

**To the Mayor and Members of the City Council****May 6, 2014**

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**SUBJECT: REGULATION OF PAYDAY LENDERS**

The purpose of this report is to provide the City Council with requested information concerning the zoning and regulation of payday lenders and similar businesses.

The City of Fort Worth regulates payday lenders, title loan companies, and similar establishments as financial institutions in the Zoning Ordinance. These uses are allowed in all commercial and industrial zoning districts. Staff considers this the correct land use classification because the general operation of the business, i.e. financial services in an office environment, is similar to that of a bank or credit union.

The City of Fort Worth requires that financial institutions, including payday lending businesses comply with commercial development standards for banks. These include: parking of 4 spaces per 1,000 square feet when within 250 feet of one- or two-family residential use; bufferyard and supplemental building setback when adjacent to one- or two-family residential use (width depends on the district), typically with landscaping and a screening fence for new construction; and a maximum 8 foot by 16 foot monument sign.

Irving and other cities in Texas, including Brownsville, Missouri City, Watauga, Mesquite, Sachse, Richardson, Garland and Little Elm, have passed zoning regulations preventing payday lenders from expanding into new locations without a special use permit. Most of these cities are classifying check cashing businesses/payday advance-loan businesses, non-depository financial institutions, or a car title loan business as non-traditional banking institutions. The regulations most commonly include the requirement that each business obtain a special use permit and establish distance regulations from other payday lenders such as 1,000 feet from another payday lender business, 500 feet from highway right-of-way, and 200 feet from residential zoning.

Austin, Dallas, San Antonio, Denton, Houston, El Paso, Balcones Heights and eight other cities in Texas have enacted business regulations over payday lenders. Such business regulations include limiting the size of the loan to a percentage of the borrower's income; limiting the number of times a loan can be rolled over; applying for and receiving a certificate of registration from the municipality. All of the named cities with the exception of Balcones Heights have been sued by the credit access business industry (payday lenders, etc.). The industry is claiming that the cities are preempted from regulating credit access businesses since the Legislature gave the Texas Office of Consumer Credit Commissioner some authority to regulate them in the 2011 Legislative Session. Balcones Heights has suspended enforcement of its ordinance pending the outcome of the City of San Antonio lawsuit. The City of Dallas lawsuit was argued on appeal on March 25<sup>th</sup> to the Fifth District Court of Appeals.

There is no case law or Attorney General opinion regarding a city's ability to regulate the location of these businesses through zoning. Generally, zoning regulations that require distance and separation restrictions are upheld by the courts as reasonably related to promoting the public welfare if a city can demonstrate the regulation controls harmful secondary effects related to the

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restricted use. Before adopting an ordinance, the City would need to justify the purposes for regulating payday lenders by showing the proliferation and the negative or potentially negative secondary impacts from the number, location and/or clustering of these businesses. The reasons would be similar to those used by the City when it adopted its regulations for sexually oriented businesses, such as the impact that the location of these businesses have on nearby property values, the contribution to crime, the effect of the viability of commercial areas in which they are located, their tendency to provide for an unattractive appearance, and displacement of conventional and traditional banks. Existing payday lenders, title loan companies and associated businesses would be grandfathered upon adoption of a zoning ordinance amendment. It is estimated that there are over 80 businesses that would have legal non-conforming status.

Several federal and state regulations have been proposed in recent years, but none have been approved. On the federal level H.R. 1214, called the Payday Loan Reform Act, was proposed in Congress in February 2009 as an amendment to the Truth in Lending Act (enforced by the Federal Trade Commission). The proposal required a payday lender to make specified disclosures, set prohibited practices, and set cancellation procedures. The bill did not regulate annual loan percentages but included a loan renewal ban. The bill was not enacted. During the current 2013-2015 federal legislative session, H.R. 3691, the Transparency Military Lending Act of 2013, has been filed and proposes to require additional disclosures from payday lenders when lending to military members and their dependents. This bill is currently pending in committee.

Texas regulates payday lenders as a Credit Service Organization (CSO). Over the last seven years several bills have been filed during the Legislative Sessions to impose regulations on payday lenders and auto title lenders such as a limit on lending fees, limits on loan rollovers and disclosure requirements. SB 189 was proposed during the Texas Legislative Session in 2009 to enforce the federal law rate cap of 36 percent on payday lenders who conduct business with military members and their dependents. This bill, passed by the Senate but left pending in committee in the House, would have exempted banks and credit unions, while the federal law includes these depository institutions. SB 3744 was proposed during the Legislative Session but was not voted upon. The bill proposed to close a loophole in state law that allows payday and auto title lenders to operate as credit service organizations (CSOs) and thereby avoid regulatory oversight, licensing and other consumer protections. Separate bills were also filed to license CSOs and to allow the State of Texas to help enforce federal interest rate caps on payday loans to the military.

In 2011 the Legislature passed two bills, H.B. 2592 and 2594, regulating certain CSOs as a Credit Access Business (CAB) by requiring the Texas Finance Commission to implement reporting and disclosure rules. HB 2592, effective January 1, 2012, required the Finance Commission to adopt rules regarding disclosure of fees and interest rates that credit access business will charge for deferred presentment transactions or vehicle title loans and authorizes other rules as well. H.B. 2594 required the licensing and the regulation of certain extensions of

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consumer credit obtained by CABs. The two bills established a three-party model upon which the CAB transaction is based and requires separation between the lender and the CAB. Under the three-party model the CAB discloses to the consumer the services to be provided by the CAB, the fees for those services and the name of the lender providing the extension of consumer credit. A third bill, HB 2593, would have limited the number of times that fees can be charged and would have required payday lenders to accept partial payments to the principal, was not voted on by the House.

During the 2013 Legislative Session S.B. 1247 was approved by the Senate after several amendments, one of which was to strike a provision which would have preempted municipal ordinances regulating payday lenders and auto title lenders. Other amendments included limits on fees and interest rates and civil penalty against payday or auto title lenders who try to offer products not authorized in the proposed law. The bill was left pending in committee in April 2013 and died.

Staff does not recommend an amendment to the Zoning Ordinance to change the regulation and classification of payday lenders, since the zoning regulations are appropriate for the bank/office type of business activity and there are no notable adverse or secondary land use effects, unlike those similar to sexually oriented businesses.. Staff recommends continuing to support state legislative efforts to regulate these types of financial services and the interest rate structure.

Staff will monitor the Dallas and San Antonio lawsuits and determine if it is practical to adopt an ordinance to regulate the business practices of payday lenders. Alternatively if the City Council desires to adopt an ordinance regulating business practices of payday lenders, staff recommends adopting the example ordinance provided by the Texas Municipal League which is uniform with other cities regulating payday lenders and suspending enforcement until the conclusion of the aforementioned lawsuits.

If you have any questions, please contact Melinda Ramos, Senior Assistant City Attorney, City Attorney's Office, at 817-392-7631.

**Tom Higgins**  
**City Manager**