



CITY HALL 2003 NOV 6 PM 2:20 FRANK GAWA PLAZA • OAKLAND, CALIFORNIA 94612

IGNACIO De La FUENTE
President of the City Council

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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.

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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:

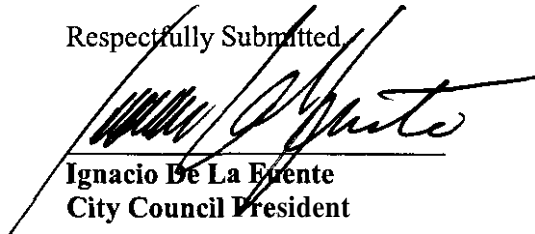
This ordinance will enact a 45 day moratorium on the granting of permits for Check Cashier or Check Cashing business in the City of Oakland. Staff will **use** the 45-day moratorium to review the impacts of such business and recommend changes to our existing land **use** and zoning laws.

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

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4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER DE LA FUENTE

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S. **DRAFT**

**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

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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 general police powers, Section 106 of the Charter of the City of Oakland, Article XI 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, _____, 2003, Passed By The Following Vote:

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

NOTES-

ABSENT-

ABSTENTION-

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

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**AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE
PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A
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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.

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