

Location: City Wide	
Proposal:	To amend the Oakland Planning Code to establish permanent regulations for activities related to check cashier and or check cashing activities, adding performance standards and limiting where such activities may occur.
Planning Permits Required:	Zoning Text Change
General Plan:	City Wide
Zoning:	City Wide
Environmental Determination:	Exempt 15061(b)(3), State CEQA Guidelines, "General Rule", no possibility of significant effect on the environment.
Service Delivery District:	City Wide
City Council District:	City Wide
Last Date for Consideration:	November 18, 2004
Support/Opposition:	There is both support and opposition to the proposed changes
Staff recommendation:	Open Public hearing, take testimony and forward recommendation to the City Council
For further information:	Contact case planner Chris Candell at 510-238-6986 .

SUMMARY

Staff recommends the adoption of a set of permanent controls for check cashiers and check cashing businesses. This ordinance defines the use, imposes a Minor Conditional Use Permit requirement, adds special criteria (or performance standards) for any such activities, and limits which zoning districts they may be allowed to operate in. Currently check cashing activities are considered the same as banks and other financial institutions and were allowed by right in a large number of zoning districts. In response to concerns regarding negative impacts of such businesses, the Oakland City Council adopted an emergency ordinance imposing a moratorium and subsequently an interim set of controls on December 16, 2003 to regulate these businesses. The interim controls expire on November 18, 2004. Staff was directed to prepare permanent regulations, hold public hearings and forward the recommendations of the Oakland Planning Commission back to the City Council.

This report details the new regulations. The regulations are summarized below:

1. Create a new activity classification called Check Cashier and Check Cashing Commercial;
2. Make the activity conditionally permitted with a Minor Conditional Use Permit in certain zoning districts subject to the performance standards which dictate:
 - Minimum distances between like activities;
 - Minimum distances to sensitive uses; and
 - Additional performance standards to regulate blight security and adverse impacts.
3. The Conditional Use Permit process would allow additional conditions of approval to be added if needed.

Attached to this staff report is a draft of the new ordinance describing the proposed zoning text changes. The previous staff reports and ordinances regarding the creation of the emergency ordinance and interim controls are also attached as a reference. Staff recommends reviewing the draft ordinance, adopting the

environmental determination, approving the Zoning Text Amendments, and forwarding a recommendation to the Oakland City Council to adopt the ordinance.

BACKGROUND

On November 18, 2003, in response to concerns regarding the proliferation of check cashing and check cashiers, the Oakland City Council adopted Ordinance No. 12558 C. M. S. The ordinance imposed a 45 day moratorium prohibiting the permitting or approval of any new, modified, or expanded check cashier or check cashing business as defined in the ordinance. Since this moratorium occurred during the holiday season there was insufficient time to create and review permanent regulations before the expiration date of January 2, 2004. On December 16, 2003, the Oakland City Council adopted Ordinance 12565 C. M. S. setting forth the interim controls for check cashier or check cashing businesses. The interim controls sunset on November 18, 2004.

GENERAL PLAN ANALYSIS

The proposed Zoning Text amendments are consistent with the General Plan. The proposed changes implement the following policies from the Land Use and Transportation Element Policy as discussed below under key issues and impacts:

ZONING CODE UPDATE ANALYSIS AND IMPLICATIONS

The proposed text changes relate well to the Zoning Code update currently being reviewed and are consistent with the General Plan policy. By taking into consideration the structure of the Zoning Code update, these revisions will minimize the need for future amendments or changes to the definition section.

ENVIRONMENTAL DETERMINATION

State CEQA Guidelines Section 15061(b)(3), the "general rule" states that, where it can be seen with certainty that there is no possibility that the project will not have a significant effect on the environment, it is not subject to environmental review. Since the proposed amendments would apply to minor changes in the use of land that could not significantly affect the environment, this project has been determined to be exempt from CEQA review.

KEY ISSUES AND IMPACTS

Proliferation of Check Cashing facilities and Displacement of Charter Banks and desired commercial development

Charter banks, as used in this staff report and the proposed ordinance, include the familiar banking institutions that meet federal standards and hold a charter plus credit unions. To a lesser extent, industrial loan companies are also captured by this definition. The ordinance further states that a "Check cashier" or "check cashing business" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check cashier" 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 cash 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.

The attached ordinance defines "Check cashier or check cashing business to mean (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 casher" also includes the business of deferred deposits whereby the check casher 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.

The unchecked proliferation of check cashing facilities displaces existing charter banks in generally lower income shopping areas. Charter banks may close or choose not to open where the market share is significantly eroded. In addition, new charter banks and other desired commercial development must compete with check cashing establishments for the limited commercial space in each shopping area. Unchecked, this may result in a reduction or displacement of needed goods and services.

Staff has proposed a minimum separation of 1,000 feet between each check cashing establishment to provide for check cashing facilities as an alternative to charter banks while limiting the number of such facilities in each shopping area. In general, this requirement will limit each shopping area to one check cashing facility. This separation requirement will also allow for development of other desired commercial development. For the same reason, staff recommends a 500 foot separation between check cashing establishments and existing charter banks.

Adverse affects on the health, safety, and welfare

Patrons of check cashing facilities have been robbed after leaving check cashing facilities. Some check cashing facilities are lacking in security measures when compared to charter banks. The security staff are often not certified. Surveillance cameras may be inadequate or non-existent. Exterior lighting and other measures are not in place to protect patrons. In addition, such facilities may operate with extended hours. Combined, these factors may facilitate the commission of crimes at a greater rate than at charter banks.

The proposed performance standards specify minimum security features to reduce the possibility of robberies in and around check cashing establishments. The proposed performance standards would be applied as conditions of approval for any approved facility. In addition, the Conditional Use Permit process allows for additional conditions of approval as needed to address design issues and to foster security. To protect students from possible negative impacts by association with those who might prey on them staff has proposed a 500 foot separation performance standard between schools and check cashing facilities.

General Plan Land Use and Transportation Element conflicts

Such businesses may potentially conflict with polices and objectives of the Land Use and transportation Element of the General Plan. Specifically the following goals, objectives, and policies: maintaining and enhancing the vitality of existing neighborhood and commercial areas.

Objective I/C1.1 Attracting New Businesses;

The City will strive to attract new businesses to Oakland which have potential economic benefits in terms of jobs and/or revenue generation. This effort will be coordinated through a citywide economic development strategy/marketing plan which identifies the City's existing economic base, the assets and constraints for future growth, target industries or activities for future attraction, and geographic areas appropriate for future use and development.

As described above, a proliferation of check cashing facilities would tend to have a negative impact on the attraction of desired businesses. The existence of a number of check cashing facilities in a shopping area will tend to discourage some businesses that would provide a potential economic benefit to the city. In addition, a proliferation of such activities would physically displace needed goods and services by

competing for scarce commercial property.

Policy N1.6 Reviewing Potential Nuisance Activities;

The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should monitor those that are existing. These may include isolated commercial or industrial establishments located within residential areas, Alcoholic Beverage Sales Commercial Activities (excluding restaurants), adult entertainment, or other entertainment activities.

C4.2 Minimizing Nuisances. The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create potential nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.

See the discussion on 'Adverse affects on the health, safety, and welfare' above. In addition, poorly run establishments may generate visual blight due to litter, graffiti, or lack of facility maintenance. Proposed performance standards would attend to nuisance and blight issues.

N5.1 Environmental Justice.

The City is committed to the identification of issues related to the consequences of development on racial, ethnic, and disadvantaged socio-economic groups. The City will encourage active participation of all its communities, and will make efforts to inform and involve groups concerned with environmental justice and representatives of communities most impacted by environmental hazards in the early stages of the planning and development process through notification and two-way communication.

In the State of California the number of check cashing businesses rose from 1,467 in 1996 to over 4,000 by 2002. Approximately 57 percent of African-Americans and 49 percent of Hispanics live within close proximity of check cashing businesses and 42 percent of households with incomes less than \$25,000 live within one mile of check cashing businesses in California. 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 that such facilities may displace the availability of full service banking institutions. In a recent study the American Association of Retired Persons indicates that customers using check cashing businesses average 13 transactions per year, per borrower, with 21 percent reporting more than 20 transactions in a year. Nearly 28 percent of consumers without a traditional checking account cash their checks primarily at check cashing institutions. A recent study by The Progressive Policy Institute revealed that a bank account with a charter bank is the first step toward giving low income Americans access to the mainstream tools for wealth creation.

Taken together, the above facts show a pattern of negative consequences of development that involves racial, ethnic, and disadvantaged socio-economic groups. Therefore, the City should only consider this type of development with the active participation of the community. The proposed Conditional Use Permit process will allow this type of participation.

Conditional Use Permit

The adoption of a Conditional Use Permit process for check cashiers and/or check cashing businesses would provide a process to allow the needed regulatory review of applications for check cashiers and or check cashing businesses. Staff recommends that applications for such activities be reviewed through the

Minor Conditional Use Permit process in the C-20, C-25, C-27, C-30, C-31, C-40, C-45, C-51, and C-55. In all other zones the activity would not be allowed at all.

In general, the Major Conditional Use Permit process is reserved for major nuisance causing activities that generally have the potential for creating major adverse impacts such as loitering and drug dealing. Certain large-scale projects are also subject to the Major Conditional Use Permit process. However, applications for check cashing are unlikely to meet this threshold. Any such application that does meet the size criteria would be reviewed by the Major Conditional Use Permit process pursuant to existing regulations under Section 17.134.020 based on the size of the project rather than the activity type. The Minor Conditional Use Permit process is appropriate for land use activities with the potential for minor adverse impacts. Staff feels most adverse impacts that can be regulated by land use controls can be mitigated through standard conditions of approval discussed above and detailed in the attached proposed ordinance. Both processes allow for public input and are appealable. Minor Conditional Use Permits may be appealed to the Oakland Planning Commission and Major Conditional Use Permits may be appealed to the Oakland City Council.

Proposed performance standards

To address the issues raised above, staff proposes the normal Conditional Use Permit findings, any special regulations of the zone, and the following performance standards. To reduce proliferation, prevent the displacement of desired development, and reduce blight and nuisance:

1. That each Check Cashier and or Check Cashing activity be no located no less than 1, 000 feet from the nearest Check Cashier and Check Cashing Activity within the City of Oakland.
2. That each Check Cashier and or Check Cashing activity be a minimum of 500 feet from the following activities:
 - Community Education Civic Activities (schools)
 - State or federally chartered bank, savings association, credit union, or industrial loan company
 - Community Assembly Civic Activities (churches)
3. That each Check Cashier and or Check Cashing activity meets the following Performance Standards and that these performance standards are included as standard conditions of approval. These performance standards may be amended or expanded by Staff as they are applied to individual locations and projects and are designed to reduce blight and increase security in and around such establishments:
 - A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty feet away. Exterior lighting shall be designed so as not to cast glare offsite.
 - Storefronts shall have glass or transparent glazing in the windows. No more than 30% of any window area shall be covered by signs, banners, or opaque coverings of any kind.
 - Days and hours of operation shall be Monday through Saturday, 7:00 AM to 7:00 PM. Patrons shall be discouraged from loitering prior to or after hours. At least one no loitering sign with letters at least 2" tall shall be installed and maintained where it will be most visible to pedestrians on each side of the building in which the activity is located including, but not limited to, street frontages and parking lots.
 - Graffiti shall be removed within 72 hours of application.
 - No exterior pay telephones shall be permitted.

- Litter shall be removed at least two times daily or as needed from in front of and for twenty feet beyond the building along adjacent street(s). All “street furniture” such as crates or mattresses shall be removed daily or as needed.
- The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies.

In general, the establishment of check cashiers and or check cashing businesses without City review could adversely affect the health, safety, and welfare enjoyed by persons in the commercial areas and neighborhoods. These uses may cause visual blight and allow a potential nuisance activity that would negatively affect the quality of life of the surrounding businesses and residents, and would disrupt the orderly development of the surrounding neighborhood. The failure of the City to properly regulate check cashing businesses can undermine the City’s efforts to improve the urban design and function of the areas at issue. Staff proposes the requirement for a Conditional Use Permit for all check cashiers and/ or check cashing businesses to evaluate conformance with the above goals and policies.

Staff recommends reviewing the draft ordinance, adopting the staff environmental determination, approving the Zoning Text Amendments, and forwarding a recommendation to the Oakland City Council to adopt the ordinance.

RECOMMENDATIONS:

1. Affirm staff’s environmental determination.
2. Recommend that the City Planning Commission review the draft ordinance, approve the Zoning Text Amendments and direct staff to forward the draft ordinance for City Council adoption.

Prepared by:

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Planner II

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO

ATTACHMENTS:

- a. Draft Ordinance
- b. Copy of Staff Report and emergency Ordinance 12558 dated November 18, 2003
- c. Copy of Staff report and interim Ordinance 12565 dated December 16, 2003.

