institutions are allowed. Since financial institutions are allowed in nearly every commercial zoning district, check cashing activities would be allowed in nearly every commercial district with no review.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the attached ordinance regulating check cashing activities.

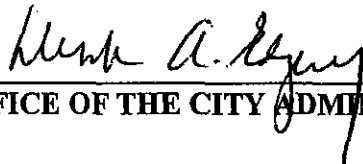
Respectfully submitted,



CLAUDIA CAPRIO
Director of Development

Prepared by:
Chris Candell, Planner II
Planning and Zoning

APPROVED AND FORWARDED TO THE
COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

Attachments:

- a. Draft Ordinance
- b. Copy of Staff report to Oakland Planning Commission dated July 7, 2004.
Containing as attachments:

A copy of the Staff Report and emergency Ordinance 12558 dated November 18, 2003, and a
Copy of the Staff report and interim Ordinance 12565 dated December 16, 2003.

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ORACOUNCIL

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

Heather Blue

CITY ATTORNEY

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD A NEW USE CLASSIFICATION AND AMEND RELATED CODE SECTIONS TO REGULATE CHECK CASHIERS AND OR CHECK CASHING BUSINESSES AND LIMITING WHERE SUCH ACTIVITES MAY BE PERMITTED

WHEREAS, In the State of California the number of check cashing business permits rose from 1,467 in 1996 to over 4,000 by 2002; and

WHEREAS, 57 percent of African-Americans and 49% of Hispanics live within close proximity to a check cashing business indicating a pattern by check cashing business for targeting primarily minority neighborhoods; and

WHEREAS, 42 percent of households with incomes of less than \$25,000 live within 1 mile of check cashing business in California indicating a pattern by check cashing business for targeting primarily low-income neighborhoods; and

WHEREAS, a recent study by the Urban Law & Public Policy Institute and Consumer Federation of America revealed that check cashing facilities charge interest rates as high as 900 percent and displace the availability of full service banking institutions; and

WHEREAS, a recent study by the American Association of Retired Persons revealed that customers using check-cashing business average 13 transactions per year, per borrower, with 21 percent reporting more than 20 transactions in a 12-month period creating a cycle of indebtedness and financial vulnerability; and

WHEREAS, 28% of consumers without a traditional checking account cash their checks primarily at check cashing institutions; and

WHEREAS, A recent study by The Progressive Policy Institute revealed that a traditional bank account is the first step toward giving low-income Americans access to the mainstream tools for wealth creation now taken for granted by the middle-class; and

WHEREAS, check cashing business obtain their profits from transactions fee, unlike banks, which primarily derive their income from the spread between interest paid on deposits and loan portfolios, creating an incentive for check cashing business for ever increasing transaction fees; and

WHEREAS, check cashing business have failed to provide adequate safety for their customers as evidenced by 3 armed individuals recently robbing a man after leaving a check cashing business on International Boulevard; and

WHEREAS, a lack of regulation check cashiers or check cashing businesses would allow a proliferation of check cashiers or check cashing establishments which may result in the displacement of charter banks especially in small neighborhood shopping areas; and

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WHEREAS, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the 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 commercial areas Policy I/C3.4; Strengthening Vitality Policy, T2.3 Promoting Neighborhood Services, Objective I/C1.1 Attracting New Business, Policy N1.6 Reviewing Potential Nuisance Activities, Policy 5.1 Environmental Justice; and

WHEREAS, the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted without a adequate review 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, the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted without a adequate review may result in displacement of needed goods and services; and

WHEREAS, such impacts may potentially conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, on November 18, 2003, the City Council adopted an Urgency Ordinance No. 12558 C.M.S., imposing a 45-day moratorium on new or expanded check cashing and check cashier activities; and

WHEREAS, on December 16, 2003, the Oakland City Council adopted Ordinance No. 12565 C.M.S., as an interim emergency ordinance to regulate check cashing and check cashier activities while a study was undertaken to develop permanent controls; and

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

WHEREAS, issuance or approval of any building, planning or other permit for such check cashier or check cashing businesses (newly instituted, modified, or expanded) without a Conditional Use Permit in certain zoning districts would result in negative impacts to the community in which it is located in; and

WHEREAS, the Oakland Planning Commission conducted a duly noticed public hearing on July 7, 2004; and

WHEREAS, after the close of the public hearing, the Oakland Planning Commission recommended the adoption of Zoning Text changes to regulate check cashier and check cashing activities, with some amendments; and

WHEREAS, the City Council's Community and Economic Development Committee considered the matter on September 14, 2004; and

WHEREAS, the City Council subsequently conducted a duly noticed public hearing;

Now, Therefore, the Council of the City of Oakland does ordain as follows:

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

SECTION 2. The City Council finds and determines, that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

SECTION 3. Section 17.10.365 "Check Cashier and Check Cashing Activities" is added to the Oakland Planning Code to read as follows:

"17.10.365 Check Cashier and Check Cashing Activity
Check Cashier and Check Cashing Activity includes:

(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 section 1789.33, as amended.

(2) "Check Cashier" or "Check Cashing Activity" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check cashier" or "Check Cashing Activity" 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.

They also include certain activities accessory to the above, as specified in Section 17.10.040."

SECTION 4. The following sections of the Oakland Planning Code are amended to add "Check Cashier and Check Cashing" as Conditionally permitted activities:

17.38.040 (C-20, Shopping Center Commercial Zone)

17.40.050 (C-25, Office Commercial Zone)

17.46.060 (C30, District Thoroughfare Commercial Zone)

17.50.060 (C-35, District Shopping Commercial Zone)

17.54.060 (C-40 Community Thoroughfare Commercial Zone)

17.56.060 (C-45, Community Shopping Commercial)

17.58.060 (C-51 Central Business Service Commercial Zone)

17.60.060 (C-52 Old Oakland Commercial Zone)

17.62.060 (C-55 Central Core Commercial Zone)

SECTION 5. Section 17.102.430 is added to the Oakland Planning Code to read as follows:

17.102.430 Regulations Applying to Check Cashier and or Check Cashing Activity

A. Additional Use Permit Criteria. A conditional use permit for any conditionally permitted Check Cashier and or Check Cashing activity as defined in Section 17.10.365 of the Oakland Planning Code may only be granted upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following performance standards:

1. That each Check Cashier and or Check Cashing activity be no located no less than 1, 000 feet from the nearest Check Cashier and Check Cashing Activity within the City of Oakland.
2. That each Check Cashier and or Check Cashing activity be a minimum of 500 feet from the following activities, which on the date of an application for Check Cashier and or Check Cashing activity had a vested right under California law to operate:

a. Community Education Civic Activities;

b. State or federally chartered bank, savings association, credit union, or industrial loan company;

c. Community Assembly Civic Activities; or

d. Alcoholic Beverage Sales Commercial Activities, excluding full service restaurants and Alcoholic Beverage Sales Commercial Activities with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more. (Note that this precludes combining check cashing with Alcoholic Beverage Sales Commercial Activities because Alcoholic Beverage Sales Commercial Activities are always considered a primary activity and therefore subject to this distance standard).

3. That each Check Cashier and or Check Cashing activity meets the following Performance Standards and that these performance standards are included as standard conditions of approval. These performance standards may be amended or expanded by Staff and/or the Planning Commission as they are applied to individual locations and projects:

a. A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty feet away. Exterior lighting shall be designed so as not to cast glare offsite.

b. Storefronts shall have glass or transparent glazing in the windows and doors. No more than 10% of any window or door area shall be covered by signs, banners, or opaque coverings of any kind so that law enforcement personnel will have clear view of the entire public area in the premises from the public sidewalk.

c. Days and hours of operation shall be Monday through Saturday, 7:00 AM to 7:00 PM. Patrons shall be discouraged from loitering prior to, during and/or after hours. At least one

no loitering sign with letters at least 2" tall shall be installed and maintained where it will be most visible to pedestrians on each side of the building in which the activity is located including, but not limited to, street frontages and parking lots.

d. Graffiti shall be removed within 72 hours of application

e. No exterior pay telephones shall be permitted.

f. Litter shall be removed at least two times daily or as needed from in front of and for twenty feet beyond the building along adjacent street(s). All "street furniture" such as crates or mattresses shall be removed daily or as needed.

g. The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies.

Section 6. The interim controls adopted in Ordinance No. 12565 C.M.S. shall no longer be in effect upon the effective date of this ordinance. This ordinance, pursuant to Charter section 216, shall be effective immediately if approved by six members of the City Council; otherwise, it shall be effective upon the seventh day after final adoption.

SECTION 7. If any section, subsection, phrase, word or 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, , 2004

PASSED BY THE FOLLOWING VOTE:

AYES-Brooks, Brunner, Chang, Nadel, Quan, Reid, Wan, and President De La Fuente

NOES-

ABSENT-

ABSTENTION-

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

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NOTICE AND DIGEST

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD A NEW USE CLASSIFICATION AND AMEND RELATED CODE SECTIONS TO REGULATE CHECK CASHIERS AND OR CHECK CASHING BUSINESSES AND LIMITING WHERE SUCH ACTIVITIES MAY BE PERMITTED

This ordinance establishes a definition of Check Cashiers and Check Cashing Businesses and requires them to obtain a minor conditional use permit, limits where such businesses can operate, and also establishes operating/performance standards.

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DEVELOPMENT CMTE**

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Location: City Wide	
Proposal:	To amend the Oakland Planning Code to establish permanent regulations for activities related to check cashier and or check cashing activities, adding performance standards and limiting where such activities may occur.
Planning Permits Required:	Zoning Text Change
General Plan:	City Wide
Zoning:	City Wide
Environmental Determination:	Exempt 15061(b)(3), State CEQA Guidelines,, "General Rule", no possibility of significant effect on the environment.
Service Delivery District:	City Wide
City Council District:	City Wide
Last Date for Consideration:	November 18, 2004
Support/Opposition:	There is both support and opposition to the proposed changes
Staff recommendation:	Open Public hearing, take testimony and forward recommendation to the City Council
For further information:	Contact case planner Chris Candell at 510-238-6986.

SUMMARY

Staff recommends the adoption of a set of permanent controls for check cashiers and check cashing businesses. This ordinance defines the use, imposes a Minor Conditional Use Permit requirement, adds special criteria (or performance standards) for any such activities, and limits which zoning districts they may be allowed to operate in. Currently check cashing activities are considered the same as banks and other financial institutions and were allowed by right in a large number of zoning districts. In response to concerns regarding negative impacts of such businesses, the Oakland City Council adopted an emergency ordinance imposing a moratorium and subsequently an interim set of controls on December 16, 2003 to regulate these businesses. The interim controls expire on November 18, 2004. Staff was directed to prepare permanent regulations, hold public hearings and forward the recommendations of the Oakland Planning Commission back to the City Council.

This report details the new regulations. The regulations are summarized below:

1. Create a new activity classification called Check Cashier and Check Cashing Commercial;
2. Make the activity conditionally permitted with a Minor Conditional Use Permit in certain zoning districts subject to the performance standards which dictate:
 - Minimum distances between like activities;
 - Minimum distances to sensitive uses; and
 - Additional performance standards to regulate blight security and adverse impacts.
3. The Conditional Use Permit process would allow additional conditions of approval to be added if needed.

controls are also attached as a reference. Staff recommends reviewing the draft ordinance, adopting the environmental determination, approving the Zoning Text Amendments, and forwarding a recommendation to the Oakland City Council to adopt the ordinance.

BACKGROUND

On November 18, 2003, in response to concerns regarding the proliferation of check cashing and check cashiers, the Oakland City Council adopted Ordinance No. 12558 C. M. S. The ordinance imposed 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. Since this moratorium occurred during the holiday season there was insufficient time to create and review permanent regulations before the expiration date of January 2, 2004. On December 16, 2003, the Oakland City Council adopted Ordinance 12565 C. M. S. setting forth the interim controls for check cashier or check cashing businesses. The interim controls sunset on November 18, 2004.

GENERAL PLAN ANALYSIS

The proposed Zoning Text amendments are consistent with the General Plan. The proposed changes implement the following policies from the Land Use and Transportation Element Policy as discussed below under key issues and impacts:

ZONING CODE UPDATE ANALYSIS AND IMPLICATIONS

The proposed text changes relate well to the Zoning Code update currently being reviewed and are consistent with the General Plan policy. By taking into consideration the structure of the Zoning Code update, these revisions will minimize the need for future amendments or changes to the definition section.

ENVIRONMENTAL DETERMINATION

State CEQA Guidelines Section 15061(b)(3), the "general rule" states that, where it can be seen with certainty that there is no possibility that the project will not have a significant effect on the environment, it is not subject to environmental review. Since the proposed amendments would apply to minor changes in the use of land that could not significantly affect the environment, this project has been determined to be exempt from CEQA review.

KEY ISSUES AND IMPACTS

Proliferation of Check Cashing facilities and Displacement of Charter Banks and desired commercial development

Charter banks, as used in this staff report and the proposed ordinance, include the familiar banking institutions that meet federal standards and hold a charter plus credit unions. To a lesser extent, industrial loan companies are also captured by this definition. The ordinance further states that a "Check casher" or "check cashing business" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check casher" 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 cash 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.

The attached ordinance defines "Check casher or check cashing business to mean (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 casher" also includes the business of deferred deposits whereby the check casher 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.

The unchecked proliferation of check cashing facilities displaces existing charter banks in generally lower income shopping areas. Charter banks may close or choose not to open where the market share is significantly eroded. In addition, new charter banks and other desired commercial development must compete with check cashing establishments for the limited commercial space in each shopping area. Unchecked, this may result in a reduction or displacement of needed goods and services.

Staff has proposed a minimum separation of 1,000 feet between each check cashing establishment to provide for check cashing facilities as an alternative to charter banks while limiting the number of such facilities in each shopping area. In general, this requirement will limit each shopping area to one check cashing facility. This separation requirement will also allow for development of other desired commercial development. For the same reason, staff recommends a 500 foot separation between check cashing establishments and existing charter banks.

Adverse affects on the health, safety, and welfare

Patrons of check cashing facilities have been robbed after leaving check cashing facilities. Some check cashing facilities are lacking in security measures when compared to charter banks. The security staff are often not certified. Surveillance cameras may be inadequate or non-existent. Exterior lighting and other measures are not in place to protect patrons. In addition, such facilities may operate with extended hours. Combined, these factors may facilitate the commission of crimes at a greater rate than at charter banks.

The proposed performance standards specify minimum security features to reduce the possibility of robberies in and around check cashing establishments. The proposed performance standards would be applied as conditions of approval for any approved facility. In addition, the Conditional Use Permit process allows for additional conditions of approval as needed to address design issues and to foster security. To protect students from possible negative impacts by association with those who might prey on them staff has proposed a 500 foot separation performance standard between schools and check cashing facilities.

General Plan Land Use and Transportation Element conflicts

Such businesses may potentially conflict with policies and objectives of the Land Use and transportation Element of the General Plan. Specifically the following goals, objectives, and policies: maintaining and enhancing the vitality of existing neighborhood and commercial areas.

Objective I/C1.1 Attracting New Businesses;

The City will strive to attract new businesses to Oakland which have potential economic benefits in terms of jobs and/or revenue generation. This effort will be coordinated through a citywide economic development strategy/marketing plan which identifies the City's existing economic base, the assets and constraints for future growth, target industries or activities for future attraction, and geographic areas appropriate for future use and development.

As described above, a proliferation of check cashing facilities would tend to have a negative impact on the attraction of desired businesses. The existence of a number of check cashing facilities in a shopping area will tend to discourage some businesses that would provide a potential economic benefit to the city. In addition, a proliferation of such activities would physically displace needed goods and services by competing for scarce commercial property.

Policy N1.6 Reviewing Potential Nuisance Activities;

The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should monitor those that are existing. These may include isolated commercial or industrial establishments located within residential areas, Alcoholic Beverage Sales Commercial Activities (excluding restaurants), adult entertainment, or other entertainment activities.

C4.2 Minimizing Nuisances. The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create potential nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.

See the discussion on 'Adverse affects on the health, safety, and welfare' above. In addition, poorly run establishments may generate visual blight due to litter, graffiti, or lack of facility maintenance. Proposed performance standards would attend to nuisance and blight issues.

N5.1 Environmental Justice.

The City is committed to the identification of issues related to the consequences of development on racial, ethnic, and disadvantaged socio-economic groups. The City will encourage active participation of all its communities, and will make efforts to inform and involve groups concerned with environmental justice and representatives of communities most impacted by environmental hazards in the early stages of the planning and development process through notification and two-way communication.

In the State of California the number of check cashing businesses rose from 1,467 in 1996 to over 4,000 by 2002. Approximately 57 percent of African-Americans and 49 percent of Hispanics live within close proximity of check cashing businesses and 42 percent of households with incomes less than \$25,000 live within one mile of check cashing businesses in California. A recent study by the Urban Law & Public Policy Institute and Consumer Federation of America revealed that check cashing facilities charge interest rates as high as 900 percent and that such facilities may displace the availability of full service banking institutions. In a recent study the American Association of Retired Persons indicates that customers using check cashing businesses average 13 transactions per year, per borrower, with 21 percent reporting more than 20 transactions in a year. Nearly 28 percent of consumers without a traditional checking account cash their checks primarily at check cashing intuitions. A recent study by The Progressive Policy Institute revealed that a bank account with a charter bank is the first step toward giving low income Americans access to the mainstream tools for wealth creation.

Taken together, the above facts show a pattern of negative consequences of development that involves racial, ethnic, and disadvantaged socio-economic groups. Therefore, the City should only consider this type of development with the active participation of the community. The proposed Conditional Use Permit process will allow this type of participation.

Conditional Use Permit

The adoption of a Conditional Use Permit process for check cashiers and/or check cashing businesses would provide a process to allow the needed regulatory review of applications for check cashiers and or check cashing businesses. Staff recommends that applications for such activities be reviewed through the Minor Conditional Use Permit process in the C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, and C-55. In all other zones the activity would not be allowed at all.

In general, the Major Conditional Use Permit process is reserved for major nuisance causing activities that generally have the potential for creating major adverse impacts such as loitering and drug dealing. Certain large-scale projects are also subject to the Major Conditional Use Permit process. However, applications for check cashing are unlikely to meet this threshold. Any such application that does meet the size criteria would be reviewed by the Major Conditional Use Permit process pursuant to existing regulations under Section 17.134.020 based on the size of the project rather than the activity type. The Minor Conditional Use Permit process is appropriate for land use activities with the potential for minor adverse impacts. Staff feels most adverse impacts that can be regulated by land use controls can be mitigated through standard conditions of approval discussed above and detailed in the attached proposed ordinance. Both processes allow for public input and are appealable. Minor Conditional Use Permits may be appealed to the Oakland Planning Commission and Major Conditional Use Permits may be appealed to the Oakland City Council.

Proposed performance standards

To address the issues raised above, staff proposes the normal Conditional Use Permit findings, any special regulations of the zone, and the following performance standards. To reduce proliferation, prevent the displacement of desired development, and reduce blight and nuisance:

1. That each Check Cashier and or Check Cashing activity be no located no less than 1, 000 feet from the nearest Check Cashier and Check Cashing Activity within the City of Oakland.
2. That each Check Cashier and or Check Cashing activity be a minimum of 500 feet from the following activities:
 - Community Education Civic Activities (schools)
 - State or federally chartered bank, savings association, credit union, or industrial loan company
 - Community Assembly Civic Activities (churches)
3. That each Check Cashier and or Check Cashing activity meets the following Performance Standards and that these performance standards are included as standard conditions of approval. These performance standards may be amended or expanded by Staff as they are applied to individual locations and projects and are designed to reduce blight and increase security in and around such establishments:
 - A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty feet away. Exterior lighting shall be designed so as not to cast glare offsite.
 - Storefronts shall have glass or transparent glazing in the windows. No more than 30% of any window area shall be covered by signs, banners, or opaque coverings of any kind.
 - Days and hours of operation shall be Monday through Saturday, 7:00 AM to 7:00 PM. Patrons shall be discouraged from loitering prior to or after hours. At least one no loitering sign with letters at least 2" tall shall be installed and maintained where it will be most visible to pedestrians on each side

of the building in which the activity is located including, but not limited to, street frontages and parking lots.

- Graffiti shall be removed within 72 hours of application.
- No exterior pay telephones shall be permitted.
- Litter shall be removed at least two times daily or as needed from in front of and for twenty feet beyond the building along adjacent street(s). All "street furniture" such as crates or mattresses shall be removed daily or as needed.
- The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies.

In general, 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. These uses may cause visual blight and allow a potential nuisance activity that would negatively affect the quality of life of the surrounding businesses and residents, and would disrupt the orderly development of the surrounding neighborhood. The failure of the City to properly regulate check cashing businesses can undermine the City's efforts to improve the urban design and function of the areas at issue. Staff proposes the requirement for a Conditional Use Permit for all check cashiers and/ or check cashing businesses to evaluate conformance with the above goals and policies.

Staff recommends reviewing the draft ordinance, adopting the staff environmental determination, approving the Zoning Text Amendments, and forwarding a recommendation to the Oakland City Council to adopt the ordinance.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Recommend that the City Planning Commission review the draft ordinance, approve the Zoning Text Amendments and direct staff to forward the draft ordinance for City Council adoption.

Prepared by:



CHRIS CANDELL

Planner II

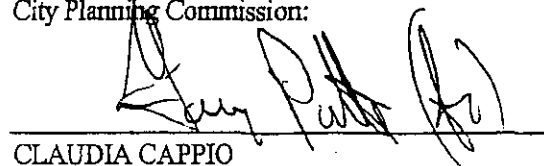
Approved by:



GARY PATTON

Deputy Director of Planning and Zoning

Approved for forwarding to the City Planning Commission:



CLAUDIA CAPPIO

ATTACHMENTS:

- a. Draft Ordinance
- b. Copy of Staff Report and emergency Ordinance 12558 dated November 18, 2003
- c. Copy of Staff report and interim Ordinance 12565 dated December 16, 2003.

DRAFT

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY

ORDINANCE No. _____

C.M.S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD A NEW USE CLASSIFICATION AND AMEND RELATED CODE SECTIONS TO REGULATE CHECK CASHIERS AND OR CHECK CASHING BUSINESSES AND LIMITING WHERE SUCH ACTIVITES MAY BE PERMITTED

WHEREAS, In the State of California the number of check cashing business permits rose from 1,467 in 1996 to over 4,000 by 2002; and

WHEREAS, 57 percent of African-Americans and 49% of Hispanics live within close proximity to a check cashing business indicating a pattern by check cashing business for targeting primarily minority neighborhoods; and

WHEREAS, 42 percent of households with incomes of less than \$25,000 live within 1 mile of check cashing business in California indicating a pattern by check cashing business for targeting primarily low-income neighborhoods; and

WHEREAS, a recent study by the Urban Law & Public Policy Institute and Consumer Federation of America revealed that check cashing facilities charge interest rates as high as 900 percent and displace the availability of full service banking institutions; and

WHEREAS, a recent study by the American Association of Retired Persons revealed that customers using check-cashing business average 13 transactions per year, per borrower, with 21 percent reporting more than 20 transactions in a 12-month period creating a cycle of indebtedness and financial vulnerability; and

WHEREAS, 28% of consumers without a traditional checking account cash their checks primarily at check cashing institutions; and

WHEREAS, A recent study by The Progressive Policy Institute revealed that a traditional bank account is the first step toward giving low-income Americans access to the mainstream tools for wealth creation now taken for granted by the middle-class; and

WHEREAS, check cashing business obtain their profits from transactions fee, unlike banks, which primarily derive their income from the spread between interest paid on deposits and loan portfolios, creating an incentive for check cashing business for ever increasing transaction fees; and

WHEREAS, check cashing business have failed to provide adequate safety for their customers as evidenced by 3 armed individuals recently robbing a man after leaving a check cashing business on International Boulevard; and

WHEREAS, a lack of regulation check cashiers or check cashing businesses would allow a proliferation of check cashiers or check cashing establishments which may result in the displacement of charter banks especially in small neighborhood shopping areas; and

WHEREAS, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the 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 commercial areas Policy I/C3.4; Strengthening Vitality Policy, T2.3 Promoting Neighborhood Services; Objective I/C1.1 Attracting New Business, Policy N1.6 Reviewing Potential Nuisance Activities, Policy 5.1 Environmental Justice; and

WHEREAS, the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted without adequate review 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, the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted without adequate review may result in displacement of needed goods and services; and

WHEREAS, such impacts may potentially conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, on November 18, 2003, the City Council adopted an Urgency Ordinance No. 12558 C.M.S., imposing a 45-day moratorium on new or expanded check cashing and check cashier activities; and

WHEREAS, on December 16, 2003, the Oakland City Council adopted Ordinance No. 12565 C.M.S., as an interim emergency ordinance to regulate check cashing and check cashier activities while a study was undertaken to develop permanent controls; and

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

WHEREAS, issuance or approval of any building, planning or other permit for such check cashier or check cashing businesses (newly instituted, modified, or expanded) without a Conditional Use Permit in certain zoning districts would result in negative impacts to the community in which it is located in; and

WHEREAS, the Oakland Planning Commission conducted a duly noticed public hearing on June 2, 2004; and

WHEREAS, after the close of the public hearing, the Oakland Planning Commission recommended the adoption of Zoning Text changes to regulate check cashier and check cashing activities; and

WHEREAS, the City Council's Community and Economic Development Committee considered the matter on _____, 2004; and

WHEREAS, the City Council conducted a duly noticed public hearing on _____, 2004;

Now, Therefore, the Council of the City of Oakland does ordain as follows:

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

SECTION 2. The City Council finds and determines, that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

SECTION 3. Section 17.10.365 "Check Cashier and Check Cashing Activities" is added to the Oakland Planning Code to read as follows:

"17.10.365 Check Cashier and Check Cashing Activity
Check Cashier and Check Cashing Activity includes:

(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 section 1789.33, as amended.

(2) "Check Cashier" or "Check Cashing Activity" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check cashier" or "Check Cashing Activity" 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.

They also include certain activities accessory to the above, as specified in Section 17.10.040."

SECTION 4. The following sections of the Oakland Planning Code are amended to add "Check Cashier and Check Cashing" as Conditionally permitted activities:

17.38.040 (C-20, Shopping Center Commercial Zone)

17.40.050 (C-25, Office Commercial Zone)

17.46.060 (C30, District Thoroughfare Commercial Zone)

17.50.060 (C-35, District Shopping Commercial Zone)

17.54.060 (C-40 Community Thoroughfare Commercial Zone)

17.56.060 (C-45, Community Shopping Commercial)

17.58.060 (C-51 Central Business Service Commercial Zone)

17.60.060 (C-52 Old Oakland Commercial Zone)

17.62.060 (C-55 Central Core Commercial Zone)

SECTION 5. Section 17.102.430 is added to the Oakland Planning Code to read as follows:

17.102.430 Regulations Applying to Check Cashier and or Check Cashing Activity

A. Additional Use Permit Criteria. A conditional use permit for any conditionally permitted Check Cashier and or Check Cashing activity as defined in Section 17.10.365 of the Oakland Planning Code may only be granted upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following performance standards:

1. That each Check Cashier and or Check Cashing activity be no located no less than 1,000 feet from the nearest Check Cashier and Check Cashing Activity within the City of Oakland.
2. That each Check Cashier and or Check Cashing activity be a minimum of 500 feet from the following activities:
 - a. Community Education Civic Activities
 - b. State or federally chartered bank, savings association, credit union, or industrial loan company.
 - c. Community Assembly Civic Activities
3. That each Check Cashier and or Check Cashing activity meets the following Performance Standards and that these performance standards are included as standard conditions of approval. These performance standards may be amended or expanded by Staff and/or the Planning Commission as they are applied to individual locations and projects:
 - A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty feet away. Exterior lighting shall be designed so as not to cast glare offsite.
 - Storefronts shall have glass or transparent glazing in the windows. No more than 30% of any window area shall be covered by signs, banners, or opaque coverings of any kind
 - Days and hours of operation shall be Monday through Saturday, 7:00 AM to 7:00 PM. Patrons shall be discouraged from loitering prior to, during and/or after hours. At least one no loitering sign with letters at least 2" tall shall be installed and maintained where it will be most visible to pedestrians on each side of the building in which the activity is located including, but not limited to, street frontages and parking lots.
 - Graffiti shall be removed within 72 hours of application
 - No exterior pay telephones shall be permitted.
 - Litter shall be removed at least two times daily or as needed from in front of and for twenty feet beyond the building along adjacent street(s). All "street furniture" such as crates or mattresses shall be removed daily or as needed.
 - The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the

property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies.

Section 6. The interim controls adopted in Ordinance No. 12565 C.M.S. shall no longer be in effect upon the effective date of this ordinance. This ordinance, pursuant to Charter section 216, shall be effective immediately if approved by six members of the City Council; otherwise, it shall be effective upon the seventh day after final adoption.

SECTION 7. If any section, subsection, phrase, word or 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, , 2004

PASSED BY THE FOLLOWING VOTE:

AYES-Brooks, Brunner, Chang, Nadel, Quan, Reid, Wan, and President De La Fuente

NOES-

ABSENT-

ABSTENTION-

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



CITY HALL 2003 NOV 18 PM 2:20 GAWA PLAZA • OAKLAND, CALIFORNIA 94612

IGNACIO De La FUENTE
President of the City Council

510/238-7005
FAX / 238-6910
TDD / 238-7413

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Office of Council President De La Fuente
DATE: November 18, 2003

RE: **An Ordinance Enacting A 45-Day Moratorium, Pursuant To California Code Section 65858, On Check Cashier Or Check Cashing Businesses in Oakland**

SUMMARY

This ordinance will enact a 45 day moratorium on the granting of any permits for Check Cashier or Check Cashing business in the City of Oakland. Staff will use the 45-day moratorium to review the impacts of such business and recommend changes to our land use and zoning laws.

FISCAL IMPACT

None. This is a policy and regulatory matter with no direct fiscal impact.

BACKGROUND

In November 2003, the residents of the Fruitvale neighborhood brought to the attention of my office applications by check cashing firms to open stores in locations that were previously operating as points of liquor sale and consumption. The residents of Fruitvale fought long and hard to remove those establishments from their neighborhood with the hope of improving the health, safety, and economic viability of their neighborhood. However, there is concern that check cashing firms potentially represent a negative component to the public safety and increase the economic and financial vulnerability of Fruitvale residents. This pattern is not unique to the Fruitvale neighborhood.

The numbers of check cashing businesses has increased sharply in the past years throughout the State of California and the City of Oakland. Such increases have had a negative impact on low-income minority communities, which appear to be the targets of check cashing or cashier businesses. A recent study by the Urban Law and Public Policy Institute revealed that 57% of African-Americans and 49% of Hispanics live within 1 mile of a check cashing business. In addition, 42 % of households with incomes of less than \$25,000 live within 1 mile of check cashing business in California.

It is the intention of this moratorium Ordinance to give staff and the Council the time to review the potential impacts of check cashier and cashing businesses and propose any necessary and appropriate regulatory procedures for the City of Oakland.

ITEM # 15
CITY COUNCIL/ORA
November 18, 2003

KEY ISSUES AND IMPACTS

Currently the City of Oakland does not separately regulate check cashier or check cashing businesses and does not differentiate between such businesses and consultative and financial services activities. The lack of separate regulatory program allows for check cashier and check cashing businesses to operate wherever consultative and financial services activity are permitted to be instituted in the City of Oakland. The continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial services activity may result in the displacement and availability of full service banking institutions, which can severely impact the ability of low-income citizens to break the cycle of indebtedness and financial vulnerability.

A recent study by The Progressive Policy Institute revealed that a traditional bank account is the first step toward giving low-income Americans access to the mainstream tools for wealth creation now taken for granted by the middle-class. A statewide survey in California indicated that 28% of consumers without a traditional checking account cash their checks primarily at check cashing institutions. Most of these customers become locked in a cycle of borrowing and more borrowing with exorbitantly high interests rates that can go as high as 900%. This matter is not limited to low-income citizens, as seniors are also potentially caught in positions of financial vulnerability. A recent study by the American Association of Retired Persons revealed that customers using check-cashing business average 13 transactions per year, per borrower, with 21% reporting more than 20 transactions in a 12-month period.

CONCLUSION:

This ordinance will enact a 45 day moratorium on the granting of permits for Check Cashier or Check Cashing business in the City of Oakland. Staff will use the 45-day moratorium to review the impacts of such business and recommend changes to our existing land use and zoning laws.

It is not believed that such a moratorium will have a substantial impact on business activity in the City, while it will provide an opportunity to review a matter that is of grave concern to people throughout the City and essential to guarantee economic sustainability to give low-income Oaklanders access to the mainstream tools for wealth creation now taken for granted by the middle-class.

RECOMMENDATIONS:

It is the recommendation of this report that Council request that the Planning Commission initiate a study to determine appropriate revisions to the zoning text and return to Council with any recommendations and to adopt the attached ordinance imposing a 45 day moratorium on all check cashier and check cashing activities during the period of this study.

Respectfully Submitted,


Ignacio De La Fuente
City Council President

~~ITEM # 5
CITY COUNCIL
November 18, 2003~~

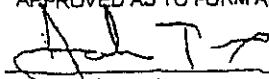
OFFICE OF THE CITY CLERK
COUNCIL

2003 NOV 18 7:12:32

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER DE LA FUENTE


CITY ATTORNEY

ORDINANCE NO. 12558 C.M.S.

**AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE
PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A
MORATORIUM ON CHECK CASHIER OR CHECK CASHING
BUSINESSES**

WHEREAS, In the State of California the number of check cashing business permits rose from 1,467 in 1996 to over 4,000 by 2002; and

WHEREAS, 57 percent of African-Americans and 49% of Hispanics live within close proximity to a check cashing business indicating a pattern by check cashing business for targeting primarily minority neighborhoods; and

WHEREAS, 42 percent of households with incomes of less than \$25,000 live within 1 mile of check cashing business in California indicating a pattern by check cashing business for targeting primarily low-income neighborhoods; and

WHEREAS, a recent study by the Urban Law & Public Policy Institute and Consumer Federation of America revealed that check cashing facilities charge interest rates as high as 900 percent and displace the availability of full service banking institutions; and

WHEREAS, a recent study by the American Association of Retired Persons revealed that customers using check-cashing business average 13 transactions per year, per borrower, with 21 percent reporting more than 20 transactions in a 12-month period creating a cycle of indebtedness and financial vulnerability; and,

WHEREAS, 28% of consumers without a traditional checking account cash their checks primarily at check cashing institutions; and

WHEREAS, a recent study by The Progressive Policy Institute revealed that a traditional bank account is the first step toward giving low-income Americans access to the mainstream tools for wealth creation now taken for granted by the middle-class; and,

WHEREAS, check cashing business obtain their profits from transactions fee, unlike banks, which primarily derive their income from the spread between

ATTACHMENT B

interest paid on deposits and loan portfolios, creating an incentive for check cashing business for ever increasing transaction fees; and

WHEREAS, check cashing business have failed to provide adequate safety for their costumers as evidenced by 3 armed individuals recently robbing a man after leaving a check cashing business on East 14th; and

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, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the 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 commercial areas - Objective I/C1.1 Attracting New Business; Policy N1.6 Reviewing Potential Nuisance Activities; Policy 5.1 Environmental Justice; and

WHEREAS, the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted activity 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, such impacts may potentially conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, the City Council hereby requests that the Planning Commission initiate a review of the regulatory mechanisms available to regulate check cashiers 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, and welfare from the negative effects of check cashier or check cashing businesses. During the period of time that it undertakes this task, the City is concerned that absent the adoption of an emergency moratorium, check cashier or check cashing businesses that conflict with contemplated changes to the City's regulatory schemes could be established in the City of Oakland thereby frustrating the realization of the goals of that study; and

WHEREAS, until such time that the City concludes its review and adopts new land use controls over such check cashier or check cashing businesses, the

community is in jeopardy that such check cashier or check cashing businesses could be instituted, modified, or expanded prior to the imposition of new controls necessary for the protection of public health and welfare; and

WHEREAS, issuance or approval of any building, planning or other permit for such check cashier or check cashing businesses (newly instituted, modified, or expanded) prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety or welfare; and

WHEREAS, pursuant to Government Code Section 65858 a city, including a charter city, may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time; 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 current, immediate and direct threat to the health, safety, or welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency.

NOW, THEREFORE, THE CITY 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), and 15307 of the State CEQA Guidelines.

SECTION 3. Until such time as the City concludes the review described above, and adopts new land use controls pertaining to check cashier or check cashing business, the City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded check cashier or check cashing business as defined in section 4 below.

SECTION 4. For purposes of this Ordinance, the following definitions shall apply:

- a) "Check cashier or check cashing business means (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 casher" or "check cashing business" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check casher" 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 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code § 65858.

SECTION 6. During the term of this ordinance as set forth in Section 5 hereof, no use permit, building, zoning or other permit that has been issued for any "Consultative and financial services Activity" or any other activity, that includes as an element of the activity an activity that meets the definition of check casher or check cashing business as set forth in section 4 above for which rights to proceed with the permit have not vested pursuant to the provisions of State law shall proceed, and no use permit, building, zoning or other permit for any check casher or check cashing business shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any "Consultative and financial services Activity" or any other activity which includes as an element thereof any check casher or check cashing business. Only "Consultative and financial services Activity" or any other activity which include as an element thereof any check casher or check cashing businesses which have vested, pursuant to the provisions of State law, prior to the date of this Ordinance shall proceed in violation of the provisions of this Ordinance.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

SECTION 8. For the term of this ordinance, as set forth in Section 5 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 9. This Ordinance is enacted pursuant to the City of Oakland's police powers, Section 106 of the Charter of the City of Oakland, Article 1 of the California Constitution and Government Code section 65858.

SECTION 10. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

In Council, Oakland, California, NOV 18 2003, 2003, Passed By The Following Vote:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and
PRESIDENT DE LA FUENTE — 8

NOTES- *Ø*
ABSENT- *Ø*
ABSTENTION- *Ø*

ATTEST *Deborah L. Floyd*
for CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

[Handwritten signature]

**AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE
PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A
MORATORIUM ON CHECK CASHIER OR CHECK CASHING
BUSINESSES**

NOTICE AND DIGEST

By this ordinance, the Oakland City Council imposes an interim moratorium, for a 45-day period, on check cashier or check cashing businesses.

OFFICE OF THE CITY CLERK
2003 NOV 18 PM 12:32

PUBLIC NOTICES
NOTICE AND DIGEST

**AN URGENCY MEASURE ADOPTING
AN INTERIM ORDINANCE PURSUANT TO
GOVERNMENT CODE SECTION 65858
IMPOSING A MORATORIUM ON CHECK
CASHIER OR CHECK CASHING
BUSINESSES**

By this Ordinance, the Oakland City Council imposes an interim moratorium, for a 45-day period, on check cashier or check cashing businesses.

Notice of Publication
This Ordinance was enacted as an urgency measure regarding an interim 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 November 18, 2003, and passed to aye 8 Ayes, 0 Noes at One Frank H. Ogawa Plaza, Council Chambers, on the third floor in Oakland, California.

Notice thereof is hereby published pursuant to California Government Code Section 65854.

Three full copies are available for use and examination by the public in the Office of the City Clerk at One Frank H. Ogawa Plaza, 1st Floor, Oakland, California.
CEDA FLOYD, City Clerk

FILED
OFFICE OF THE CITY CLERK
6 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

2003 DEC -4 PM 5:11
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

ATTACHMENT C

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 policies 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.

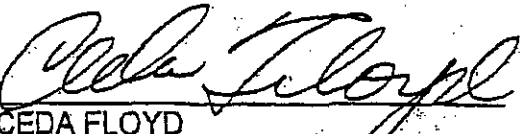
In Council, Oakland, California, December 16, 2003, Passed By The Following
Vote:

AYES- 8

NOTES- 0

ABSENT- 0

ABSTENTION- 0

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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 & 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, #313481
December 28, 2003

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 16, 2003

RE: 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

SUMMARY

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 businesses. Due to the time necessary for the City Planning Commission and City Council to study the issues, permanent regulations can not be adopted within the 45-day moratorium period. Therefore, staff has prepared an emergency ordinance to establish interim controls to regulate check cashier and or check cashing businesses that are not conducted by a state or federally chartered bank or as an accessory activity of a retail seller engaged in selling consumer goods. The interim controls propose permitting check cashier and/or check cashing businesses only upon the granting of a Conditional Use Permit. The interim controls are proposed for a one-year period to allow development and adoption of appropriate zoning text changes. Staff recommends adopting the proposed interim controls.

FISCAL IMPACTS

No direct fiscal impacts. Applicants applying for a Minor Conditional Use Permit to conduct a Check Cashier and Check Cashing activity will pay the application fees to offset staff time for review and processing.

BACKGROUND

Due to a growing concern regarding the impacts of check cashier and/or check cashing activities, the Oakland City Council gathered facts and information regarding such activities and passed ordinance No. 12558 C. M. S. imposing a moratorium on all new Check Cashier and Check Cashing Commercial activities for a period of 45 days. 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

Item No. _____
Council _____
December 16, 2003

changes to the Planning Code to protect the public health, safety, or welfare from negative effects of check cashier or check cashing businesses.

As defined in the ordinance, the moratorium applies to "Check cashier or check cashing business", meaning (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 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.

KEY ISSUES AND IMPACTS

The Oakland City Planning Commission and the City Council will not be able to conduct a thorough review of the issue prior to the expiration of the moratorium. As a result, the Oakland City Council will not be able to adopt permanent regulations prior to the expiration of the moratorium. It is in the interest of the community that a thorough review of the issues be made and appropriate land use regulations formulated.

Adverse Effects

Currently, check cashiers and or check cashing businesses are not specifically regulated by the Planning Code. Continued establishment of check cashier or check cashing businesses in any and all locations where Consultative and Financial Commercial Service uses are permitted may result in displacement and availability of full service banking institutions, and create a cycle of indebtedness and financial vulnerability for low-income citizens. In addition, the 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.

Such businesses may potentially conflict with some of the polices and objectives of the Land Use and transportation Element of the General Plan. Specifically the following goals, objectives, and policies: 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; and Policy 5.1 Environmental Justice. In general, 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. These uses would cause visual blight and allow a potential nuisance activity that would negatively effect the quality of life of the surrounding residents, and would disrupt the orderly development of the surrounding neighborhood. The failure of the City to properly regulate check cashing businesses can undermine the City's efforts to improve the urban design and function of the areas at issue.

The City of Oakland has recently received a request to establish such activities. This request creates an urgent need to impose restrictions to avoid a direct threat to the health, safety and welfare of the surrounding community.

Conditional Use Permit

The adoption of a Conditional Use Permit process for check cashiers and/or check cashing businesses above would provide a process to allow the needed regulatory review of applications for check cashiers and or check cashing businesses. Staff recommends that applications for such activities be reviewed through the Minor Conditional Use Permit process in the 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 zones.

In general, the Major Conditional Use Permit process is reserved for major nuisance causing activities that generally have the potential for creating major adverse impacts such as loitering and drug dealing. Certain large-scale projects are also subject to the Major Conditional Use Permit process. However, applications for check cashing are unlikely to meet this threshold. Any such application that does meet the size criteria would be reviewed by the Major Conditional Use Permit process pursuant to existing regulations under Section 17.134.020 based on the size of the project rather than the activity type. The Minor Conditional Use Permit process is appropriate for land use activities with the potential for minor adverse impacts. Staff feels most adverse impacts that can be regulated by land use controls can be mitigated through standard conditions of approval discussed below. Both processes allow for public input and are appealable. Minor Conditional Use Permits may be appealed to the Oakland Planning Commission and Major Conditional Use Permits may be appealed to the Oakland City Council.

Performance Standards

The Conditional Use Permit process would allow staff to evaluate the impacts of each specific application and to impose specific conditions designed to mitigate adverse impacts as outlined below. Under this proposal staff could only approve such activities if the required Conditional Use Permit findings of Section 17.134.050 can be made. In approving any application staff may impose standard conditions of approval to mitigate adverse impacts including, but not limited to:

- Requiring an exterior lighting plan
- Keeping windows free of advertising and unobstructed
- Installation of no loitering signage
- Posting at least one licensed uniformed security guard on duty at all times the business is open.
- Maintaining hours that are no earlier than 7:00 AM or later than 8:00 PM
- Removing graffiti within 72 hours
- Removing litter at least twice daily

SUSTAINABLE OPPORTUNITIES

No direct opportunities for sustainable development will be created by this ordinance.

ENVIRONMENTAL DETERMINATION

The adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3) General Rule, 15307 Actions by Regulatory Agencies for Protection of Natural Resources, and 15308, Actions by Regulatory Agencies for Protection of the Environment, of the State CEQA Guidelines.

SENIOR AND DISABILITY ACCESS

All check cashier and/or check cashing facilities will be subject to the ADA (Americans with Disabilities Act) to allow physical access by seniors and those with disabilities. Access will be provided to the extent required by the ADA and local building code regulations through the building permit process.

RECOMMENDATION (S) AND RATIONALE

Check cashier and/or check cashing activities appear to target low-income Oakland residents. By concentrating near low-income residents, the establishments act to displace accredited banking services or other goods and services. The proliferation of check cashier and/or check cashing activities within certain areas of the City of Oakland perpetuates a cycle of indebtedness and financial vulnerability. The proposed controls allow the City to review applications for such establishments during an interim period while creating permanent controls for such businesses.

Therefore, staff recommends that the Oakland City Council adopt the proposed ordinance establishing interim controls for Check Cashier and/or Check Cashing Activity or any other activity, that includes as an element of the activity that meets the definition of Check Cashier or Check Cashing business as defined in the ordinance. These interim controls would prohibit the establishment of a Check Cashier and/or Check Cashing Activity without first applying for and obtaining a Minor Conditional Use Permit.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the staff's environmental determination
2. Approve the ordinance

Respectfully submitted,

CLAUDIA CAPPIO
Director of Planning, Building Services
Major Projects & OBRA

~~Item No. 1
Council
December 16, 2003~~

Deborah Edgerly
December 16, 2003

Page 5

Prepared by: Chris Candell
Planner II
CEDA - Planning & Zoning

APPROVED AND FORWARDED TO THE
CITY COUNCIL:

OFFICE OF THE CITY MANAGER

ATTACHMENTS:

- A. Copy of ordinance 12558 establishing a 45 day Moratorium
- B. Copy of proposed ordinance

~~5~~
COMMUNITY & ECONOMIC
DEVELOPMENT CMTE

SEP 14 2004

14.1
COUNCIL

Item No. ~~X~~
Council
December 16, 2003

OCT 05 2004