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APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE No. 12626 C.M.S.

**AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD A NEW USE CLASSIFICATION AND AMEND RELATED CODE SECTIONS TO REGULATE CHECK CASHIERS AND OR CHECK CASHING BUSINESSES AND LIMITING WHERE SUCH ACTIVITES MAY BE PERMITTED**

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**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 customers as evidenced by 3 armed individuals recently robbing a man after leaving a check cashing business on International Boulevard; and

**WHEREAS,** a lack of regulation check cashiers or check cashing businesses would allow a proliferation of check cashiers or check cashing establishments which may result in the displacement of charter banks especially in small neighborhood shopping areas; and

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**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 PolicyI/C3.4; Strengthening Vitality Policy, T2.3 Promoting Neighborhood Services, 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 without adequate review 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**, the continued establishment of check cashier or check cashing businesses in any and all locations where consultative and financial service uses are permitted without adequate review may result in displacement of needed goods and services; 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**, on November 18, 2003, the City Council adopted an Urgency Ordinance No. 12558 C.M.S,, imposing a 45-day moratorium on new or expanded check cashing and check cashier activities; and

**WHERAS**, on December 16, 2003, the Oakland City Council adopted Ordinance No. 12565 C.M.S., as an interim emergency ordinance to regulate check cashing and check cashier activities while a study was undertaken to develop permanent controls; and

**WHEREAS**, the City has completed a review of the regulatory mechanisms available to regulate check cashiers or check cashing businesses with the goal of adopting permanent 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; 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) without a Conditional Use Permit in certain zoning districts would result in negative impacts to the community in which it is located in; and

**WHEREAS**, the Oakland Planning Commission conducted a duly noticed public hearing on July 7, 2004; and

**WHEREAS**, after the close of the public hearing, the Oakland Planning Commission recommended the adoption of Zoning Text changes to regulate check cashier and check cashing activities, with some amendments; and

**WHEREAS**, the City Council's Community and Economic Development Committee considered the matter on September 14, 2004; and

**WHEREAS**, the City Council subsequently conducted a duly noticed public hearing;

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**Now, Therefore, the Council of the City of Oakland does ordain as follows:**

**SECTION 1.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this ordinance.

**SECTION 2.** The City Council finds and determines, that the adoption of this Ordinance is exempt from CEQA under Sections 15061(b)(3) of the State CEQA Guidelines and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

**SECTION 3.** Section 17.10.365 "Check Cashier and Check Cashing Activities" is added to the Oakland Planning Code to read as follows:

"17.10.365 Check Cashier and Check Cashing Activity
Check Cashier and Check Cashing Activity includes:

(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 section 1789.33, as amended.

(2) "Check Cashier" or "Check Cashing Activity" does not include a state or federally chartered bank, savings association, credit union, or industrial loan company. "Check cashier" or "Check Cashing Activity" 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.

They also include certain activities accessory to the above, as specified in Section 17.10.040."

**SECTION 4.** The following sections of the Oakland Planning Code are amended to add "Check Cashier and Check Cashing" as Conditionally permitted activities:

17.38.040 (C-20, Shopping Center Commercial Zone)

17.40.050 (C-25, Office Commercial Zone)

17.46.060 (C30, District Thoroughfare Commercial Zone)

17.50.060 (C-35, District Shopping Commercial Zone)

17.54.060 (C-40 Community Thoroughfare Commercial Zone)

17.56.060 (C-45, Community Shopping Commercial

17.58.060 (C-51 Central Business Service Commercial Zone)

17.60.060 (C-52 Old Oakland Commercial Zone)

17.62.060 (C-55 Central Core Commercial Zone)

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**SECTION 5.** Section 17.102.430 is added to the Oakland Planning Code to read as follows:

17.102.430 Regulations Applying to Check Cashier and or Check Cashing Activity

A. Additional Use Permit Criteria. A conditional use permit for any conditionally permitted Check Cashier and or Check Cashing activity as defined in Section 17.10.365 of the Oakland Planning Code may only be granted upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following performance standards:

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, which on the date of an application for Check Cashier and or Check Cashing activity had a vested right under California law to operate:

   a. Community Education Civic Activities;

   b. State or federally chartered bank, savings association, credit union, or industrial loan company;

   c. Community Assembly Civic Activities; or

   d. Alcoholic Beverage Sales Commercial Activities, excluding full service restaurants and Alcoholic Beverage Sales Commercial Activities with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more. (Note that this precludes combining check cashing with Alcoholic Beverage Sales Commercial Activities because Alcoholic Beverage Sales Commercial Activities are always considered a primary activity and therefore subject to this distance standard).

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 and/or the Planning Commission as they are applied to individual locations and projects:

   a. 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.

   b. Storefronts shall have glass or transparent glazing in the windows and doors. No more than 10% of any window or door area shall be covered by signs, banners, or opaque coverings of any kind so that law enforcement personnel will have clear view of the entire public area in the premises from the public sidewalk.

   c. Days and hours of operation shall be Monday through Saturday, no earlier than 7:00 AM nor later than 7:00 PM. Patrons shall be discouraged from loitering prior to, during and/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.

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d. Graffiti shall be removed within 72 hours of application

e. No exterior pay telephones shall be permitted.

f. 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.

g. 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.

**Section 6.** The interim controls adopted in Ordinance No. 12565 C.M.S. shall no longer be in effect upon the effective date of this ordinance. This ordinance, pursuant to Charter section 216, shall be effective immediately if approved by six members of the City Council; otherwise, it shall be effective upon the seventh day after final adoption.

**SECTION 7.** If any section, subsection, phrase, word or provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Introduction Date: 10/5/04

IN COUNCIL, OAKLAND, CALIFORNIA, , 2004 OCT 19 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES-Brooks, Brunner, Chang, Nadel, Quan, Reid, Wan, and President De La Fuente — 8

NOES- Ø

ABSENT- Ø

ABSTENTION- Ø

ATTEST: Alonda Simmons /for
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California