

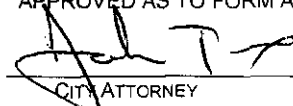
OFFICE OF THE CITY CLERK
COUNCIL

2003 NOV 18 PM 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

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

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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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PUBLIC NOTICES

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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 print 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 65858.

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