



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 9, 2012

Approved

Date

5/10/12

SUPPLEMENTAL

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.40.100 OF CHAPTER 20.40 (COMMERCIAL ZONING DISTRICTS), SECTION 20.70.100 OF CHAPTER 20.70 (DOWNTOWN ZONING DISTRICTS), TO ADD A NEW PART 12.5 TO CHAPTER 20.80 (SPECIFIC USE REGULATIONS), TO ADD A NEW SECTION 20.200.875 TO AND CHAPTER 20.200 (DEFINITIONS), AND RESCINDING THE SUSPENSION OF THE EFFECTIVENESS OF SECTIONS 20.100.1500, 20.100.1510, 20.100.1520, 20.100.1525 AND 20.100.220 OF CHAPTER 20.100 (PART 13, ZONING CODE VERIFICATION CERTIFICATE), ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) TO ESTABLISH LAND USE REGULATIONS PERTAINING TO PAYDAY LENDING ESTABLISHMENTS.

REASON FOR SUPPLEMENTAL

This memorandum responds to a request made by the Planning Commission at their April 25, 2012, hearing to provide information to the City Council on the possible modification to the proposed ordinance to include a limit or "cap" on the total number of payday lending establishments in San José. The memorandum also provides clarification on the applicability of the proposed ordinance to new payday establishments proposed to occupy the same location where there had previously been an existing, legally-established payday lending establishment.

RECOMMENDATION

Staff recommends that the City Council approve the proposed amendment to the Zoning Code (Title 20) as outlined in the memorandum dated April 12, 2012, to establish land use regulations pertaining to payday lending establishments without a limit (or “cap”) on the number of payday lending establishments.

BACKGROUND

On April 25, 2012, the Planning Commission conducted a public hearing on the proposed ordinance. Approximately 40 members of the public spoke during the public hearing. Most of the testimony was in favor of the proposed payday lending regulations. Some speakers suggested that the City modify the proposed ordinance to include a citywide limit on the total number of payday lending establishments. In response to this testimony, the Planning Commission included in its motion (as described in the April 30, 2012, transmittal memo) a request to staff to provide the City Council with information related to establishing a limit on the number of payday lending establishments for the Council to consider as part of its consideration of the proposed ordinance.

ANALYSIS

Research conducted by staff indicates that no other city of comparable size in the State of California or in the nation currently imposes a specific limit (or “cap”) on the number of payday lenders within their jurisdiction. Typically communities have adopted one or more of the following land use related requirements for payday lending establishments:

- A distance or separation requirement between payday lending/check cashing businesses to prevent overconcentration in specific areas (e.g., prohibition on the location of a payday lending business within 300 feet or half mile of another such business.).
- A distance requirement separating payday lending/check cashing businesses from residential areas and/or other sensitive or specified uses (i.e., schools, parks, churches, adult uses, or liquor stores).
- A limitation to certain zoning districts or prohibition from specific geographic areas.
- A requirement to obtain a conditional use or special use permit.
- A limitation on the density of payday lending establishments, in the form of a limit on the number of payday lenders per capita. Examples were found of smaller communities that limit the number of payday lenders to 1 per 5,000, 10,000 or 15,000 residents. (Currently San José has a ratio of approximately 1 payday lender per 25,000 residents.)

May 9, 2012

Subject: Proposed Zoning Code Amendment for Payday Lending Establishments

Page 3

In San Francisco, the code was amended to include a noncontiguous “Fringe Financial Service Restricted Use District,” within which payday lending establishments are prohibited. The intent was to slow the “unchecked proliferation of these businesses” and preserve the residential character and the neighborhood serving commercial uses within, or within a quarter-mile of the district.

In Oakland, check cashiers (including payday lenders.) are required to obtain a Use Permit with performance standards that include a minimum separation distance between such establishments (1,000 feet), and a 500 foot separation requirement from other uses, including schools, banks, credit unions, alcohol sales and civic uses. Requirements related to lighting, window signs limits, and hours of operation (seven a.m. to seven p.m.) are also included in the ordinance. Sacramento also adopted similar permitting and distance separation requirements.

Staff is not recommending that the proposed ordinance include the imposition of a cap on the total number of payday lenders within San José for the following reasons:

- Information provided through public testimony or otherwise found through staff research does not indicate a specific number of payday lenders that would effectively address the issues associated with this type of land use.
- The staff and Planning Commission’s recommended zoning ordinance provisions as proposed, directly and sufficiently address the specific problem of the overconcentration of payday lenders in low-income areas.
- Staff and Planning Commission’s recommended ordinance will likely curb the numbers of payday lenders in San José by prohibiting new establishments from locating in low-income areas.
- Imposing a cap will create a new and unique regulatory/monitoring process that will require additional staffing resources. In order to implement the cap, the City would be required to monitor the number of operating establishments on an ongoing basis to determine whether there is capacity to approve additional payday lending establishments.
- Implementation of a regulatory cap would be a more time consuming and costly permit process than the Zoning Code Verification Process that is currently proposed, given the additional staff resources that would be required.
- A cap will reduce potential competition within the payday lending industry and thereby reduce economic pressure that could lead to reduced rates or fees for payday loans. Establishing a cap will potentially raise the value of existing payday lending businesses and thus promote their long term economic viability.
- The City’s Zoning Ordinance does not generally employ caps on specific types of businesses.

Legal Nonconforming Provisions

If the proposed ordinance is adopted, legally operating payday lending establishments currently in existence would be able to continue operating, even if they do not meet the proposed ordinance's location requirements, as legal nonconforming uses.

The proposed ordinance would require each new operator of a payday lending establishment to obtain, prior to commencing operation, a Zoning Verification Certificate confirming that the establishment meets the location requirements in the ordinance. However, if a legally operating payday lending establishment existed at the same location, and the use has not been abandoned for a period longer than six months, a Zoning Verification Certificate could be issued to the new operator even if the location requirements are not met. For this provision to apply, the new operator would have to confine the payday lending establishment to the same space (or a portion thereof) occupied by the prior payday lending establishment, without enlargement or expansion of the use.

ALTERNATIVES

While staff is not recommending any of the alternatives below, the following ideas are provided to assist the Council in its thinking and decision making regarding a numerical limit (cap) or density limitation on the number of payday lenders. Depending upon the Council's action, additional work on the draft ordinance may be needed prior to the second reading.

1. A numerical limit (cap) corresponding to the number of existing payday lenders. There are currently 38 payday lenders in San José according to the Department of Corporations records. If a citywide cap of 38 payday lenders was to be established, no new payday lenders could operate in San José without the closure of an existing business. This would prevent an increase in the number of payday lending establishments, but potentially allow replacement or existing businesses should they close and facilitate the relocation or transfer of existing business if desired by the business owner.
2. A numerical limit (cap) at a level above the number of current payday lenders. This would allow there to be a limited number of new payday lenders in San José in addition to the 38 existing facilities. It is unclear as to how many additional payday lenders would be appropriate.
3. A numerical limit (cap) at a level below the number of current payday lenders. This would reduce over time the number of payday lenders in San José as a result of new payday lenders being prohibited in San Jose until the number of existing facilities is reduced below the established numerical limit. It is unclear as to how many additional payday lenders would be appropriate. Existing payday lenders could be allowed to continue operation, transfer ownership, or relocate depending upon provisions included within the ordinance.

HONORABLE MAYOR AND CITY COUNCIL

May 9, 2012

Subject: Proposed Zoning Code Amendment for Payday Lending Establishments

Page 5

4. A density limitation on the number of payday lenders allowed per capita. This density limitation would be similar to a cap, and could be established at a level less than, greater than, or comparable to the current number of payday lending facilities within San José, but would then potentially change over time based upon the City's population.

COORDINATION

Preparation of the proposed ordinance and this memorandum has been coordinated with the City Attorney's Office.

/s/

JOSEPH HORWEDEL, DIRECTOR

Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti at 535-7901.