



Memorandum

TO: HUMAN RIGHTS COMMISSION

FROM: Richard Doyle
City Attorney

SUBJECT: BankOn San Jose Program

DATE: August 13, 2009

BACKGROUND

At its July 16, 2009 meeting, the Human Rights Commission discussed a proposal regarding the City's support of the "BankOn San Jose" program which is intended to encourage low income residents to use traditional financial institutions for their banking needs instead of relying on check cashing and payday loan businesses.

The recommendation before the Commission is as follows:

- 1) The City of San Jose provide ongoing support of the BankOn Program by:
 - a. Maintaining a link to the program on the City's website
 - b. Encourage City officials to include "BankOn" when conducting outreach to communities that may benefit from the program

- 2) The City implement a policy which requires businesses operating as a "Payday Advance", "Short-Term Loan" or "Check Cashing" or similar entities, except banking institutions, be required to provide information about the "Bank On" Program:
 - a. Such information shall be available in areas accessible to the public in font large enough to read without assistance and should be available in languages read or spoken by San Jose residents.
 - b. And shall be required for approval of new and renewal applications for required city permits and licenses of such businesses.

The Commission deferred action on the recommendation and requested a memo from the City Attorney's Office outlying any potential issues with the proposals.

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Subject: Regulating Check Cashing Businesses

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ANALYSIS

The first part of the recommendation, related to publicizing the BankOn San Jose Program through City outreach mechanisms poses no legal issues, since this is a City supported program of benefit to San Jose residents.

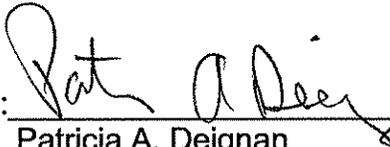
However, the second part of the recommendation does raise several legal issues.

The requirements that information about the BankOn Program be made available on site at the Check Cashing and Payday Advance establishments cannot be done through the permitting process. The only permits these establishments would be required to have are land use permits. This is not an appropriate land use condition.

The City currently does not license such establishments, and it is unclear as to whether we would legally be able to do so, given that financial establishments are regulated by the federal and state governments.

Any mandatory requirement would have to be established by ordinance. The research required to determine whether the City is authorized to impose such regulations, and the drafting of an ordinance if it is determined that it is feasible, will likely require a work load assessment. The City Manager's Office will be able to advise as to the workload assessment process.

RICHARD DOYLE, City Attorney

By: 
Patricia A. Deignan
Chief Deputy City Attorney