



Council Meeting: September 24, 2013

SUBJECT: Discussion and Possible Action to Introduce an Ordinance to Regulate Payday Lending Establishments (Study Issue)

REPORT IN BRIEF

In November 2012, the City Council received a request from Sunnyvale Community Services and the Law Foundation of Silicon Valley asking for a study of payday lending establishments and their effects on the community. At that same meeting, the Council sponsored a study issue of the topic (Attachment A).

Payday lending establishments have very little oversight from the Federal or State government and many cities have created specific regulations for this use. The use is not currently defined in the Sunnyvale Zoning Code, leading to confusion about the classification of the use and how these businesses should be treated. Many community groups have expressed social and safety concerns regarding payday lending establishments and their effects on minority and low-income populations.

In order to address the issue, staff recommends that the Council introduce an ordinance with a definition for payday lending establishments, distance requirements, modifications to the use tables and operational standards for new payday lending establishments (Attachment B). The ordinance (Attachment B) is based on the following:

- There is little regulation of the use at the Federal and State level;
- The definition will provide consistency in classifying the use in the zoning code;
- There are safety concerns based on these establishments having a lot of cash on hand without having the same security requirements as financial institutions; and
- Excessive payday lending establishments or an over-concentration of such businesses could have an adverse impact on the general welfare of the community and the character of adjacent neighborhoods and commercial areas.

On August 26, 2013 the Planning Commission discussed the Payday Lending Study Issue. The meeting minutes from August 26, 2013 are Attachment E. At that meeting six Planning Commissioners were present and voted unanimously

to recommend that the City Council adopt the staff recommendation with several amendments, including limiting the number of payday lending establishments in the city to a total of six. The Planning Commission recommendation is explained further in this report and is incorporated into Alternative 1 (revised from the Draft Report to Council).

If the City Council chooses to regulate payday lending establishments further, staff has provided a spreadsheet (Attachment F) that provides information on what other Northern California cities have done.

BACKGROUND

The payday lending establishment study issue was ranked first on the list of 2013 topics in the Community Development Department. Staff was requested to return with recommendations on whether or not the City should regulate payday lending establishments, and if so, to provide zoning options (Study Issue paper, Attachment A).

The process of payday lending involves a lender (licensed by the state of California) providing a short-term unsecured loan to be repaid at the borrower's next payday. As discussed in this report, there are State laws regarding this subject; however, they are limited and do not contain the same regulations many local jurisdictions have imposed. Given the lack of State and Federal oversight, it has fallen to cities to regulate and oversee these establishments. In the past few years, some cities (e.g. San Jose, Los Altos, San Mateo, San Francisco, Sacramento) have modified their municipal codes to regulate (and in some cases ban) new payday lending establishments.

EXISTING POLICY

Goal LT-4 Quality Neighborhoods and Districts

Preserve and enhance the quality character of Sunnyvale's industrial, commercial and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.

CEQA REVIEW

Although the modifications to the ordinance are considered a project under the California Environmental Quality Act (CEQA) staff's analysis of the Initial Study checklist has led us to conclude that adopting the proposed ordinance is exempt from CEQA under Section 15061.b.3.

EXISTING REGULATION

Federal Law

Payday lending establishments have very few regulations at the federal level (unless the loan is taken by a member of the military). The following is a description of the federal regulations that exist regarding payday lending establishments:

- The Federal Truth in Lending Act requires payday lending establishments to keep records of their transactions and requires disclosure to customers of fees and payment schedules as set by each state.
- The Military Lending Act imposes a 36% rate cap on tax refund loans and certain payday and auto title loans made to active duty armed forces members and their covered dependents. The act also prohibits certain terms, such as the amount of time an individual has to pay back the loan.

California State Law and Guidelines

The State of California regulates payday lending (deferred deposit transaction) establishments under California Financial Code 23000-23106 with the following standards:

- Loan Terms:
 - Maximum Loan Amount: \$300
 - Loan Term: Maximum of 31 days
 - Maximum Finance Rate and Fees: 15%
 - Finance charge for a 14-day \$100 loan: \$17.65
 - APR for a 14-day \$100 loan: 459%
- Debt Limits:
 - Maximum Number of Loans at One Time: One
 - Rollovers Permitted: None
 - Repayment Plan: Voluntary (no fees may be charged in conjunction with a payment plan)
- Collection Limits:
 - Collection Fees: \$15 non-sufficient funds fee
 - Criminal Action: Prohibited

On April 17, 2013, California Senate Bill 515 was heard by the Banking and Financial Institutions Committee. This bill proposed the following additional regulations for California payday lending establishments (the full summary of the bill can be found in Attachment G):

- A central database for payday lending establishments to monitor how much money individuals have out in loans and how many loans an individual has taken out.
- A cap on the number of loans an individual could take out in one year (four).
- Increased minimum payback time (30 days).
- Prohibition on a payday lending establishment giving a loan to someone whose total monthly debt service payments exceed 50% of the customer's gross monthly income.
- Requirement for payday lenders to offer payment plans to those who are unable to pay their loan back in the specified time.

Senate Bill 515 did not receive enough votes to pass the bill onto the full Senate because some members of the committee felt the bill was too stringent as written. The committee allowed for reconsideration of the bill after modifications, to be heard at a future committee meeting.

Other States

Currently 12 states (and Washington D.C.) prohibit new payday lending establishments and they are highly regulated in five additional states. Every state has some level of regulation on payday lending but, like California, most allow for high APRs and lack a central database to regulate how many loans an individual has out at one time.

DISCUSSION

Overview

The issue of whether to restrict payday lending establishments in Sunnyvale is complicated and can be controversial. Many arguments have been presented from those who oppose these establishments; conversely, arguments supporting the community need for these establishments have also been offered. This study considered the following issues:

- Current laws;
- The role of a local agency in regulating this use;
- The impact of payday lending establishments on the community, and the possible increase of those impacts if regulations are not put in place that limit payday lending establishments;
- Correlation of crime statistics and this use;
- Sufficiency of alternatives to payday loans;
- Comparison of what other cities have done regarding payday lending establishments;
- Land use compatibility concerns regarding payday lending establishments in the city; and
- Possible regulations to consider, should the decision be made to restrict payday lending establishments in the city.

As mentioned briefly above, a payday loan transaction (defined as a deferred deposit transaction in the California Finance Code) is a transaction in which an operator defers depositing a customer's personal check until a specific date, pursuant to a written agreement and supplies that customer with a loan equal to the personal check amount. A deferred deposit originator (payday lender) is any person that offers, originates, or makes a deferred deposit transaction (payday loan). Deferred deposit originators are required to obtain a license from the California Department of Corporations and payday loans can only occur at the place of business named in the license.

In the traditional retail model, borrowers visit a payday lending store and secure a small cash loan, with payment due in full at the borrower's next paycheck. The borrower writes a postdated check to the lender in the full amount of the loan plus fees. On the maturity date, the borrower is expected to return to the store to repay the loan. If the borrower does not repay the loan in person, the lender may cash the check. If the account is short on funds to cover the check, the borrower may now face a bounced check fee from their bank in addition to the costs of the loan, and the loan may incur additional fees and/or increased interest rate as a result of failure to pay.

Land Use

The Zoning Code is used to address land use issues associated with specific uses. It may also include business or lending practices as they relate to a legitimate land use concern.

Payday Lending is not specifically called out in the Zoning Code, but has been classified as both a financial institution and a personal service in the past. The existing payday lending establishments are located within C-1 and C-2 zoning districts of the City. The following table shows the existing businesses and associated zoning (a map is also available, Attachment C).

Name	Address	Zone	Year Business Opened
California Check Cashing Stores	680 N. Fair Oaks Way	C-1/PD	1985
Frontera Financial Services	887 E. El Camino Real	C-2/ECR	1988
Cash Plus	189 W. El Camino Real	C-2/ECR	2004
Check Into Cash	724 S. Wolfe Rd	C-1/PD	2005
Check n' Go	939 W. El Camino Real	C-2/ECR	2005
Dollex Dollar Express, Inc.	933 E. Duane Ave	C-1/PD	2006
Lucky Check Cashing	950 W. El Camino Real	C-2/ECR	2007
Check in Cash Out	1111 W. El Camino Real	C-2/ECR	2008

Since the use has been classified in the past as both a financial institution and a personal service business, it leaves a grey area in how to classify new payday lending establishments.

Criminal Activity Concerns

Staff mapped the 2012 crime statistics from the Department of Public Safety (DPS) with the eight existing payday lending establishments (Attachment D) and found that there was one robbery committed at the Check n' Go located at 939 W. El Camino Real. The map also shows other robberies that occurred

near other payday lending establishments; however, these robberies were not found to be directly related to the payday lending establishments. Staff conducted site visits to all of the payday lending businesses and found that most of the businesses were located in secure buildings with some safety precautions in place to negate crime in and around their businesses. As a crime precaution, staff had included an operational standard that any new payday lending business would have a uniformed security guard at the business during hours of operation, however, the Planning Commission recommends removing this operational standard from the ordinance since public safety problems have not been associated with these uses. Staff agrees that this standard is not essential and is an optional measure that the City Council could consider as an added safety precaution.

Other City's Approaches

In the bay area, several jurisdictions have adopted Ordinances restricting payday lending and check cashing businesses. The table attached to this report (Attachment F) shows approaches to the issue by other cities in the bay area and Sacramento. Oakland, San Mateo and San Jose have included operational standards and distancing requirements in their ordinances.

In Santa Clara County, three of the 16 jurisdictions have taken steps to prohibit/restrict payday lending establishments. Both the County of Santa Clara and City of Los Altos have banned check cashing/payday lending establishments by redefining their definition for financial institutions to specifically exclude such uses. The City of San Jose does not ban but restricts payday lending establishments by creating distance requirements, capping the number of payday lending establishments allowed in the City and defining operational standards for the use. The City of Gilroy is also studying the issue at this time. The definition staff has included in the draft ordinance is similar to the definition the County and Los Altos have used and the operational standards are similar to what San Jose, San Mateo and Oakland have in place.

Social Concerns and Community Alternatives to Payday Loans

The Center for Responsible Lending, Law Foundation of Silicon Valley, The Coalition Against Payday Predators and several other organizations have submitted information (Attachment H) regarding payday lending establishments and their effects on a community.

While some proponents espouse the benefits of payday lending establishments for certain circumstances, some alternatives are available. Many charitable organizations are dedicated to providing alternatives to payday loans and many of these organizations have submitted letters in support to regulate new payday lending establishments (Attachment I). In Sunnyvale, the primary alternative to obtaining financial assistance is Sunnyvale Community Services that offer help in the following ways:

- Financial assistance with utility bills and rent,
- Grocery assistance,
- Classes on financial planning and budgeting (in multiple languages), and
- Budget planning on an individual basis.

Aside from Sunnyvale Community Services, organizations like the United Way, Salvation Army, Society of St. Vincent de Paul, Step Up Silicon Valley, Sunnyvale FISH, Our Daily Bread, Asian Americans for Community Involvement, etc. provide the residents of Sunnyvale with a number of services to help them get through difficult financial times. Prepared meals, grocery services, health services, bill assistance and financial education are a few examples of the alternatives these organizations provide. More specific examples are included in their public comment letters.

OPTIONS

Option A: Restrict New Payday Lending Establishments

Adopt an ordinance (Attachment B) to regulate new payday lending establishments. The ordinance would consist of the following:

- Create a definition for payday lending establishments.
- Allow payday lending only in highway business commercial zones (C-2).
- Require at least 1,000 feet between payday lending establishments.
- Allow no more than six payday lending establishments in the City.
- Establish operational standards for new payday lending establishments; including:
 - Approval of a lighting plan for the tenant space;
 - Limit hours of operation to 7 a.m. to 7 p.m. daily;
 - Require payday lending establishments to post a sign that is clearly visible at the entrance of the store with information on alternatives to payday loans. The sign shall be minimum four square feet in size with the message stated in at least two languages.

This option would allow new payday lending establishments to open in the C-2 zone and help prevent over-concentration of the use. Based on the attached map showing the 1,000 foot radius lines (Attachment C), there are locations for approximately six payday lending establishments; however with the recommendation to limit the total to six, new businesses could not open until at least three of the existing businesses ceased operation. New businesses would need to meet the operational standards. This option would also cause three existing payday lending establishments to become legal non-conforming uses because they are currently located within a neighborhood commercial (C-1) zone. Another three payday lending facilities on El Camino Real would become legal non-conforming because they are within 1,000 feet of each other.

Any new payday lending establishments would be required to obtain a Miscellaneous Plan Permit (MPP) from the Planning Department to open in a C-2 zone. Staff would confirm the distance requirements are met and ensure the operational standards are imposed on the business. If all standards can be met, the MPP would be approved by staff.

This option would not result in changes to existing payday lending establishments except that any site that is legal nonconforming would not be able to expand. Staff is proposing that the operational standard requiring posting of the payday lending alternatives be required of all payday lending establishments within six months of the adoption of this ordinance.

Option B: Ban New Payday Lending Establishments

Similar to the ordinances adopted by Los Altos and the County of Santa Clara, banning new payday lending establishments would restrict any new payday lending businesses from opening in the City. This would not eliminate the existing payday lending establishments as they would be considered legal non-conforming; however, banning the use would prohibit existing payday lending establishments from expanding or relocating.

Option C: Capping the Number of Payday Lending Establishments in the City

This option could be done alone or along with Option 1 to further restrict the number of payday lending establishments that could operate within the City. This number could equal the existing number of businesses (eight), or be less (or more) than what currently exists as a method for regulating the number of establishments over time. Adding a cap on payday lending businesses at less than eight would not affect the existing payday lending businesses; however, if those businesses discontinued the use for more than one year (according to the non-conforming use standards), a new business would not be able to open in their place (or elsewhere in the City).

Option D: Maintain the Status Quo

This would allow payday lending establishments to open in all areas where personal service businesses are allowed (commercial zones, Downtown Specific Plan, and the Moffett Park Specific Plan) with no restrictions on the businesses. It would also have no effect on existing payday lending establishments.

FISCAL IMPACT

If Council introduces the ordinance, the costs to the City to implement it would be minimal. Staff time would include processing the MPP applications to make sure the use meets the operational standards and is not within 1,000 feet of another payday lending business.

PUBLIC CONTACT

Public contact regarding the study issue was made through the following ways:

1. Posting the Planning Commission and City Council agendas on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website;
2. Publication in the *Sun* newspaper, at least 10 days prior to the hearing;
3. E-mail notification of the hearing dates sent to all interested parties, existing payday lending facilities and Sunnyvale neighborhood groups;
4. Public Meeting with the existing Payday Lending Establishments;
5. Meetings with Sunnyvale Community Services and the Law Foundation of Silicon Valley; and
6. Outreach by Sunnyvale Community Services to members of their organization and other service agencies they conduct business with.

At the August 26, 2013 Planning Commission meeting 17 members of the public came to speak in favor of regulating payday lending establishments and two speakers came in representation of the payday lending businesses to generally oppose regulation of the use. Additionally, included in Attachment I are letters received from the public by mail and e-mail in support for restricting payday lending establishments.

ALTERNATIVES

1. Introduce an ordinance in accordance with the Planning Commission recommendation with a definition for payday lending establishments, distance requirements, modifications to the use tables, operational standards for new payday lending establishments and a cap of six payday lending establishments (Option A and Attachment B).
2. Adopt an alternative with modifications (banning the use, capping the number of payday lending establishments, etc.).
3. Do not modify Chapter 19 and direct staff to regulate payday lending businesses as personal service uses.

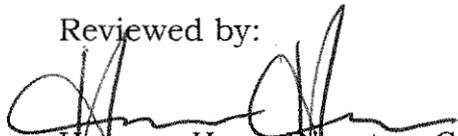
RECOMMENDATION

The Planning Commission recommends Alternative 1, which is the original staff recommendation with the following amendments:

- Introduce the ordinance with the following modifications:
 - Remove an operational standard requiring a uniformed security guard;
 - Remove an operational standard requiring a “no loitering” sign to be posted on the business; and
 - Add an operational standard requiring payday lending establishments to display information on community organizations that provide alternatives to payday lending.
 - Set a cap of six payday lending establishments in the city.

Even if one accepts that payday lending establishments serve a community need for emergency or other purposes, the further proliferation of such uses is a community concern. Staff finds that the Planning Commission recommendation would achieve similar results and will help avoid over-concentration of this use, maintain the general welfare of the community, and preserve the quality and character of residential neighborhoods and commercial areas. Therefore, staff has made the changes to the attached ordinance and supports the Planning Commission recommendation.

Reviewed by:

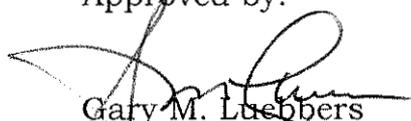


Hanson Hom, Director, Community Development

Reviewed by: Trudi Ryan, Planning Officer

Prepared by: Amber El-Hajj, Senior Planner

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Study Issue Paper
- B. Draft Ordinance
- C. Payday Lending Business Map showing 1,000 foot buffer.
- D. 2012 Robbery Statistics Map with Payday Lending Businesses
- E. Planning Commission Meeting Minutes from August 26, 2013
- F. Bay Area Payday Lending Regulation Spreadsheet
- G. Senate Bill 515 Summary
- H. Coalition Against Payday Predators and The Center for Responsible Lending Fact Sheets
- I. Public Comment Letters

Attachment A

2013 Council Study Issue

CDD 13-12 Payday lending establishments

Lead Department Community Development

History 1 year ago None 2 years ago None

1. What are the key elements of the issue? What precipitated it?

Recently, local agencies have been looking into ways to regulate businesses that engage in what is known as "payday lending." Payday lending is a business established to loan money to individuals that have trouble getting traditional loans, and have financial difficulties in meeting their obligations. Payday loans are short-term, small-dollar loans given to people who need cash to tide them over until their next paycheck. In California, the maximum loan amount is \$300.00 with a 31-day maximum loan term (Civil Code 1789.30 et. seq. and Financial Code 23000 et. seq.). The people most impacted by payday lender practice include low income, young, families and the disabled.

Several jurisdictions have enacted regulations to control the number of these businesses in their cities. This study would examine land use options for regulating the number and location of payday lending establishments. The study would review options such as: restricting new payday lending businesses, limiting the number of these establishments in the city, and avoiding over-concentration through spacing restrictions. Also, efforts to assist those in need of short-term lending can be reviewed, including existing programs from PG&E, credit unions, Sunnyvale Community Center, and the use of CDBG funds.

2. How does this relate to the General Plan or existing City Policy?

Goal LT-6 SUPPORTIVE ECONOMIC DEVELOPMENT ENVIRONMENT

An economic development environment that is supportive of a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal and land use constraints.

Policy LT-7.3

Promote commercial uses that respond to the current and future retail service needs of the community.

3. Origin of Issue

Council Member(s) Griffith, Davis, Spitaleri

4. Staff effort required to conduct study Moderate

Briefly explain the level of staff effort required

Review State law concerns, review other city processes, and conduct outreach with the community.

5. Multiple Year Project? No **Planned Completion Year** 2013

6. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No
Does this issue require review by a Board/Commission? Yes
If so, which? Planning Commission
Is a Council Study Session anticipated? No

7. Briefly explain if a budget modification will be required to study this issue

Amount of budget modification required 0

Explanation

- 8. Briefly explain potential costs of implementing study results, note estimated capital and operating costs, as well as estimated revenue/savings, include dollar amounts

Are there costs of implementation? No

Explanation

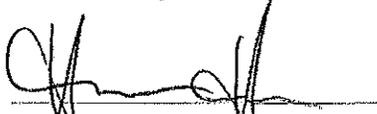
9. Staff Recommendation

Staff Recommendation Support

If 'Support', 'Drop' or 'Defer', explain

As of November 20, 2012, Sunnyvale has seven payday lending businesses. Studying the issue now, before the use becomes more prevalent, would be useful. This study would look into restrictions to avoid a larger number of these businesses in the city, along with looking for other useful approaches to help those in need.

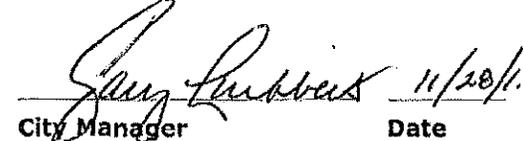
Reviewed by



Department Director

11/26/12
Date

Approved by



City Manager

11/20/12
Date

Attachment B

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CERTAIN SECTIONS OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO PAYDAY LENDING ESTABLISHMENTS.

SECTION 1. SECTION 19.12.070 AMENDED. Section 19.12.070 of Chapter 19.12 (Definitions) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.12.070. "F"

(1)-(5) [Text unchanged.]

(6) "Financial institution" means establishments such as, but not limited to, state or federally-chartered banks, savings and loan associations, credit unions, credit agencies, mortgage lenders, investment companies, non-profit financial institutions and brokers and dealers of securities and commodities. "Financial institution" does not include "Payday lending establishments". ~~Banks, savings and loan, credit unions, credit agencies, investment companies, and brokers and dealers of securities and commodities.~~

(7)-(10) [Text unchanged.]

SECTION 2. SECTION 19.12.170 AMENDED. Section 19.12.170 of Chapter 19.12 (Definitions) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.12.170. "P"

(1) – (2) [Text unchanged]

(3) "Payday lending establishment" means a retail business owned or operated by a "licensee" as that term is defined in California Financial Code section 23001(d), as amended from time to time.

(3) – (15) [Renumber (4) – (16) consecutively. Text unchanged]

SECTION 3. TABLE 19.18.030 AMENDED. Table 19.18.030 of Chapter 19.18 (Residential Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**TABLE 19.18.030
Permitted, Conditionally Permitted and Prohibited Uses in Residential
Zoning Districts**

In the table, the letters and symbols are defined as follows:

P = Permitted use

MPP = Miscellaneous Plan Permit required

UP = Use Permit required

SDP = Special Development Permit required

N = Not permitted, prohibited

RESIDENTIAL ZONING DISTRICTS	R-0/R-1	R-1.5	R-1.7/PD	R-2	R-3	R-4	R-5	R-MH
1.-6. [Text unchanged.]								
7. <i>Other Uses</i>								
A- N. [Text unchanged.]								
O. Payday Lending Establishment	N	N	N	N	N	N	N	N

SECTION 4. TABLE 19.20.030 AMENDED. Table 19.20.030 of Chapter 19.18 (Commercial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**TABLE 19.20.030
Permitted, Conditionally Permitted and Prohibited Uses in Commercial Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P = Permitted use
- UP = Use permit required
- MPP = Miscellaneous plan permit
- N = Not permitted, prohibited

COMMERCIAL ZONING DISTRICTS	C-1	C-2	C-3	C-4
1 – 9 [Text Unchanged]				
10. <i>Other</i>				
A-K [Text Unchanged]				
L. Payday lending establishment	N	MPP ⁹	N	N

1-8. [Text unchanged.]

9. Subject to the provisions of Section 19.20.050

SECTION 5. SECTION 19.20.050 ADDED. Section 19.20.050 of Chapter 19.20 (Commercial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.20.050. Payday Lending Establishments.

(a) **Distance Requirement.** Payday lending establishments are prohibited within 1,000 feet of the parcel boundaries of any other payday lending establishment.

(b) **Maximum Number of Payday Lending Establishments.** The maximum number of payday lending establishments that may be operating at any one time is six.

(c) Operational Standards. Payday lending establishments must meet the following minimum operational standards at all times, which are the obligation of the owner of the payday lending establishment:

(1) The approved lighting plan for the tenant space must be maintained (plan required with the submittal of the applicable planning permit application);

(2) Hours of operation must be between the hours of 7 a.m. to 7 p.m. daily;

(3) At least one "no loitering" sign must be posted on the premises in plain view of patrons; and

(4) At least one uniformed security guard must be on duty during the hours of operation.

(3) At least one sign (minimum four sq. ft.) shall be posted in the business that is clearly visible to patrons from the entrance of the store with information on alternatives to payday loans. The exact language for the sign will be uniform and created by the Community Development Director. All payday lending establishments will be subject to comply with this operational standard 6 months after of adoption of this ordinance.

SECTION 6. SECTION 19.22.030 AMENDED. Section 19.22.030 of Chapter 19.22 (Industrial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

TABLE 19.22.030
Permitted, Conditional Permitted and Prohibited Uses in Industrial Zoning Districts

In the table, the letters and symbols are defined as follows:

- P = Permitted use
- MPP = Miscellaneous plan permit required
- UP = Use permit required
- N = Not permitted, prohibited
- FAR = Floor area ratio restrictions
- > = Greater than
- N/A = FAR does not apply

Use Regulations by Zoning District USE	M-S Zoning Districts FAR ³	M-S Zoning Districts	M-S/POA Zoning Districts	M-3 Zoning Districts FAR ³	M-3 Zoning Districts
1 – 5 [Text Unchanged]					
6. Other					
A – R [Text Unchanged]					
S. Payday lending establishment	<u>N/A</u>	<u>N</u>	<u>N</u>	<u>N/A</u>	<u>N</u>

TABLE 19.24.030
Permitted, Conditionally Permitted and
Prohibited Uses in Office and Public Facilities Zoning Districts

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- UP** = Use permitted required
- MPP** = Miscellaneous plan permit required
- N** = Not permitted, prohibited

OFFICE AND PUBLIC FACILITIES ZONING DISTRICTS	O	P-F
<i>1 – 5 [Text Unchanged]</i>		
6. Other		
A – M [Text Unchanged]		
<u>N. Payday lending establishment</u>	<u>N</u>	<u>N</u>

SECTION 8. SECTION 19.28.070 AMENDED. Section 19.28.070 of Chapter 19.28 (Downtown Specific Plan District) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

TABLE 19.28.070
Permitted, Conditionally Permitted and Prohibited
Uses in Mixed Use, Commercial and Office DSP Blocks

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- SDP** = Special development permit required
- MPP** = Miscellaneous plan permit required
- N** = Not permitted, prohibited

DSP MIXED USE, COMMERCIAL AND OFFICE BLOCKS	1	1a	2	3	7	13	18	20
1 – 5 [Text Unchanged]								
6. Other Uses								
A – O [Text Unchanged]								
<u>P. Payday lending establishment</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

SECTION 9. SECTION 19.29.050 AMENDED. Section 19.29.050 of Chapter 19.29 (Moffett Park Specific Plan Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**Table 19.29.050
 Permitted, Conditionally Permitted and Prohibited Uses
 in MPSP Subdistricts**

In the table, the letters and symbols are defined as follows:

P = Permitted use. A Moffett Park Design Review Permit is required pursuant to Section 19.29.050(c). Development exceeding the standard FAR limit must be reviewed through a major permit.

SDP = Special development permit. A Moffett Park Special Development Permit is required.

MPP = Miscellaneous Plan Permit. A Miscellaneous Plan Permit is required.

N = Not permitted. Prohibited.

Use	Specific Plan Subdistrict			
	MP-TOD	MP-I	MP-C	
	<i>1 – 7 [Text Unchanged]</i>			
8.	<i>Other</i>			
	A – U [Text Unchanged]			
<u>V.</u>	<u>Payday lending establishment</u>	<u>N</u>	<u>N</u>	<u>N</u>

SECTION 10. EXEMPTION FROM CEQA. The City Council finds that although the modifications to the ordinance are considered a project under the California Environmental Quality Act (CEQA) analysis of the Initial Study checklist has led to a conclusion that adopting the proposed ordinance modifications is exempt from CEQA under Guideline 15061(b)(3), because it can be seen with certainty it will not have a significant impact on the environment.

SECTION 11. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 12. EFFECTIVE DATE. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

SECTION 13. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within 15 days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2013, and

adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

City Attorney

Attachment C

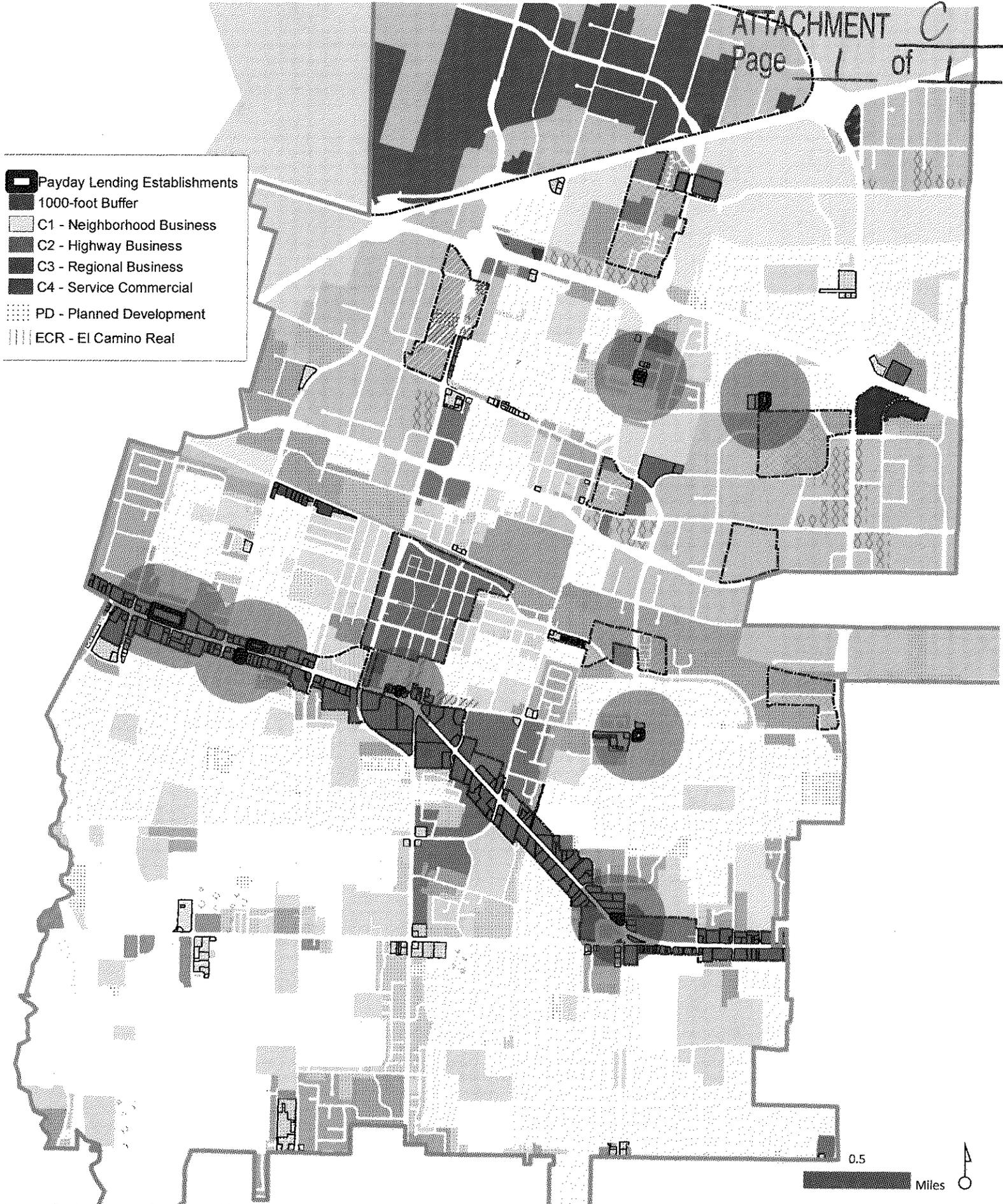


Council Study Issue: Payday Lending Establishments

1000-foot Buffer from Payday Lending Establishments

ATTACHMENT C
Page 1 of 1

-  Payday Lending Establishments
-  1000-foot Buffer
-  C1 - Neighborhood Business
-  C2 - Highway Business
-  C3 - Regional Business
-  C4 - Service Commercial
-  PD - Planned Development
-  ECR - El Camino Real



0.5 Miles 

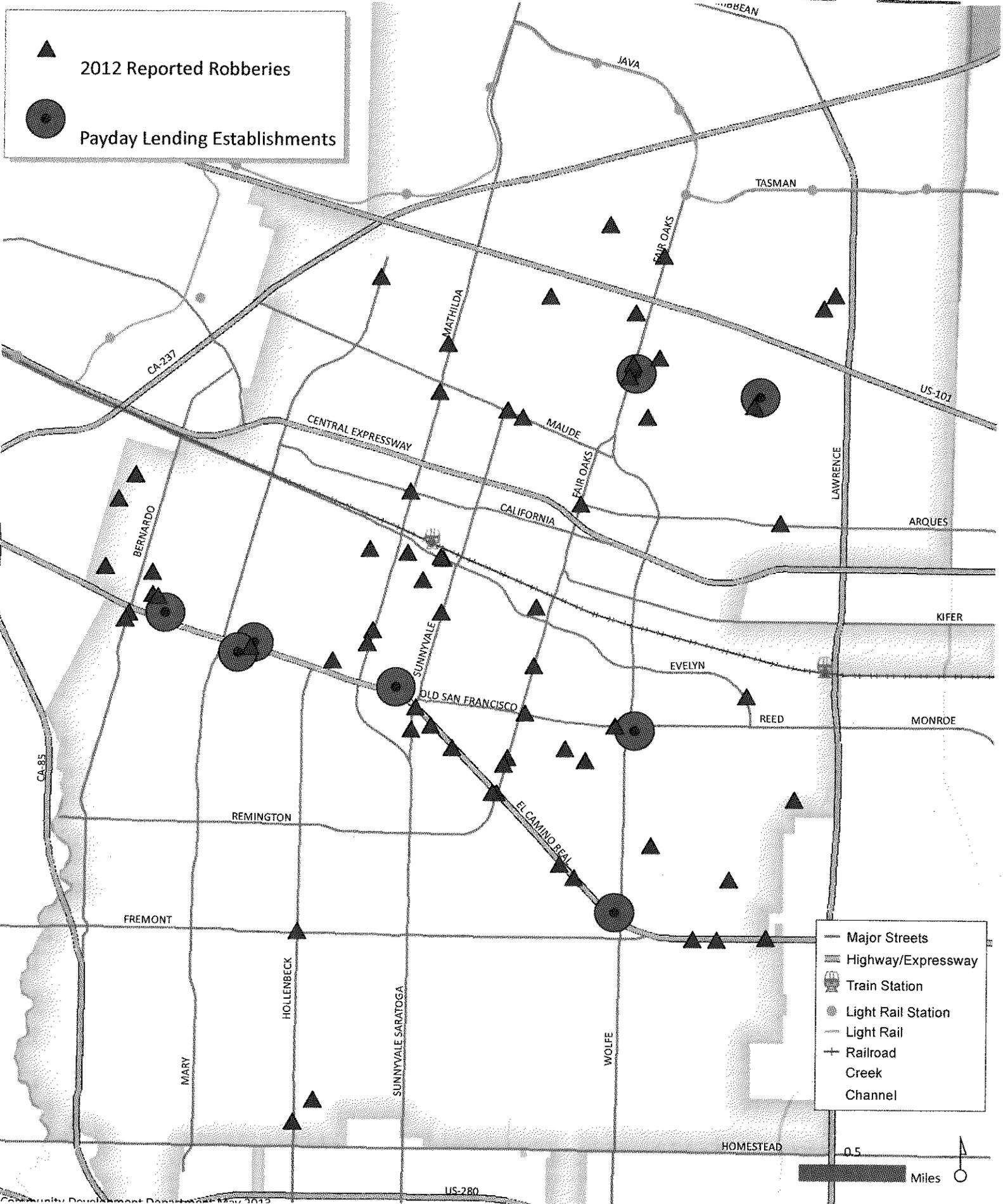
Attachment D



Council Study Issue: Payday Lending Establishments 2012 Reported Robberies

▲ 2012 Reported Robberies

● Payday Lending Establishments



Attachment E

This item was heard before item 5.

- 6. File #:** 2013-7139
Location: Citywide
Proposed Project: Payday Lending Establishments (Study Issue): A study to review land use options for possible regulation of payday lending establishments.
Environmental Review: Exempt Under CEQA Section 15061.3
Staff Contact: Amber El-Hajj, (408) 730-2723,
ael-hajj@sunnyvale.ca.gov

Amber El-Hajj, Senior Planner, presented the staff report.

Comm. Hendricks confirmed with Ms. El-Hajj the distance requirement between establishments. Comm. Hendricks and Ms. El-Hajj discussed "No Loitering" signs and uniformed guards.

Comm. Olevson and Ms. El-Hajj discussed the relationship of crimes to payday lending and state and federal regulations of Payday Lending establishments. Comm. Olevson asked if it is staff's position that it is the City's job to take care of people. Ms. El-Hajj said that while there is a social concern, staff's conclusion was based on land use and overconcentration. Comm. Olevson asked if it is our job to restrict how people spend their money. **Trudi Ryan**, Planning Officer, said it is not directly the City's responsibility, but through zoning there are ways to contribute to the health, safety and general welfare of the community, as with the Below Market Rate (BMR) program. **Kathryn Berry**, Senior Assistant City Attorney, asked what kind of city Sunnyvale is envisioned to be, and discussed the role of using Land Use tools to achieve that vision of Sunnyvale. Comm. Olevson commented on the correlation between crime and these establishments and hiring uniformed guards.

Comm. Larsson asked how many Payday Lending establishments have left Sunnyvale within the last 5-10 years. Ms. El-Hajj said that she only pulled business licenses for the last five years and that all of the eight current establishments had been in Sunnyvale during that time.

Comm. Hendricks discussed with Ms. El-Hajj federal-level restrictions on Payday Lending that are in place for people in the military and not in place for the rest of the population. Comm. Hendricks confirmed with staff that the Planning Commission does not have the purview to look at percentage caps.

Vice Chair Melton asked about SB 515. Ms. El-Hajj said the bill was continued for revisions, not voted down as the State Finance Committee thought the bill was too restrictive. In response to Vice Chair Melton, Ms. El-Hajj explained the controversy on the payday lending issue. Vice Chair Melton asked where the proposal suggests borrowers go if lenders are banned. Ms. El-Hajj says the recommendation is not for an outright ban because staff is not convinced that there is no need for payday lenders.

Chair Dohadwala asked staff why the recommendation was not an outright ban. Ms. El-Hajj said she believes there is no exact replication of this service that you can get from a community group.

Comm. Larsson confirmed with staff that it is within the Planning Commission's purview to require lenders to provide community specific information about alternatives to borrowing or financial counseling.

Chair Dohadwala opened the public hearing.

Vanessa Lugo, Government Affairs Director of Check into Cash, said she opposes utilizing land use options for regulation of payday lending establishments.

Sofia Garcia, Director of Government Affairs with Advance America, said she urges the Planning Commission to reconsider taking action to regulate payday lending establishments.

Almaz Negash, Managing Director of Step-Up Silicon Valley, said she supports utilizing land use options for regulation of payday lending establishments. Chair Dohadwala confirmed with Ms. Negash that her organization provides one-time emergency funding.

Donna Beres, volunteer with Our Daily Bread and St. Vincent de Paul, said she supports any action that would stop the proliferation of Payday Lending establishments.

Eleanor Clement Glass, Chief Giving Officer of the Silicon Valley Community Foundation, said she supports the recommendation to restrict Payday Lending establishments.

Dixie Larson, with the Church of Jesus Christ of Latter-Day Saints, said she supports an ordinance that sets a cap on the number of lenders in Sunnyvale. Comm. Larsson asked what Ms. Larson's suggestion is for the number of establishments that should be allowed in Sunnyvale. Ms. Larson said Sunnyvale has more establishments per capita than the City of San Jose, which suggests that we currently have too many.

Lucia Gonzalez, Organizer with Working Partnerships USA, said she supports the recommendation to restrict Payday Lending establishments.

Comm. Hendricks discussed with Ms. Ryan that the hours of operation condition in option 1 would apply to new establishments, and that if existing establishments currently operate within those time limits they are bound by them. She said establishments currently exceeding those time limits would be allowed to continue as a non-conforming use.

Jenny Dantanavantawong, with Working Partnership, said she supports restrictions on Payday Lending establishments.

Jay Pecot, with Sacred Heart Community Service, said he supports the restriction of Payday Lending stores.

Ana Rosa Camacho, Income Specialist with United Way Silicon Valley, said she supports restrictions on Payday Lending establishments.

Wendy Ho, Advocacy and Public Policy Program Manager with United Way, said she supports the regulation and restriction of Payday Lending establishments. Comm. Larsson asked Ms. Ho what the cap on the establishments should be. Ms. Ho said she would like to see the cap at the number of existing establishments in Sunnyvale.

James Zahradka, reading Linda Batton's written comment, said Linda supports the strongest possible ordinance to limit payday lending in Sunnyvale.

Marie Bernard, Executive Director of Sunnyvale Community Services, said she supports the strongest possible ordinance to limit payday lending in Sunnyvale.

Maria Buenrostro, Case Worker with Sunnyvale Community Services, said she supports restricting Payday Lending establishments.

Yen Dang, Deputy Supervising District Attorney for Santa Clara County, said she urges the Planning Commission's support of the strongest possible ordinance restricting Payday Lending establishments.

Liana Molina, Organizer with the California Reinvestment Coalition, said she supports the regulation and restriction of Payday Lending establishments.

Melissa Morris, Attorney with the Law Foundation of Silicon Valley, said she urges the Planning Commission to accept the staff recommendation while adding requirements for lending establishments to obtain use permits and provide information on alternatives to borrowing. Comm. Hendricks discussed with staff the inclusion of an operational standard requiring establishments to provide information to borrowers.

Stan Hendrix, a Sunnyvale resident, said he supports the regulation and restriction of Payday Lending establishments.

Kyra Kazantzis, with the Law Foundation of Silicon Valley, said she supports the regulation and restriction of Payday Lending establishments.

Chair Dohadwala closed the public hearing.

Comm. Hendricks asked if staff had any suggestions for the language of the educational material. Ms. Ryan said that if the Planning Commission wanted to include the material as an operational standard, staff would need more time to produce a recommendation before going to council.

Vice Chair Melton asked staff about opinions on a potential land-based requirement based on low-income census tracts. Ms. El-Hajj said it may be difficult to regulate and that similar requirements only include distance requirements. Ms. Ryan said staff recommends establishments locate within C-2 zones only, and that the Planning Commission could recommend a distance requirement on top of a cap.

Comm. Olevson said he likes the staff recommendations to limit the location of establishments to C-2 zones and the minimum distance requirement. He said that because there is no clear definition of what a payday lending establishment is and because there is no identifiable problem with crime and overconcentration, he suggests minimal regulation until that no longer works.

Comm. Larsson moved to adopt options 1 and 3 to restrict new payday lending establishments and cap the number of establishments in the city at six, with existing establishments being grandfathered in, and that the City develop language for education materials to advise patrons of other options.

Comm. Hendricks offered a friendly amendment to strike the uniformed security guard and "No Loitering" sign standards. Comm. Larsson accepted the friendly amendment and Comm. Hendricks seconded the motion.

Comm. Larsson thanked the speakers for their comments, and said he is concerned that having too many payday lending establishments would affect the character of the City. He said he believes that loans are often borrowed under duress, and he wants to see the development of alternatives. He said he wanted to set the cap at a lower number to reduce the number of establishments over time, and that after a better system is developed and the state makes changes in legislation, perhaps the number of establishments could again be increased.

Comm. Hendricks said he will be supporting the motion and thanked the speakers. He said that he agrees with one of the speakers that this is one tool to address the issue, and that he is looking forward to the development of the educational material.

Vice Chair Melton said he will be supporting the motion and thanked the public for speaking. He said sometimes questions come down to the free market versus social benefit. He said he thinks there is a necessary social benefit we need to achieve through land use policy that overrides the forces of market demand. He said a valid loan is between a willing lender and a willing borrower who are both aware of the material terms and conditions of the loan and he thinks that is where we are falling short. He said he is skeptical that lenders are meeting regulatory compliance. He referenced a fact sheet statistic that stated there are more payday lenders than stand-alone Starbucks stores in the nation and he discovered that there are eight Starbucks stores in Sunnyvale. Vice Chair Melton said that whenever there is explosive growth in a business, something is askew. He said talking about short term loans in terms of an APR is not a valid argument. He said he is more inclined to believe that the default rate

on these loans is 37%, as one speaker mentioned, which indicates that almost half of the loans are defaulting under duress.

Comm. Olevson said he will be supporting the motion. He said he is concerned with limiting businesses, and that a majority of his motion goes to giving staff clear direction on what the policy should be in the City.

Comm. Chang said he will be supporting the motion. He said that restrictions, the permitting process and caps are a good way of managing this type of business, and that he is looking forward to staff guidance on the development of informational material that lets patrons know about alternatives to borrowing from these establishments.

Comm. Larsson said his rationale for a cap at six establishments is based on the number of payday lending establishments in, and the population of San Jose. He said our population is almost 150,000 so it would translate to 6.

Chair Dohadwala said she would be supporting the motion, and that the Commission is trying to handle a social problem with land use tools which is not perfect, but is the best attempt to exert a measure of control over the establishments.

ACTION: Comm. Larsson moved to recommend to City Council: to adopt Option 1 to restrict new payday lending establishments, removing the operational standards of requiring one posted "No Loitering" sign on establishment premises and the requirement to have one uniformed security guard present during hours of operation; to adopt Option 3 to cap the number of payday lending establishments in the City at 6, with existing establishments being grandfathered in; and that the business be required to provide customers with educational material on alternatives to payday lending. Comm. Hendricks seconded. Motion carried, 6-0 with Comm. Kolchak absent.

APPEAL OPTIONS: This recommendation will be forwarded to City Council for consideration at the September 24, 2013 City Council meeting.

Attachment F

City	Outright Ban?	Regulated?	Include Check Cashing?	Include Operational Standards?	Include Distancing Requirements between other Payday Establishments?	Include Distancing Requirements from Schools, Liquor Stores, etc?	Additional Information
Co. of Santa Clara	Yes		Yes	n/a	n/a	n/a	
Los Altos	Yes		Yes	n/a	n/a	n/a	
San Jose		Yes	No	No	Yes, 1,320 ft.	Yes	Capped the number of allowed payday lending establishments at 39 (the number that currently exists)
East Palo Alto		Yes	Yes	Yes	Yes, 1,000 ft.	Yes, 500-1000 ft.	Allowed in commercial zones only
Oakland		Yes	Yes	Yes	Yes, 1,000 ft.	Yes, 500 ft.	
San Francisco		Yes	Yes	No	Yes	n/a	Code restricts the use to only a few zones (commercial)
San Mateo		Yes	Yes	Yes	Yes, 1,000 ft.	Yes, 500 ft.	Allowed in commercial zones only
Sacramento		Yes	Yes	Yes	Yes, 1,000 ft.	Yes, 1,000 ft.	Allowed in commercial zones only

Attachment G

an installment plan. Would further require each CDDTL licensee to convert a deferred deposit transaction into an installment plan, as follows:

- a. Each agreement for an installment plan would have to be in writing and acknowledged by both the customer and the licensee.
- b. The licensee would be prohibited from assessing any fee, interest charge, or other charge on a customer, when converting a deferred deposit transaction into an installment plan.
- c. The minimum length of an installment plan would be 90 days per each \$100 borrowed (thus a \$100 loan would have a minimum 90-day installment plan; loans between \$101 and \$200 would have a minimum 180-day installment

SB 515 (Jackson), Page 3

plan; and loans between \$201 and \$300 would have a minimum 270-day installment plan).

- d. Customers would be allowed to prepay their installment loans at any time, without penalty, fee, or other charge.
 - e. A licensee would be allowed to accept one or more postdated checks for installment plan payments at the time the installment plan is entered into. However, licensees would be prohibited from charging customers any fee for postdated checks that are dishonored. If a customer defaults on his or her installment plan, the licensee would be able to charge that customer a one-time installment plan default fee of \$25.
7. Would require the commissioner, by contract with a third-party provider or otherwise, to develop and implement a common database with real-time access, via an Internet connection, through which CDDTL licensees may determine whether a prospective customer has an outstanding deferred deposit transaction or is in an outstanding installment plan, and whether a prospective customer has reached his or her four loan per year limit.
 8. Licensees would be responsible for doing all of the following with respect to the database:
 - a. Timely and accurately submitting data required by the commissioner before entering into a deferred deposit transaction with a customer. At a minimum, the required information would include the customer's name, social security number or employment authorization alien number, address, driver's license number, transaction amount, transaction date, date the completed transaction is closed, income by category established by the commissioner, zip code where the transaction occurs, and gender.
 - b. Correcting any incorrect data entered into the database.
 9. The database provider would be responsible for doing all of the following with respect to the database:
 - a. Establishing and maintaining a process by which

SB 515 (Jackson), Page 4

licensees may submit information to and obtain information from the database during times the database is inaccessible via the Internet due to technical difficulties.

- b. Take all reasonable measures and comply with all applicable federal and state laws intended to prevent identity theft.
- c. Provide accurate and secure receipt, transmission,

and storage of customer data.

10. The commissioner would be responsible for adopting rules to ensure that the database is used by licensees, in accordance with the bill. Rules would be required to:

- a. Ensure that data are retained in the database only as required to ensure licensee compliance with the bill.
- b. Ensure that borrower information is deleted from the database on a regular and routine basis, twelve months after a transaction is closed.
- c. Require the archiving of deleted data.
- d. Prohibit the database from ranking the creditworthiness of a borrower.
- e. Require that data collected within the database be used only as prescribed by the commissioner.
- f. Authorize the imposition of a fee, per transaction, payable by a licensee to the database provider, for data that is required to be submitted. The fee may not exceed the reasonable costs of entering the data into the database and may not include any costs paid by the commissioner to the provider for operating the database. The fee may not be passed on to a customer.
- g. Allow persons to request reports and data from the database provider, as specified.
- h. Send written notification to each licensee informing them when the database has been implemented and specifying the date the database shall be considered operational, for purposes of triggering licensees' duty

SB 515 (Jackson), Page 5

to report loan data to the database.

EXISTING LAW

11. Provides for the CDDTL (Financial Code Section 23000 et seq.), administered by the Department of Corporations (DOC). The CDDTL:

- a. Allows lenders licensed under its provisions to defer the deposit of a customer's personal check for up to 31 days; limits the maximum value of the check to \$300; limits the maximum fee to 15% of the face amount of the check; and requires CDDTL lenders to distribute a notice to customers prior to entering into any deferred deposit transaction that includes information about the loan and loan charges and a listing of the borrower's rights.
- b. Requires each CDDTL loan agreement to be in writing in a type size of 10 point or greater, written in the same language that is used to advertise and negotiate the loan, signed by both the borrower and the lender's representative, and provided by the lender to the borrower, as specified.
- c. Allows CDDTL licensees to grant borrowers an extension of time or a payment plan to repay an existing deferred deposit transaction, and prohibits the lender from charging any additional fee in connection with the extension or payment plan.
- d. Prohibits CDDTL licensees from entering into a deferred deposit transaction with a customer who already has a deferred deposit transaction outstanding, and from doing any of the following:
 - i. Accepting or using the same check for a subsequent transaction;
 - ii. Permitting a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another;
 - iii. Entering into a deferred deposit transaction with a person lacking the capacity to contract;

SB 515 (Jackson), Page 6

- iv. Accepting any collateral or making any deferred deposit transaction contingent on the purchase of insurance or any other goods or services;
 - v. Altering the date or any other information on a check, accepting more than one check for a single deferred deposit transaction, or taking any check on which blanks are left to be filled in after execution;
 - vi. Engaging in any unfair, unlawful, or deceptive conduct or making any statement that is likely to mislead in connection with the business of deferred deposit transactions;
 - vii. Offering, arranging, acting as an agent for, or assisting a deferred deposit originator in any way in the making of a deferred deposit transaction unless the deferred deposit originator complies with all applicable federal and state laws and regulations;
- e. Provides that licensees who violate the CDDTL are subject to suspension or revocation of their licenses, and that violations of the CDDTL are subject to civil penalties of \$2,500 per violation.

COMMENTS

1. Purpose: SB 515 is intended to bring needed reforms to payday lending in California. According to the author's office, the bill targets the specific features of payday loans that cause the most damage to customers, by requiring that lenders evaluate borrowers' ability to pay back their loans, giving borrowers more time in which to repay them, and limiting the number of loans that lenders can make to any one borrower. The bill is intended to bring payday loans into alignment with their advertised purpose of short-term loans for occasional, unexpected expenses.

2. Background: Debates over the merits and dangers of payday loans have been waged in the California Legislature since the state first authorized payday lending in 1996. Consumer advocates believe that payday loans drive borrowers into a

SB 515 (Jackson), Page 7

cycle of repeat borrowing, which harms them more than they are helped by the infusion of borrowed cash. Industry advocates assert that their product offers needed credit to borrowers who have few other options, and cite high rates of customer satisfaction from borrowers who understand the risks and rewards of their product.

SB 515 represents a new approach by consumer advocates to the issue of payday lending in California. Where previously, the groups advocated on behalf of a 36% APR cap, now they are seeking loan limit caps enforced by a payday loan database, longer loan lengths, automatic installment plans, and underwriting. Industry counters that these changes will put them out of business, by significantly increasing their costs without a commensurate increase in allowable fees, and by changing their loans into installment products.

In 2011, the most recent year for which annual data are available on the California payday loan industry, 12.4 million payday loans were made to 1.7 million different customers by payday lenders licensed to operate in California. The total dollar volume of payday loans equaled \$3.3 billion dollars. The average loan was \$263 in size, and average loan length equaled 17 days. In 2011, DOC licensed and regulated 241 payday lenders, operating at 2,119 locations.

Online payday lending is legal in California, as long as the lender holds a CDDTL license from DOC. Although DOC's annual report does not provide a breakdown of payday loans made online by licensed lenders versus those made in licensed storefronts located in California, information contained in recent annual reports strongly suggests that payday loans are increasingly being made online in California. The number of licensed storefront locations at which payday loans can legally be made in California has dropped each year since 2007. This trend occurred over a time period during which the total number of loans and the total dollar volume of loans rose steadily.

Customers who obtain payday loans often have few other borrowing options available to them, when they seek out credit. A study of California payday loan customers conducted during 2007 by the Applied Management and Planning Group, on behalf of DOC, found that a significant number of payday loan customers have not considered other options. When forced to

SB 515 (Jackson), Page 8

consider those options, most payday loan customers said they would turn to family or friends if they were unable to obtain a payday loan. A smaller percentage would wait until their next payday. Other options cited by the survey respondents, in very low numbers, included use of pawn shops and borrowing money from an employer.

Consistent with the responses of survey participants, short-term installment loans in amounts below \$2,500 are not extensively used in California. During 2011, approximately 275,000 loans totaling \$217 million were made. The vast majority of those loans (258,000) were unsecured.

3. Payday Loan Database: SB 515 is the second bill introduced in recent years, which proposes to establish a payday loan database that can be used by DOC to help administer the CDDTL. Two policy issues posed by creation of a database are addressed immediately below. A policy discussion of the remaining elements of the bill is left to the supporters and opponents of this bill (see support and opposition sections below).

a. Database funding: SB 515 is silent on a funding mechanism for the database contemplated by the bill. The author and sponsors indicate that they expect DOC to fund the database through surcharges on licensees - a funding mechanism which requires no additional statutory changes. Financial Code Section 23016 requires each licensee to annually pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of the CDDTL. According to DOC, the most recent pro rata assessment imposed on CDDTL licensees equaled \$941 per licensed lending location.

b. Database privacy: This bill requires DOC to develop and implement a payday loan database with real-time access, via an Internet connection, for use by payday loan licensees in complying with this bill, and by DOC for purposes of enforcing this bill.

To date, fourteen other states have established payday loan databases similar to the one envisioned by this bill (Florida, Virginia, South Carolina, Kentucky, Delaware, New Mexico, Illinois, Michigan, Wisconsin, North Dakota, Washington, Alabama, Indiana, and Oklahoma).

SB 515 (Jackson), Page 9

A single company, Veritec, administers the databases in all of those states. Committee staff reached out to representatives of Veritec to ask how they have handled privacy and data breach issues in those other states. They responded that if a Veritec database is breached, the company's responsibilities are covered by existing state and federal data breach laws. Those laws require

that the company housing the data notify consumers of the breach and pay for credit monitoring. Veritec's contracts require it to adhere to applicable state and federal laws regarding customer notification following a data breach, and to carry insurance to cover Veritec's costs to comply with those requirements, should Veritec lack the funds with which to do so.

In the states in which Veritec operates, the state payday loan regulator and Veritec are the only entities that have access to all of the data in the database. Typically, these states and Veritec indemnify each other against unlawful use of the database by each of their employees and contractors. Individual payday lenders only have access to data they enter into the database. According to Veritec, lenders are liable for unauthorized access to the database via their portals.

4. Summary of Arguments in Support:

a. This bill is co-sponsored by the Center for Responsible Lending (CRL), Public Interest Law Firm (a program of the Law Foundation of Silicon Valley), California Reinvestment Coalition (CRC), and National Council of La Raza (NCLR).

CRL believes that the provisions of SB 515, taken together, will align payday loans with their intended purpose as short-term loans, by reducing loan-churning, ensuring that payday borrowers can afford to repay their loans, reducing borrowers' need for additional loans, and otherwise alleviating the harm that payday loans cause. CRL asserts the following four points: 1) Most payday loans go to borrowers caught in a debt trap; 2) Most payday borrowers are regular users of payday loans; 3) For many payday borrowers, there is no way out of the payday lending debt trap; and 4) Very few borrowers take out just one payday loan. CRL believes that payday loans

SB 515 (Jackson), Page 10

do not solve financial emergencies; instead, they leave borrowers worse off than they were before obtaining payday loans. SB 515 targets the problem of the debt trap, by ensuring that borrowers are able to repay their loans without having to borrow again before their next payday.

In its letter of support, CRL cites data from Washington State, which implemented an eight loan per person per year cap in 2010, and saw the volume of payday loans made in that state decrease by 75% in the two years since enactment. CRL believes that this reduction reflects loans that were going to borrowers who were churning their payday loans, and taking out more than eight loans per year. CRL also believes that this limit has led more Washington State borrowers to use payday loans for truly occasional borrowing, as they are marketed. Washington borrowers have saved millions of dollars in fees. But, CRL believes that a cap of eight loans per borrower per year is still too much, and prefers the four loan limit proposed in SB 515.

CRL also support the provisions of SB 515 that give payday borrowers more time to repay their loans, believing that these provisions will make it more likely that borrowers will be able to accumulate the funds to pay off their loans, without having to return to take out new loans.

Finally, CRL cites the underwriting requirements of the bill as important to ensuring that families will avoid the cycle of repeat lending, by ensuring that borrowers are able to repay their loans, without the need to borrow

again.

CRC views SB 515 as necessary to rein in the predatory payday loan industry and protect consumers from the payday loan debt trap. CRC is extremely concerned about the high APRs on payday loans, the inescapable cycle of debt the loans create for borrowers, and the easy accessibility of payday loans, especially to individuals who can least afford the loans. Over the past seven years, CRC has worked with its members, allies, and elected officials in the cities of Oakland, San Francisco, Oceanside, Sacramento, and San Jose to enact

local land use policies restricting the growth of payday lenders. CRC asserts that many cities have done what

SB 515 (Jackson), Page 11

they could to limit payday lending, but need the leadership of state representatives to address payday lenders' practices.

The Law Foundation of Silicon Valley, NCLR, myriad other advocacy groups, and at least one local government and one microlender support SB 515 for all of the reasons cited above. These groups believe that payday loans are harmful to the people who use them, and believe that SB 515 will help mitigate the most harmful of the impacts of payday loans on the Californians who use these products.

5. Summary of Arguments in Opposition:

- a. The California Financial Service Providers (CFSP) and Community Financial Services Association of America (CFSA) are opposed to the bill, because it would abolish licensed payday lending in California, and would drive customers to unlicensed, unregulated payday lenders. Among its many provisions, the bill would turn a deferred deposit into an installment product, which is not what a deferred deposit is.

The bill would also impose significant costs on payday lenders, related to underwriting and database support, which would render the product unprofitable, given its current cost structure. The underwriting requirements would not only increase the costs of the product, but would also create enormous liability for lenders and would be extremely intrusive for borrowers. The obligation to establish a database presents a threat to customers' privacy and creates a risk of identity theft.

6. Amendments:

- a. In order to address concerns that the version of the bill before this Committee goes too far, the author and sponsors will offer the following substantive amendments in Committee:

- i. Delete the underwriting requirements.
- ii. Delete the requirement that loan

SB 515 (Jackson), Page 12

length be increased to 30 days per \$100 borrowed. Instead, increase the minimum loan length from 14 days to 30 days. According to CRL, Oregon and Virginia both have 30-day minimum length requirements for their payday loans.

- iii. Cap the maximum number of loans per borrower per year at six (up from four in the version of the bill before this committee). This compares with a loan cap of five loans per year in Delaware and eight loans per year in Washington State.

- iv. Strike the language which allows borrowers to obtain an installment repayment plan if they are unable to pay back any payday loan and replace it with language authorizing payday borrowers to obtain an installment repayment plan only if they are unable to pay back their sixth loan in any year. Require that each installment plan be a minimum of 120 days in length, and provide for the amount owed to be repaid over at least four substantially equal installments, spaced at least 14 days apart, scheduled on or after a borrower's pay date.

v. Require the DOC commissioner to ensure that the payday loan database is fully operational no later than July 1, 2014, and require payday loan licensees to begin reporting to the database within 30 days after the database is certified by the DOC commissioner as being fully operational.

vi. Make a series of technical amendments, to clarify terms, delete superfluous language, and authorize the database provider to charge fees to offset its cost of providing data to people who request it.

b. In addition to the amendments summarized above, which were offered by the author's office and this bill's sponsors, SB 515 requires technical amendments to achieve its intent. The list of technical amendments recommended by staff focuses only on the provisions of the bill that the author is proposing to retain. It does not focus on the provisions the author is proposing to delete from the

SB 515 (Jackson), Page 13

bill.

i. Language is needed to provide delayed operative dates for three provisions of the bill that rely on the existence of an operational payday loan database. These provisions include subdivision (b) of Section 23035 (which applies the payday loan cap), subdivision (b) of Section 23036 (which allows customers to trigger an installment plan if they cannot pay back their sixth and final payday loan of the year), and subdivision (c) of Section 23036 (which prohibits licensees from entering into a new payday loan with a customer who has an existing outstanding payday loan or outstanding installment plan).

Staff suggests the addition of language to the bill, providing that these provisions will become operative on the same date that licensees' requirements to begin submitting data to the database become operative.

ii. Staff also suggests that this bill's author and sponsors are overly optimistic about the ability of DOC to contract out for, test, and bring an operational database online by July 1, 2014. Expecting licensees to enter data into that database within one month of the database coming online is also highly optimistic.

DOC is in a much better position than Committee staff to offer reasonable timeframes for contracting out, testing, and bringing the database online, and for requiring licensees to begin entering data into that database. Until input from DOC can be obtained on these issues, staff suggests an implementation date for the database of at least one year from the bill's operative date (January 1, 2015) and an additional 90 day period (April 1, 2016) to give licensees time in which to train their branch employees in how to use the database, before requiring data to be entered into it on a regular basis.

iii. Technical amendments are also necessary to address the issue of database entries by

SB 515 (Jackson), Page 14

licensees who go out of business or have their licenses revoked by DOC. The bill's existing language on this topic is unclear (page 12, lines 20 through 29). Staff understands that the author's office is working with DOC on language to clarify this issue.

- iv. The author may also wish to include language, clarifying the liability of the commissioner, in the event of a database data breach, which occurs despite the existence of policies and procedures intended to prevent it.

7. Selected Prior and Related Legislation:

- a. AB 365 (Lowenthal), 2011-12 Legislative Session: Would have directed the Commissioner of Corporations to establish a payday loan database. Never taken up by the author.
- b. AB 7 (Lieu, Chapter 358, Statutes of 2007): Gave DOC the authority to enforce specified federal protections, including a 36% AFR cap, which were granted to members of the military and their dependents.
- c. SB 898 (Perata, Chapter 777, Statutes of 2002). Enacted the Deferred Deposit Transaction Law and shifted the responsibility for administering the law to DOC.
- d. SB 1959 (Calderon, Chapter 682, Statutes of 1996): Enacted the earliest version of a payday lending law in California. Gave regulatory authority to the California Department of Justice.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

Center for Responsible Lending (co-sponsor)
California Reinvestment Coalition (co-sponsor)
National Council of La Raza (co-sponsor)
Public Interest Law Firm/Law Foundation of Silicon Valley (co-sponsor)
Opportunity Fund
Affordable Housing Network

SB 515 (Jackson), Page 15

Affordable Housing Services
Alliance of Californians for Community Empowerment
Asian Americans for Community Involvement
Asian Law Alliance
Asian Pacific Policy and Planning Council
Black Economic Council
California Association for Micro Enterprise Opportunity
California Capital Financial Development Corporation
California Church IMPACT
California Labor Federation
California/Nevada Community Action Partnership
Catholic Charities of California United
CCCS Financial Resource Center
CHAM Deliverance Ministry
Civic Center Barrio Housing Corporation
Coalition for Quality Credit Counseling
Community Housing Council of Fresno
Community HousingWorks
Community Legal services in East Palo Alto
Courage Campaign
Dennis Herrera, San Francisco City Attorney
Dolores Huerta Foundation
EARN
East L.A. Community Corporation
East Palo Alto Community Legal Services
Economic Partners in Change
Fair Housing Council of San Fernando Valley
Fair Housing Napa Valley
Faith in Community
Jose Cisneros, Treasurer, City and County of San Francisco
Housing and Economic Rights Advocates
Housing Equality Law Project/Human Equality Law Project
Housing Opportunities Collaborative
Housing Rights Center
Insight Center for Community Economic Development
Latino Business Chamber of Greater Los Angeles
League of United Latin American Citizens
Mexican American Legal Defense and Educational Fund
Mission Asset Fund
Mission Economic Development Agency
Mission San Francisco Community Financial Center
Multicultural Real Estate Alliance for Urban Change

Mutual Housing California
 NAACP, San Jose Chapter
 National Asian American Coalition
 NEW Economics for Women

SB 515 (Jackson), Page 16

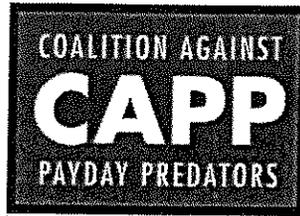
Novadebt
 Nuestra Casa
 Oakland Community Organizations
 Opportunity Fund
 Pacific Islander Initiative
 Pan American Bank
 PICO California
 Public Counsel
 Public Law Center
 Sacred Heart Community Service
 Santa Clara County Board of Supervisors
 Santa Clara County La Raza Lawyers Association
 San Diego City-County Reinvestment Task Force
 Somos Mayfair
 Sonoma County Housing Advocacy Group
 St. Joseph's Family Center
 Sunnyvale Community Service
 Training Occupational Development Educating Communities Legal
 Center
 Valley Economic Development Center
 Watts/Century Latino Organization
 Western Center on Law & Poverty
 Youth Leadership Institute

Opposition

California Financial Service Providers
 Community Financial Services Association of America
 Greater Riverside Hispanic Chamber of Commerce

Consultant: Eileen Newhall (916) 651-4102

Attachment H



THE FACTS ABOUT PAYDAY LENDING

Payday is widespread in Silicon Valley

- There are currently **7 payday lenders** in Sunnyvale, amounting to **1 lender per 20,000 residents**, a higher ratio than in San Jose.¹
- Santa Clara and San Mateo Counties had **91 payday lending stores** in 2007.²

Payday charges exorbitant fees for very short term loans

- A California borrower who writes a check for **\$300** receives a loan of \$255 and **pays a fee of \$45**.³ The **average annual percentage rate** for payday loans was 414 percent in 2010.⁴
- Payday lending costs Californians an estimated **\$757 million annually** in finance charges.⁵
- In California, the average number of **days to pay back a payday loan** was **17 days** in 2010.⁶

Payday borrowing is a symptom of poverty

- In 2007, approximately **60 percent of California payday borrowers** earned less than **\$50,000 per year**.⁷
- Families who borrow from payday lenders are more likely to be of **color, single women, young, and non-homeowners**.⁸

Payday causes a cycle of debt and poverty

- Most borrowers **cannot afford to pay back** the typical \$255 that they borrow after 17 days and still afford all their other basic living expenses. Instead, most use a **back-to-back transaction** where they pay off their balance and immediately borrow it back for another \$45 fee.
- The typical California payday borrower takes out 10 loans a year. In essence, that means that the borrower **ultimately pays \$450 for a \$300 loan** over the course of a year.⁹

Payday is big business in California

- In 2010, **1,646,700 Californians** obtained payday loans, an **increase of 79,512 customers** from the previous year.¹⁰
- The **total dollar amount of payday loans** made in 2010 was **\$3,125,299,157**.¹¹
- The **total number of payday loans** made in 2010 was **12,092,091** and 11,784,798 in 2009.¹²
- Nearly **450 companies** are licensed by the state to provide payday loans. These companies operate approximately **2,400 payday loan outlets**.¹³

THE FACTS ABOUT PAYDAY LENDING

Page 2

Northern California cities and counties are leading the way in restricting payday

- The **City of San Jose** passed an ordinance in 2012 that:
 - Capped the number of payday lenders at the current number;
 - Restricted payday lenders from locating in low income neighborhoods; and
 - Prevented overconcentration of payday lenders.
- The **City of Los Altos** banned payday lending.
- **Santa Clara County** banned payday lending in unincorporated areas of the County.
- **Pacifica and East Palo Alto** also recently passed ordinances restricting payday lending. Sacramento, Oakland, and San Francisco passed such ordinances years ago.

There are real alternatives to payday borrowing

- Alternatives to payday borrowing include: nonprofit cash assistance programs such as those provided by Sunnyvale Community Services, government assistance programs like food stamps, utility payment assistance programs, more affordable credit union-based loan products, affordable for-profit loan alternatives such as Progreso Financiero, non-profit loan products like Ways to Work that provides a 6% loan for cars, family borrowing, lending circles, and emerging employer-based lending products like PAL loans through OnePacificCoast Bank. More alternatives are coming on line every day.
- Often, there's not a quick solution when families run out of money. The car breaks, a child needs money for tuition, or someone in the family gets ill and has unexpected medical bills. The best long-term plan to build an emergency savings fund. Many nonprofits, including three of CAPP's core coalition members, are providing financial education, budget planning assistance, and matched savings accounts to low income families.
- Because the 7 current payday lenders in Sunnyvale would be grandfathered into any ordinance, payday lending would continue to exist in Sunnyvale until more affordable alternatives replace it.

The Coalition Against Payday Predators (CAPP)

CAPP is a coalition of community-based organizations in Santa Clara County that has come together to advocate for county-wide policies that would limit payday lenders' ability to prey on financially vulnerable members of our community as well as to advocate for state-wide reform of the legal loopholes that allow for this type of predatory loan. CAPP's core coalition includes:

1. Public Interest Law Firm (PILF) (of the Law Foundation of Silicon Valley)
2. The California Reinvestment Coalition (CRC)
3. Asian Law Alliance (ALA)
4. Alliance of Californians for Community Empowerment (ACCE)

THE FACTS ABOUT PAYDAY LENDING

Page 3

5. Sacred Heart
6. Step Up/Catholic Charities
7. United Way

CAPP's core organizations are supported by grants from the Silicon Valley Community Foundation. Organizational endorsers include: AARP, Asian Americans for Community Involvement (AACI), Asian Pacific Islander Justice Coalition of Silicon Valley (APIJC), Catholic Charities of Santa Clara County, Center for Employment and Training (CET), Center for Responsible Lending (CRL), Center for Training and Careers (CTC), Community Homeless Alliance Ministry (CHAM), Council of Churches Santa Clara County, Council on Aging Silicon Valley, El Comité, La Raza Roundtable, Latina Coalition of Silicon Valley (LCSV), Latino Business Student Association of San José State, Low Income Self Help Center, Mexican American Community Services Agency (MACSA), Micro Branch, Community Trust Credit Union, Momentum for Mental Health, Most Holy Trinity Church (PACT LOC), Native American Voice, Project Sentinel, Sacred Heart Community Services, San José Peace and Justice Center, San José National Association for the Advancement of Colored People (NAACP), Santa Clara County Democratic Party, Santa Clara County Older Women's League (OWL), SEIU Local 521, Silicon Valley Community Foundation, Silicon Valley Council of Nonprofits, Somos Mayfair, South Bay Labor Council, Sunnyvale Community Services, The Opportunity Fund, UNITE HERE Local 19, and the Latino Democratic Forum.

¹California Department of Corporations (DOC),

<http://www.corp.ca.gov/fsd/licensees/default.asp?flag=1&srctype=contains&licstatus=active&busname=&id=&lictype=Deferred+Deposit+Originator&city=sunnyvale&state=&zip=>

² DOC, "2007 Payday Loan Study" (December 2007; updated June 2008), 31-32, available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07.pdf>.

³ California Budget Project, "Payday Loans: Taking the Pay out of Payday" (Sept. 2008), 10, available at http://www.cbp.org/pdfs/2008/080926_paydaychartbook.pdf.

⁴DOC, "Annual Report: Operation of Deferred Deposit Originators under the California Deferred Deposit Transaction Law," (2010), 3, available at <http://www.corp.ca.gov/pub/pdf/CDDTL2010ARC.pdf>.

⁵ California Reinvestment Coalition, "The Financial Divide: An Uneven Playing Field, Bank Financing of Check Cashers and Payday Lenders in California Communities" (Mar. 2005), 2, available at <http://www.calreinvest.org/system/assets/17.pdf>.

⁶ DOC, "Annual Report: Operation of Deferred Deposit Originators under the California Deferred Deposit Transaction Law," (2010), 3, available at <http://www.corp.ca.gov/pub/pdf/CDDTL2010ARC.pdf>.

⁷ DOC, "2007 Payday Loan Study" (December 2007; updated June 2008), 63, available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07.pdf>.

⁸ Amanda Logan and Christian E. Weller, "Who Borrows From Payday Lenders? An Analysis of Newly Available Data," Center for American Progress (Mar. 2009), available at http://www.americanprogress.org/issues/2009/03/pdf/payday_lending.pdf.

⁹ California Budget Project, "Payday Loans: Taking the Pay out of Payday" (Sept. 2008), 5, available at http://www.cbp.org/pdfs/2008/080926_paydaychartbook.pdf. Payday lenders report that almost half (48%) of their business comes from borrowers who obtained between 2 and 9 loans within an 18-month period. California Department of Corporations, "2007 Payday Loan Study" (December 2007; updated June 2008), 27, available at <http://www.corp.ca.gov/pub/pdf/PDLStudy07.pdf>. [statistics based on information gathered during the 18 months prior to the study period].

¹⁰ DOC, "Annual Report: Operation of Deferred Deposit Originators under the California Deferred Deposit Transaction Law," (2010), 2, available at <http://www.corp.ca.gov/pub/pdf/CDDTL2010ARC.pdf> [this statistic counts repeat customers once].

¹¹ *Id.*

¹² *Id.*

¹³ California Budget Project, "Payday Loans: Taking the Pay out of Payday" (Sept. 2008), 14, available at http://www.cbp.org/pdfs/2008/080926_paydaychartbook.pdf.



FAST FACTS--PAYDAY LOANS

- Since its inception in the 1990s, the payday lending industry has established over 22,000 locations which originate an estimated \$27 billion in annual loan volume.
- Nationally, there are more than two payday lending storefronts for every Starbucks location.
- The typical two-week payday loan has an annual interest rate ranging from 391 to 521 percent.
- The "churning" of existing borrowers' loans every two weeks accounts for three-fourths of all payday loan volume.
- Repeated payday loans result in \$3.5 billion in fees each year.
- Loans to non-repeat borrowers account for just two percent of the payday loan volume.
- The average payday borrower has nine transactions per year.
- 90% of the payday lending business is generated by borrowers with five or more loans per year, and over 60% of business is generated by borrowers with 12 or more loans per year.
- If a typical payday loan of \$325 is flipped eight times, the borrower will owe \$468 in interest; to fully repay the loan and principal, the borrower will need to pay \$793.
- The typical payday borrower remains in payday loan debt for 212 days of the year.
- From 2008-2010, voters in three states have said 'NO' to triple digit interest rates when their state legislatures did not: Arizona, Montana and Ohio.
- Seventeen states and the District of Columbia have enacted double-digit rate caps on payday loans.
- Studies have shown that payday borrowers are more likely to have credit card delinquency, unpaid medical bills, overdraft fees leading to closed bank accounts, and even bankruptcy.

Copyright © 2003-2012 Center for Responsible Lending. All rights reserved.



Attachment I

777 Hollenbeck Ave, Apt 22
Sunnyvale, CA 94087

June 9, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd.

I agree with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City.

I am especially concerned about the 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, creating an asset-stripping effect that impacts both the individual and the entire community.

I support a reduction in the number of pay-day loan sites in Sunnyvale, or a ban on them altogether, and respectfully request that the Council approve a restrictive payday ordinance when it comes before you in August.

Thank you.

G Bell

George Bell

cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



June 9, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

We are writing to the Sunnyvale City Council on behalf of our St. Vincent de Paul Conference (SVdP) located in Sunnyvale. The SVdP Society is a nonprofit organization that provides direct assistance to anyone suffering or in need. Our local conference specifically provides food and financial help in the form of assistance with rents, utility bills, and medical costs to low income families living in Sunnyvale.

We are writing in regards to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the best interest of the citizens of Sunnyvale for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city.

We have concerns about the predatory practices of this industry and how it often targets low income families. We are greatly concerned about the 459% APR interest rates on payday loans and the cycle of debt these loans can create for the already impoverished families in our community. Adopting a cap and developing a permitting process along with zoning restrictions for these businesses would help to minimize the negative practices and effects of payday lenders on our city.

We ask the City to support programs and policies that will help those in need and reduce poverty in our community. In that spirit, we respectfully ask the Council to consider and approve a restrictive pay day lending ordinance as soon as possible.

Thank you for your time and consideration,

Tanya Pereira
Co-President SVdP Sunnyvale

Donna Beres
Co-President SVdP Sunnyvale

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission

To: Amber El-Hajj, City of Sunnyvale
From: Melissa A. Morris, Public Interest Law Firm, Law Foundation of Silicon Valley
Re: Payday Lending Ordinance Policy Parameters
Date: May 14, 2013

**MEMORANDUM REGARDING LAND USE ORDINANCE ADDRESSING FRINGE
FINANCIAL SERVICES**

This memo was prepared by Public Interest Law Firm on behalf of CAPP, the Coalition Against Payday Predators, to provide information about and recommendations for an ordinance to limit the proliferation of payday lenders in Sunnyvale. In compiling this memo, we conducted research on similar ordinances in other jurisdictions and on the legal implications of a variety of ordinance options. We provide general information, as well as our own recommendations below.

INTRODUCTION¹

Payday loans are lending transactions in which a borrower provides a lender with a post-dated check and receives immediate cash from the lender. The borrower's check includes not only the principal loan amount, but also any interest and fees charged by the lender. The lender then cashes the borrower's check on the borrower's next payday. Payday loans, sometimes called deferred deposit transactions or cash advances, comprise one corner of a larger universe of "alternative" or "fringe" financial services, which also include check cashing services, pawn brokers, and rent-to-own stores.² In California, payday loans are typically small; state law caps them at \$300.³ However, these small-dollar loans must be repaid quickly—the average term of a payday loan is 17 days—and, as such, they have an APR of over 400 percent.⁴

Payday lending is widespread in California. In 2011, over 1.7 million Californians were issued payday loans (at an average of between 7 and 8 loans per borrower).⁵ Although payday loans are advertised as short-term credit products for use in emergencies, data show that most payday loan borrowers are unable to repay their loans in lump sum and that payday loan

¹ Public Interest Law Firm published *Report on the Status of Payday Lending in California*, commissioned by Silicon Valley Community Foundation (October 2009), available at <http://www.siliconvalleycf.org/docs/payday-lending-report.pdf>, and much of the text in this section is taken from that report. More recently, the Pew Charitable Trusts has published reports and analyses in its *Payday Lending in America* series, available at <http://www.pewstates.org/research/featured-collections/payday-lending-in-america-85899405692>.

² See, e.g., Sharon Hermanson and George Gaberlavage, "The Alternative Financial Services Industry," AARP Public Policy Institute (Aug. 2001), available at <http://www.aarp.org/research/credit-debt/credit/research-impact-108-1051.html>. The San Francisco Municipal Code also uses the term "fringe financial services" to refer to these types of establishments. San Francisco Muni. Code § 790.111.

³ Cal. Fin. Code, § 23035, subd. (a).

⁴ California Department of Corporations, "2011 Annual Report: Operation of Deferred Deposit Originators licensed under the California Deferred Deposit Transaction Law, 6, available at http://www.corp.ca.gov/Laws/Payday_Lenders/pdfs/CDDTL2011ARC.pdf.

⁵ Department of Corporations, *supra* note 4, at 4.

borrowers are indebted for an average of five months per year.⁶ Further, the average payday loan borrower takes out eight loans per year, “often renewing an existing loan or taking out a new loan within days of repaying the previous one.”⁷

Payday lenders and other fringe financial services tend to be more densely concentrated in lower income areas and communities of color.⁸ One study found that, “[e]ven after controlling for income and a variety of other factors, payday lenders are 2.4 times more concentrated in African American and Latino communities. On average, controlling for a variety of relevant factors, the nearest payday lender is almost twice as close to the center of an African American or Latino neighborhood as a largely white neighborhood.”⁹ In Sunnyvale, payday lenders are clustered along El Camino Real, Sunnyvale’s primary commercial corridor. Of Sunnyvale’s seven existing payday lenders, six are on El Camino between Lawrence Expressway and Highway 85.

REGULATION OF PAYDAY LENDERS

In California, payday lenders are governed by the Deferred Deposit Transaction Law (Fin. Code, §§ 23000 et seq.) and by regulations promulgated by the Department of Corporations (Cal. Code Regs., tit. 10, ch. 3.). These laws set parameters for the amounts of loans, the fees charged, and other aspects of how payday lenders operate. As such, local jurisdictions are preempted from regulating the content of payday loans.

However, local jurisdictions *are* permitted to enact local policies that combat the proliferation of payday lenders in their communities and that address the overconcentration of these types of businesses in low-income and minority neighborhoods. Silicon Valley voters are in favor of such local measures according to a 2010 poll, which found that an overwhelming majority of respondents supported restrictions on payday lenders, and over half believed that such restrictions were appropriate actions for city government.¹⁰

In Santa Clara County, the cities of San José and Los Altos, as well as the County itself, have already adopted regulations concerning payday lenders. Further, Gilroy has imposed a 4temporary moratorium on the establishment of new payday lenders as it considers longer-term

⁶ The Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (Jul. 2012), 6, available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf.

⁷ *Id.* at 9.

⁸ *See, e.g.*, Brookings Institution, “From Poverty, Opportunity: Putting the Market to Work for Lower Income Families,” (2006), available at http://www.brookings.edu/reports/2006/07poverty_fellowes.aspx.

⁹ Wei Li, *et al.*, “Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California,” Center for Responsible Lending (Mar. 26, 2009), 25, available at <http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf>.

¹⁰ Goodwin & Simon Strategic Research, *San José Payday Loan Store Restrictions Survey* (Dec. 2010), available at <http://www.responsiblelending.org/california/ca-payday/research-analysis/San-Jose-Payday-Lending-Voter-Poll-Memo.pdf>.

controls. Below are some of the types of regulations these and other jurisdictions have adopted, as well as CAPP's recommendations for regulations to be adopted in Sunnyvale.

TEMPORARY CITYWIDE MORATORIUM WITH STUDY PERIOD

Prior to enacting long-term restrictions on payday lenders, Sunnyvale may pass a temporary citywide moratorium on the establishment of new payday lenders, check cashers, and/or other fringe financial services, in order to study the impact of these types of businesses on the surrounding community.¹¹ Several local jurisdictions, including Santa Clara County, Los Altos, Menlo Park, and, most recently, Gilroy, have utilized such moratoria as they study options for longer-term controls.¹² California law authorizes cities to adopt an "interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time."¹³ Such an ordinance may remain in effect for no more than 45 days from its date of adoption, and may either be adopted as an urgency measure or pursuant to the procedural requirements of Government Code, section 95090.¹⁴ If the interim ordinance is adopted as an urgency measure, it may later be extended for 10 months and 15 days, and then for a year, as long as proper notice is provided and procedure is followed for each extension.¹⁵ If the interim ordinance is adopted following the procedures of Government Code, section 65090, then it may later be extended for 22 months and 15 days, as long as proper notice is provided and procedure is followed.¹⁶ Both the adoption and the extension of the interim ordinance require a 4/5 vote, as well as a finding that "... there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare."¹⁷

By prioritizing a payday lending study issue in its city budget, Sunnyvale has already acknowledged that payday lending is a serious concern of the City. The City could go one step further to temporarily ban new payday lenders while it continues to develop long-term policies on payday lending.

PERMANENT ORDINANCE RECOMMENDATIONS (PENDING FINDINGS)

The temporary moratorium authorized by Government Code, section 65858, is intended only as an interim measure during the term of which the city studies the impacts of a particular use and, if appropriate, develops more long-term restrictions to address the health and safety issues caused by that use. Some jurisdictions, such as Santa Clara County¹⁸ and Los Altos,¹⁹

¹² See Gilroy Ord. No. 2013-06.

¹³ Gov. Code, § 65858, subd. (a).

¹⁴ Gov. Code, §§ 65858, subd. (a), (b).

¹⁵ Gov. Code, §§ 65090, 65858, subd. (a).

¹⁶ Gov. Code, §§ 65090, 65858, subd. (b).

¹⁷ Gov. Code, § 65858, subd. (a)-(c).

¹⁸ Santa Clara County Ord. Code, § 2.10.040, subd. (6).

have instituted permanent moratoria on payday lenders, prohibiting new payday lenders from locating within the jurisdiction.²⁰ However, most local jurisdictions choose to enact permanent policies that still allow for new payday loan stores to open but impose thoughtful regulations on their number, location, and operation.

Cities are able to impose such restrictions through their planning and zoning power, which allows cities to regulate particular uses in order to prevent nuisance and to promote the public welfare. Sunnyvale's Zoning Code does not specifically identify payday lenders among its regulated uses. Therefore, local regulation of payday lenders will likely involve amendment of the Zoning Code to define payday lending as a use²¹ and to impose restrictions on where, how, and when payday loan stores can operate. Below are some examples of the types of regulations that have been adopted, both in Santa Clara County and elsewhere in California and the nation.

Caps on the Number of Payday Lenders

Many cities have placed caps on the number of new payday lenders that can locate within their city limits. Last year San José became the largest city in the nation to impose such a cap, limiting the number of payday lenders in the city to 39, the number that were in operation at the ordinance's adoption.²² Other California cities, including National City and Norwalk, have also imposed caps on the number of payday lenders.²³ Such a cap allows new payday lenders to locate in a City, but only if an existing payday lender has closed or relocated.

CAPP recommends that Sunnyvale likewise impose a cap based on its existing number of payday lenders (7).

Geographic Restrictions

Many cities have imposed permanent restrictions that exclude payday lenders and check cashers from certain zoning districts or neighborhoods. The rationale behind these types of restrictions is to limit the proliferation of such businesses in areas where their existence runs contrary to the stated purpose of the district (e.g., in residentially zoned areas) or to keep new payday lenders or check cashers from opening in areas that already have an overconcentration of

¹⁹ Los Altos Mun. Code, § 14.02.070.

²⁰ Although California courts have not considered whether a municipality may impose an outright ban on payday lending establishments, the California Supreme Court recently upheld a city's ban on facilities that distribute medical marijuana in *City of Riverside v. Inland Empire Patients Health and Wellness Ctr., Inc.* (May 6, 2013, S198638) ___ Cal.4th ___ [2013 Cal. LEXIS 4003]; the Court held that the City of Riverside's ban was within its land use power and was not preempted by state statutes that exempt medical marijuana dispensaries from prosecution under certain state statutes.

²¹ Many cities, including Santa Clara County, Los Altos, San Francisco, Oakland, and Sacramento have opted to include check cashing and other "fringe financial services" in their regulation of payday lenders. While they are distinct practices and require separate licenses, payday lending and check cashing often occur together in the same storefront. If Sunnyvale determines that regulation of check cashing is also appropriate, such regulation can be enacted together with regulation of payday lenders.

²² San Jose Mun. Code, § 20.80.1060.

²³ National City Mun. Code, § 18.30.330; Norwalk Mun. Code, § 17.04.095, subd. (C)(2).

these types of businesses. Based on the types of distance requirements imposed in other cities, including East Palo Alto, Sacramento, Oakland, and San Francisco, Sunnyvale could impose the following requirements for the siting of new payday lenders:

- That new payday lenders may not open within a quarter mile (1320 ft.) of existing payday lenders or check cashers;
- That new payday lenders may not open within 500 feet of any residential use or residentially zoned parcel;
- That new payday lenders may not open within 1000 feet of any school, park, playground, church or religious facility, or child care or preschool facility;
- That new payday lenders may not open within 500 feet of banks, savings associations, or credit unions.
- That new payday lenders may not open within 1000 feet of liquor stores.

Other cities have banned payday lenders from certain census tracts or neighborhoods, based either on the overconcentration of payday lenders in those areas or based on the vulnerability of the population to predatory lending practices. For example, San José, in addition to its numerical cap, also prohibits new payday lenders from locating in or near very low-income census tracts.²⁴ Similarly, San Francisco established a Fringe Financial Service Restricted Use District, which excludes new payday lenders and check cashers from locating in certain neighborhoods based on the over-proliferation of such uses in those neighborhoods.²⁵

Based on Sunnyvale's demographics and the locations of existing payday lenders within the City, CAPP's recommendation is to impose distance requirements, to only allow new payday lenders to locate in zones where other commercial uses are permitted, and to require a permit, as discussed below.

Use Permit

Many cities have imposed special or conditional use permit requirements on new payday lenders. Sunnyvale could likewise require use permits (and/or miscellaneous plan permits) for new payday lenders and impose certain conditions as part of the approval process. Sunnyvale already requires specific conditions for permitting of uses such as gas stations,²⁶ so such requirements would be consistent with Sunnyvale's larger zoning scheme. Based on permitting schemes adopted by other cities, Sunnyvale could impose the following types of requirements as a condition of use permits for payday lenders:

- Restricted hours of operation (East Palo Alto, Oakland, and Sacramento have established 7:00 a.m. to 7:00 p.m. unless other hours are approved in the special use permit²⁷);
- Good neighbor policy;
- Lighting plan;

²⁴ San Jose Mun. Code, § 20.80.1055.

²⁵ San Francisco Mun. Code, § 249.35.

²⁶ Sunnyvale Mun. Code, § 19.98.020, subds. (i)-(k).

²⁷ Oakland Planning Code, § 17.102.430, subd. (A)(3)(c); Sacramento City Code § 17.24.050, n. 84.

- Sign plan that conforms with Sunnyvale's Sign Ordinance; and
- Graffiti removal.

Requirement to Provide Information About Non-Predatory Alternatives

One option that, to our knowledge, has not yet been adopted by a local jurisdiction in California but could be very helpful to payday loan consumers would be to require the distribution of information about local alternatives to payday loans. State law requires payday lenders to include a notice with the following information each time they issue a payday loan:

- (1) Information about charges for deferred deposit transactions.
- (2) That if the customer's check is returned unpaid, the customer may be charged an additional fee of up to fifteen dollars (\$15).
- (3) That the customer cannot be prosecuted in a criminal action in conjunction with a deferred deposit transaction for a returned check or be threatened with prosecution.
- (4) The [Department of Corporations'] toll-free telephone number for receiving calls regarding customer complaints and concerns.
- (5) That the licensee may not accept any collateral in conjunction with a deferred deposit transaction.
- (6) That the check is being negotiated as part of a deferred deposit transaction made pursuant to Section 23035 of the Financial Code and is not subject to the provisions of Section 1719 of the Civil Code. No customer may be required to pay treble damages if this check does not clear.²⁸

Sunnyvale could require that payday lenders also provide a City-approved flyer listing local resources for emergency financial assistance, savings, and financial education. Such flyers could include information about community service agencies like Sunnyvale Community Services, hotlines like the United Way's 211 number, non-profit loan programs like Ways to Work's auto loan program, and government programs like CalFresh (formerly Food Stamps). CAPP's member agencies can aid the City in compiling information for the flyer.

Even if the City elected not to require distribution of such a flyer at payday loan stores, the City could produce the flyer and distribute it through its usual channels for distributing information to the public: publication in City offices, inclusion in email alerts, promotion at City events, etc. In our experience, the more consumers know about alternatives to payday lending, and the more accessible those alternatives are, the less likely consumers are to become trapped in the cycle of payday loan debt.

²⁸ Cal. Fin. Code, § 23025, subd. (c).

Policies to Encourage the Development of Alternatives

We recommend the City adopt a resolution encouraging the development of non-predatory alternatives to payday loans and consider policies that incentivize the development of non-predatory alternatives. Sunnyvale already supports alternatives to payday loans through its support of Sunnyvale Community Services and other local organizations that help Sunnyvale residents to meet their basic needs, but it could consider additional policies that are specifically designed to shrink the market for payday loans. One option would be to create incentives, such as incentives related to ATM placement, for credit unions that offer small dollar loan products to their members.²⁹ Other cities have considered other incentives, such as the express exemption of non-profit services from local regulation of payday lenders; for example, San Francisco specifically exempts non-profit fringe financial services (including payday lenders and check cashers) from its ordinance.³⁰ Such incentives should be carefully tailored to encourage credit alternatives that are affordable (i.e., whose interest rate is lower than 36 percent APR) but not to open the door for other financial products with costly or deceptive terms. CAPP members can provide input on policy options based on our experience in other jurisdictions.

Another way in which the City could help to ensure that Sunnyvale residents have access to non-predatory alternatives to payday loans is to support the payday lending helpline, currently in development by CAPP member organization United Way of Silicon Valley with funding from the Silicon Valley Community Foundation. The helpline will provide information and directed referrals to consumers who are encountering financial difficulties and who either want to avoid payday loans or are trying to free themselves of payday loan debt. The Community Foundation has provided United Way with sufficient financial support to start the helpline, but the helpline is not funded on an ongoing basis. If the City were to commit funds to the helpline, it could help to ensure that the service is available to consumers in the future.

Support Statewide Legislation

Because the substance of payday loans is regulated by the state, state legislation has the potential to establish meaningful consumer protections. Senate Bill 515, authored by Senator Hannah-Beth Jackson (D-19) and coauthored by Senator Jim Beall (D-15), has been proposed in the California senate but is currently being held in the Senate Banking Committee. If passed, SB 515 will prevent payday lenders from trapping consumers in long-term, high-cost cycles of debt by capping the number of loans a lender can make to an individual at four loans per year and requiring the lenders to incorporate basic underwriting standards. CAPP recommends that Sunnyvale adopt a resolution to support state legislative efforts to curb the damaging effects of payday lending on the community.

²⁹ Credit Unions are prohibited by the National Credit Union Administration's rules from charging more than 28 percent APR. See <<http://www.mycreditunion.gov/what-credit-unions-can-do/Pages/Short-Term-Loans.aspx>>.

³⁰ San Francisco Planning Code, § 249.35, subd. (d).

April 22, 2013

To Whom It May Concern,

I am a 64 year old, with custody of two grandchildren under three. I am on a fixed income and I have been accruing additional food and clothing costs.

I had been borrowing from Cash/Check for six months from two different creditors, and borrowing in a cycle, (paying current month due to Cash/Check and borrowing from Cash/Check to cover expenses due in June \$300. each). This has caused a great financial burden.

I am on a fixed income of Social Security and SSI. That is not enough to cover the recurring expenses. There are no other resources available to seniors like myself where I can get financial relief without getting into a revolving problem.

I appreciate programs like Sunnyvale Community Services who have helped me with my rent, and the monthly food distribution.

You may contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Jackson', with a long horizontal flourish extending to the right.

Sarah Jackson
408 685-2242



May 28, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I'm writing on behalf of Step Up Silicon Valley. Our network works to reduce poverty in Santa Clara County by 50% by the year 2020. As a part of our advocacy efforts, we partner with the Law Foundation of Silicon Valley to educate and raise awareness amongst communities that are negatively affected by payday lending stores.

We are writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

We're concerned about the predatory practices of this industry, particularly as working people in our country and state continue to face huge hardships due to the irresponsibility of predatory lenders. We are especially concerned about the 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community. While not necessarily the case in Sunnyvale, we dislike that these businesses often target low and moderate-income workers and communities of color, and that they tend to cluster in certain neighborhoods. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would help address the latter issue, and would allow for communities to weigh in on any future proposals for new payday lenders.

Step Up Silicon Valley strives to help families reach self-sufficiency through a variety of initiatives, including the Franklin McKinley Women's Initiative (FMWI). FMWI increases economic opportunities for low-medium income families by educating women on how to start their own businesses. Our most recent success involves three FMWI participants graduating from a business start-up class done in conjunction with CommUniverCity and San Jose State University students. While we do not offer a small dollar loan product per se, our founding organization; Catholic Charities of SCC provides a range of services that help families avoid the payday loan debt trap.

We at Step Up hope to create a thriving community with better access to health care, quality education, sufficient food, decent and affordable housing, and reliable income, all of which can

only be possible in an economically healthy environment. Our organization finds payday lending to be a predatory practice that threatens the possibility of successfully building an economically-sound community. As a network, we have partnered with other non-profit agencies, parishes, and schools to spread awareness in the community about the dire consequences of payday lending through financial education workshops, bus campaigns, and educational materials. In that spirit, we reiterate our support for this policy and respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in August.

Thank you for your time and consideration,

Almaz Negash, Managing Director
Step Up Silicon Valley

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission

May 28, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I'm writing on behalf St. John Lutheran Church. Most of our members our Sunnyvale residents and we have served the Sunnyvale community for more than 50 years.

We are writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

We're concerned about the predatory practices of this industry, particularly as working people in our country and state continue to face huge hardships due to the irresponsibility of predatory lenders. We are especially concerned about the 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community. While not necessarily the case in Sunnyvale, we dislike that these businesses often target low and moderate-income workers and communities of color, and that they tend to cluster in certain neighborhoods. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would help address the latter issue, and would allow for communities to weigh in on any future proposals for new payday lenders.

While we do not offer direct financial assistance or loans, we are engaged in a number of activities that help families avoid the payday loan debt trap. We have long supported the efforts of Sunnyvale Community Services through the work of our volunteers. We organize and host the annual "Junque Sale" which has raised \$8 - \$12 Thousand dollars annually to support Sunnyvale Fish which provides food and clothing for those in need. We work with Faith in

Action Rotating Shelter to host up to fifteen homeless men for one month as they work to obtain good jobs and permanent shelter. We are a drop off location for the Second Harvest Senior Brown Bag program. We host the Sunnyvale singers for their regular rehearsals and their annual fund raiser on behalf of Sunnyvale Community Services.

As a Christian Congregation, we firmly believe that we are called by God to be concerned for the well being of all people and to work for and speak on behalf of those who do not have the basic resources of food and shelter. In that spirit, we reiterate our support for this policy and respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in August.

Thank you for your time and consideration,

Rev. Peggy White
St. John Lutheran Church

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



Amber El-Hajj <ael-hajj@sunnyvale.ca.gov>

(no subject)

don rode <doncatrode@yahoo.com>
 Reply-To: don rode <doncatrode@yahoo.com>
 To: "ael-hajj@sunnyvale.ca.gov" <ael-hajj@sunnyvale.ca.gov>

Sun, Jun 2, 2013 at 2:19 PM

June 3 2013

Sunnyvale City Council
 Honorable Mayor and Council Members
 Sunnyvale City Hall
 456 W. Olive Avenue
 Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

We are writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

We're concerned about the predatory practices of this industry, particularly as working people in our country and state continue to face huge hardships due to the irresponsibility of predatory lenders. We are especially concerned about the 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community. While not necessarily the case in Sunnyvale, we dislike that these businesses often target low and moderate-income workers and communities of color, and that they tend to cluster in certain neighborhoods. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would help address the latter issue, and would allow for communities to weigh in on any future proposals for new payday lenders.

We participate in food drives and service projects throughout the year to help our community. In that spirit, we reiterate our support for this policy and respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in

6/3/13

City of Sunnyvale Mail - (no subject)

ATTACHMENT I
Page 16 of 99

August.

Thank you for your time and consideration,

Don & Cathy Rode

Members, Church of Jesus Christ of Latter Day Saints

cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



CALIFORNIA REINVESTMENT COALITION

May 27, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I'm writing on behalf of the California Reinvestment Coalition (CRC). CRC advocates for the right of low-income communities and communities of color to have fair and equal access to banking and other financial services. We have a membership of 300 nonprofit organizations and public agencies across the state; we also co-convene the Coalition Against Payday Predators (CAPP) with a number of ally organizations across Santa Clara County. CRC has been a leading voice in the struggle against predatory payday lending in local jurisdictions and at the state Capitol. We were instrumental in working with concerned residents, community organizations, council members and city staff in San Francisco, Sacramento, San Jose and other California cities to enact land use restrictions on the payday loan industry.

We are writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. CRC stands with Sunnyvale Community Services and other local groups in urging the City to adopt an ordinance that would put a cap on the number of payday loan outlets in Sunnyvale, and set forth permitting and distance requirements for any new payday loan storefronts, should existing outlets close or change ownership. We believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to contain the growth of the payday loan industry, consistent with other cities in the region.

We believe there are a few key reasons for land use restrictions:

1. In a 2007 payday loan study by the state Department of Corporations, researchers found that 24% of borrowers found out about their payday lender because they "saw a payday location and went in." We know that payday loan consumers utilize this product because of the easy accessibility. When neighborhoods have an abundance of payday lenders and other high cost financial services, they will often use those services because it's "convenient," even if it's to their financial detriment. By restricting the proliferation of such asset-stripping entities, the City makes it more difficult for payday lenders to prey upon economically vulnerable consumers.

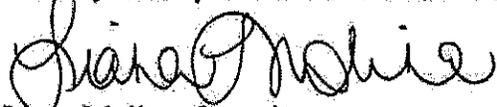
2. In a recent national study by Pew Charitable Trust, "Payday Lending in America," researchers found 73% of payday loan consumers exclusively use storefront payday lenders. This study also found that in states with laws that restrict storefront payday lending, 95 out of 100 would-be borrowers elect not to use payday loans at all, and just 5 borrow online or elsewhere. In California, the state legislature has failed to enact any real consumer protections and restrictions on high cost payday lending. This creates an imperative for cities to use all authority available to restrict this harmful financial practice and make it less convenient for consumers to access these loans and more difficult for lenders to inundate consumers with this product in their neighborhoods.
3. A 2009 study by the Center for Responsible Lending found that payday lenders are eight times as concentrated in neighborhoods with the largest shares of African Americans and Latinos as compared to white neighborhoods. Even after controlling for income and other important factors, payday lenders are 2.4 times more concentrated in African American and Latino communities. This data suggests that the industry targets ethnic minority communities. Cities must set restrictions to ensure that certain neighborhoods are not being disproportionately and unfairly burdened by this industry.

We will be present at the July 22nd planning commission meeting to provide further comment. Please allow the written record to reflect our recommendation that the Planning Commission consider limiting the total number of these businesses at their current number (7), and prohibiting any new fringe financial businesses from opening within a quarter mile (1,320 ft) of a "very low-income" census tract, and a quarter mile distance from the parcel line on which a payday loan business is located. The City of San Jose has set a precedent for this type of zoning ordinance, which we believe is a strong model for other jurisdictions in the county and across the state.

Unfortunately, the Planning Commission and City Council cannot take any action to address the usurious 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for borrowers. However, you can take steps to limit the easy accessibility of this product, especially to individuals who can least afford the loans. Given the payday loan industry's track record and business model, it makes sense for local policy makers to implement safeguards to prevent the over-proliferation of these businesses.

We respectfully reiterate our call on the City Council to support a permanent "cap" on the number of these businesses, and on the planning commission to recommend the Council's adoption of such policy. If you have any questions in advance of July 22nd, please don't hesitate to contact me.

Thank you for your time and consideration,



Liana Molina, Organizer
California Reinvestment Coalition

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Planning Commission, in c/o Trudi Ryan, Planning Officer, Planning Division

County of Santa Clara

Office of the District Attorney

County Government Center, West Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-7400
www.santacleara-da.org



Jeffrey F. Rosen
District Attorney

May 29, 2013

Via email to ael-hajj@sunnyvale.ca.gov

Amber El-Hajj
Sunnyvale Planning Commission
456 W. Olive Avenue
Sunnyvale, CA 94086

Re: Payday Loans

Dear Ms. El-Hajj and Planning Commissioners:

The Office of the District Attorney urges the City of Sunnyvale to adopt an ordinance that would put a cap on the number of payday lenders in the City of Sunnyvale, and set forth permitting and distance requirements for any new payday loan or check cashing storefronts. We believe it is in the interest of Sunnyvale communities for the Council to adopt reasonable policies to regulate the growth of the payday loan industry in the region.

Unregulated payday lending practices may be harmful to consumers for the following reasons:

- Triple digit interest rates (459%) result in a downward spiraling cycle of debt
- Clustered in lower-income and minority communities
- Lack of written notice being disseminated to borrowers to adequately inform them about terms, conditions, interest rates (the "actual" cost of a payday loan)
- Lack of written information in languages other than English
- Loans are not used as a one-time emergency loan as the industry portrays it. The average number of loans per borrower is ten per year.
- Certain payday lending institutions have been found to engage in unlawful business practices including:
 1. unlicensed activity
 2. collections of unauthorized fees
 3. schemes to collect on multiple unauthorized number of loans
 4. circumventing the \$300 cap on payday loans in violation of the California Deferred Deposit Transaction Law

Sunnyvale Planning Commission

Page 2

Our county's (including the City of Sunnyvale) consumers can benefit from exploring a range of well-regulated and reputable lending institutions when considering loans. Any step the Sunnyvale City Council takes to minimize harmful lending practices is a step in the right direction for the members of our community.

The Office of the District Attorney appreciates the opportunity to comment on this important issue. If you have any questions concerning this matter, please contact Supervising Deputy District Attorney Yen Dang of our Consumer Protection Unit at (408) 792-2818 or ydang@da.sccgov.org.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey F. Rosen".

JEFFREY F. ROSEN
District Attorney

June 1, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. I stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

I am concerned about the predatory practices of this industry, particularly as working people in our country and state continue to face huge hardships due to the irresponsibility of predatory lenders. **I am especially concerned about the 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, creating an asset-stripping effect that impacts both the individual and the entire community.**

These businesses typically target low and moderate-income workers and communities of color, and tend to cluster in certain neighborhoods. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would help address the latter issue, and would allow for communities to weigh in on any future proposals for new payday lenders.

Each year, several Sunnyvale churches do a major food drive in cooperation with Sunnyvale Community Services. I am aware that some of the recipients of this food may be the very people who need assistance because they have fallen victim to unscrupulous predatory loan businesses.

I believe that the faith community as a whole would advocate against predatory loan practices that result in loss of cars, possessions, housing, jobs, the ability to feed the family and, ultimately, poverty.

I support a reduction in the number of pay-day loan sites in Sunnyvale, or a ban on them altogether, and respectfully request that the Council approve a restrictive payday ordinance when it comes before you in August.

Thank you for your careful consideration of the information provided here.

Dixie Larsen
Member, Church of Jesus Christ of Latter-day Saints
Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



Silicon Valley
Independent Living Center

*A disability justice organization
that creates fully inclusive communities*

May 28, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

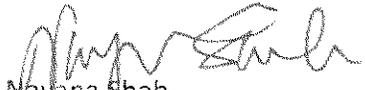
Dear Mayor Spitaleri and Members of the City Council:

I'm writing on behalf Silicon Valley Independent Living Center (SVILC) which has served the Sunnyvale community for 37 years. Our diverse programs and services address the comprehensive needs that individuals with disabilities have when attempting to gain or increase their independence. Many of those we serve, along with several of our staff members are Sunnyvale residents.

We are writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

We're concerned about the predatory practices of this industry, particularly as working people in our country and state continue to face huge hardships due to the irresponsibility of predatory lenders. We are especially concerned about the 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community. SVILC firmly believes that we should advocate for the rights of all people and respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in August.

Thank you for your time and consideration,


Nayana Shah
Chief Operating Officer

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



231 Sunset Avenue
Sunnyvale, CA 94086
408-736-4108

ATTACHMENT I
Page 22 of 59

June 5, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I am writing to the Sunnyvale City Council on behalf of Our Daily Bread (ODB). ODB is an outreach program located at St. Thomas Episcopal Church in Sunnyvale. We serve hot meals to people in need in our community every Monday, Wednesday, and Friday.

We are writing in regards to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the best interest of the citizens of Sunnyvale for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city.

We have concerns about the predatory practices of this industry and how it often targets low-medium income families. We are greatly concerned about the 459% APR interest rates on payday loans and the cycle of debt these loans can create for the already impoverished families in our community. Adopting a cap and developing a permitting process along with zoning restrictions for these businesses would help to minimize the negative practices and effects of payday lenders on our city.

While ODB does not offer loans or financial aid, our agency provides free meals to assist impoverished families in our community lower their food costs and avoid the payday loan debt trap. We serve over 300 diners per day including the aged, disabled, unemployed, working poor, and homeless. ODB has been serving meals since 1983. Unfortunately, due to ongoing difficult economic times, the number of diners and need for meals continues to grow. ODB is dedicated to serving all hungry men, women, and children who come to our program in hopes that the level of poverty in Sunnyvale will begin to decline. We ask the City to continue to support programs and policies that will help reduce poverty in our community. In that spirit, we respectfully ask the Council to consider and approve a restrictive pay day lending ordinance as soon as possible.

Thank you for your time and consideration,

Donna Beres
ODB Board Secretary

David Barnes
ODB Program Manager

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



Sunnyvale Community Services

725 Kifer Road, Sunnyvale, CA 94086 408.738.4321

Working to Prevent Homelessness and Hunger

June 12, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I am writing to the Sunnyvale City Council on behalf of the staff and board of Sunnyvale Community Services. Our mission is to prevent homelessness and hunger in our community. As the nonprofit "safety net" agency for the City of Sunnyvale, we work with dozens of organizations and faith communities to help low-income families and seniors to stay housed with utilities turned on and food on their table. Year-round, SCS assists 7,000 residents of Sunnyvale each year with food and/or financial assistance. We help 5% of the population of Sunnyvale, but we know that 25% are at risk of hunger. Sadly, 41% of our clients are children and 11% are seniors 65 or older.

Parents working minimum wage often have to work multiple jobs to pay rent, and seniors have to choose between medications and food. Low-income families are often one bill away from homelessness. When an unexpected financial emergency happens, or the rent increases, they may become victims of predatory payday loans. Unfortunately, many people come to Sunnyvale Community Services after they have already taken out five or six payday loans in one year. They get caught in what one client called the merry-go-round of debt, with APR interest rates up to 459% a year.

We are writing in regards to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission in the coming weeks. We stand with over a dozen organizations in Sunnyvale and the Coalition Against Payday Predators (CAPP) in urging the City Council to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the best interest of the citizens of Sunnyvale for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city.

In addition, we ask that the City Council pass a resolution advocating that the State of California enact regulations restricting the number of payday loans that can be issued to a borrower to 4 per year, and capping the APR interest rate to 36% per year. The most powerful impact to restrict predatory practices in this industry will need to be legislated at the State government level. The State legislators have failed to take any action on this issue, which is why a resolution from Sunnyvale City Council is needed to encourage our elected officials to finally regulate this industry.

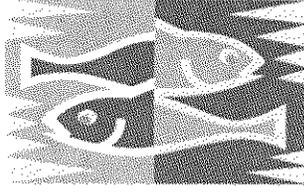
We have serious concerns about the predatory practices of this industry and how it often targets low-income families and seniors. We are greatly concerned about the extremely high interest rates on payday loans and the cycle of debt these loans can create for the already impoverished families in our community. Adopting a cap and developing a permitting process along with zoning restrictions for these businesses would help to minimize the negative practices and effects of payday lenders on our city.

We ask the City of Sunnyvale to support programs and policies that will help those in need and reduce poverty in our community. In that spirit, we respectfully ask the Council to consider and approve a restrictive payday lending ordinance as soon as possible, and to pass a resolution to the State of California advocating regulations on the industry.

Thank you for your time and consideration,



Marie Bernard
Executive Director



SUNNYVALE FISH

“Christians Who Care by Helping Others in Need”
(408) 245-9109

June 12, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

We are writing to the Sunnyvale City Council on behalf of Sunnyvale Fish (FISH) located at the Congregational Community Church in Sunnyvale. FISH is a nonprofit organization that provides clothing, bedding, and household items through our clothes closet to people in need in our community. We also work in partnership with Sunnyvale Community Services to provide emergency food assistance to low income and homeless families in Sunnyvale and the local community.

We are writing in regards to the “Payday Lending Study Issue” scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. We believe it is in the best interest of the citizens of Sunnyvale for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city.

We have concerns about the predatory practices of this industry and how it often targets low income families. We are greatly concerned about the 459% APR interest rates on payday loans and the cycle of debt these loans can create for the already impoverished families in our community. Adopting a cap and developing a permitting process along with zoning restrictions for these businesses would help to minimize the negative practices and effects of payday lenders on our city.

We ask the City to support programs and policies that will help those in need and reduce poverty in our community. In that spirit, we respectfully ask the Council to consider and approve a restrictive pay day lending ordinance as soon as possible.

Thank you for your time and consideration,

Renata Thorne
Sunnyvale FISH Board President

Donna Beres
Sunnyvale FISH Board Member

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission

June 7, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
456 W. Olive Avenue
Sunnyvale, CA 94088-3707

RECEIVED
JUN 18 2013
PLANNING DIVISION

Dear Mayor Spitaleri and Members of the City Council:

On behalf of Asian Americans for Community Involvement (AACI), I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, July 22nd. We stand with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in requesting an ordinance that would cap the number of payday loan outlets in Sunnyvale, and set forth permitting and distance requirements for any new payday loan storefronts. It is in the best interest of Sunnyvale residents for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry.

We're concerned about the predatory practices of this industry, particularly as working people continue to face hardships due to irresponsibility of predatory lenders. We are particularly concerned about the 459% APR interest rates on payday loans and the cycle of debt these loans create for consumers.

AACI has been providing an array of health and social services for low-income families in Santa Clara County for 40 years. We seek to empower individuals and provide services that help families avoid the payday loan debt trap.

Thank you for your consideration.

Sincerely,



Michele Lew
President and CEO

Cc: Amber El-Hajj, Senior Planner, Department of Community Development
Sunnyvale Planning Commission



August 5, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, California 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

On behalf of United Way Silicon Valley, I am writing in support of an ordinance that would place a cap on the number of payday loan outlets in Sunnyvale and establish permitting and distance requirements for new payday loan storefronts.

United Way Silicon Valley is focused on helping families with children become economically secure, able to support their children's educational success, physically and emotionally healthy, and connected to their community. We believe everyone deserves the opportunity to build a good life: enough income to support a family through retirement, a quality education that leads to a stable job, and the chance to stay healthy.

Storefront payday lenders offer small loans with interest rates upward of 460 percent. Storefront payday lending outlets are overwhelmingly concentrated in low-income areas. Individuals who borrow from payday lenders can least afford payday loan fees-- In 2007, approximately 60 percent of payday borrowers in California earned less than \$50,000 a year and were more likely to be people of color, single women, young, and non-homeowners. The typical California payday borrower takes out 10 loans a year, ultimately paying \$450 for a \$300 loan.

An ordinance to cap the number of payday lending outlets in the city and to establish permitting and distance requirements for new payday loan storefronts is just one tool in a larger tool box to help people achieve financial stability. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would limit the number of these irresponsible businesses, ensure that the community has a say about the placement of any future payday lenders, and protect vulnerable communities against these predatory lenders.

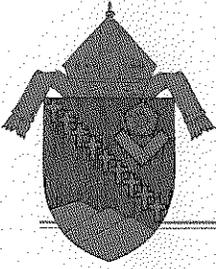
We are proud to partner with a host of organizations throughout Sunnyvale and Santa Clara County working in concert with one another to help families achieve self sufficiency. United Way Silicon Valley provides financial education classes, helps people open bank accounts and raise their credit score. Together, these efforts help families get closer to financial stability and into the financial mainstream. Entering the financial mainstream enables individuals and families to begin saving, build a credit history and gain access to lower-cost credit sources. It also, decreases the chances of them having to turn to payday lenders for a loan, and ultimately makes it more possible for them to invest in their future.

We hope that you will join us in protecting working families against the destructive cycle of payday lending. I urge you to support an ordinance to cap the number of payday lending outlets in the city and to establish permitting and distance requirements for new payday loan storefronts.

Sincerely,

A handwritten signature in cursive script that reads "Carole Leigh Hutton".

Carole Leigh Hutton
President & CEO



AUG 06 2013

Diocese of San Jose

PLANNING DIVISION

Office for Parish Services

August 1, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, August 26th and by the Council on Tuesday, September 24th. We are standing with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance putting a cap on the number of payday lenders in the city and setting forth permitting and distance requirements for any new payday loan storefronts.

Having heard about the activities of these lenders, we are concerned about the predatory practices of this industry, particularly as they affect working people who face hardships due to the irresponsibility of these lenders, including the 459% APR and cycle of debt encouraged by these lenders. Through these short term loans at exorbitant rates often targeted to low and middle-income communities, families and individuals become trapped in a cycle of debt from which they cannot escape.

The Catholic Diocese of San Jose represents fifty-four parishes and missions in Santa Clara County. Three of these parishes are located within the City of Sunnyvale. The Catholic Church has a long tradition of standing with the poor and marginalized. As the US Bishops stated:

All economic life should be shaped by moral principles. Economic choices and institutions must be judged by how they protect or undermine the life and dignity of the human person, support the family and serve the common good. -A Catholic Framework for Economic Life, 1996

In this spirit, we stand with the working families and those on the margins who are victimized by predatory lenders and respectfully encourage the Council to approve a restrictive payday ordinance when it comes before you.

Sincerely,

Linda L. Batton
Director of Social Ministries

Cc: Amber El-Hajj, Senior Planner, Department of Community Development, Sunnyvale Planning Commission



Amber Hajj <ahajj@sunnyvale.ca.gov>

Letter re Payday Lending Study Issue

don v <thedenzels@gmail.com>

Tue, Aug 20, 2013 at 10:58 AM

To: ael-hajj@sunnyvale.ca.gov

Sunnyvale City Council

Honorable Mayor and Council Members

Sunnyvale City Hall

456 W. Olive Avenue
Sunnyvale, California 94088-3707

Dear Mayor Spitaleri and Members of the City Council:
I'm writing as a resident of Sunnyvale; I live at 955 Iris Avenue .

I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission in August and the City Council in September. Along with Sunnyvale Community Services, the Coalition Against Payday Predators (CAPP), and numerous local churches and community organizations, I support capping the number of payday loan outlets in the City, and setting forth permitting and distance requirements for any new payday loan storefronts.

I'm concerned about the unfair and predatory practices of this industry, especially the shocking 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community.

I respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in September.

Sincerely,

Donald P Veith Jr.

ATTACHMENT I
Page 29 of 59

August 19, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, California 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I'm writing as a resident of Sunnyvale; I live at 627 E. El Camino Real, Unit 101, Sunnyvale, CA 94087-2978.

I am writing in regard to the "Payday Lending Study Issue," which I understand is scheduled to be heard by the Planning Commission in August and the City Council in September. I agree with Sunnyvale Community Services, the Coalition Against Payday Predators (CAPP), and numerous other local churches and community-based organizations serving Sunnyvale in supporting an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. I believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

I'm concerned about the unfair and predatory practices of this industry, especially the shocking 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would limit the number of these irresponsible businesses, ensure that the community has a say about the placement of any future payday lenders, and protect vulnerable communities against over concentration.

I respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in September.

Sincerely,

Dolores S. Medeiros

August 1, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 West Olive Avenue
Sunnyvale, CA 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, August 26th and by the Council on Tuesday, September 24th. We are standing with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance putting a cap on the number of payday lenders in the city and setting forth permitting and distance requirements for any new payday loan storefronts.

Having heard about the activities of these lenders, we are concerned about the predatory practices of this industry, particularly as they affect working people who face hardships due to the irresponsibility of these lenders, including the 459% APR and cycle of debt encouraged by these lenders. Through these short term loans at exorbitant rates often targeted to low and middle-income communities, families and individuals become trapped in a cycle of debt from which they cannot escape.

The Catholic Diocese of San Jose represents fifty-four parishes and missions in Santa Clara County. Three of these parishes are located within the City of Sunnyvale. The Catholic Church has a long tradition of standing with the poor and marginalized. As the US Bishops stated:

All economic life should be shaped by moral principles. Economic choices and institutions must be judged by how they protect or undermine the life and dignity of the human person, support the family and serve the common good. -A Catholic Framework for Economic Life, 1996

In this spirit, we stand with the working families and those on the margins who are victimized by predatory lenders and respectfully encourage the Council to approve a restrictive payday ordinance when it comes before you.

Sincerely,

Linda L. Batton
Director of Social Ministries

Cc: Amber El-Hajj, Senior Planner, Department of Community Development, Sunnyvale Planning Commission

ATTACHMENT I
Page 33 of 59

 182K

 **UCD Stango Fall 2012.pdf**
779K

 **Payday Lending Best Practices Help Prevent so-called Cylce of Debt.pdf**
28K

 **Fact vs Fiction_Payday advance.pdf**
34K

 **Payday Lenders Provide Desired Service to Lower and Moderate Income, Middle-Educated, Young American Families.pdf**
81K

 **Why Payday Advance is Not Predatory Lending.pdf**
68K

 **Payday Loans.pdf**
151K

**ATM, DEBIT
+ PREPAID**

OCTOBER 20-23, 2013 | FORUM

BELLADINO, LAS VEGAS, NV | 21ST ANNUALPresented by: **AMERICAN BANKER**
PaymentsSource

AMERICAN BANKER.

Why Payday Loans are Good for Millions of People

William Isaac

AUG 13, 2013 10:00am ET

The Justice Department and state regulators are targeting banks that service a broad range of what they consider questionable financial ventures, including some online payday lenders. I applaud the government's efforts to weed out bad actors that engage in fraudulent transactions or violate federal laws. But I'm deeply concerned about the unintended consequences this could have on much needed financial services for underbanked people who rely on legitimate short-term lenders, commonly referred to as payday lenders.

Payday lending is pretty simple. An individual has an urgent short-term need for cash and goes to a payday lender. A person with a job, a checking account and proper identification can borrow anywhere from \$100 to \$500 until his or her next payday. Such borrowers write post-dated checks or provide written authorizations to the payday lender for the amount of the loan plus a fee, which is typically 15%. On the next payday the loan is either repaid in person by the borrower or the lender cashes the check or initiates an electronic funds transfer. That's it.

The typical first-time payday transaction is completed within 15 minutes. Very few banks are willing to make these loans – the transaction costs are simply too high.

Millions of middle-income Americans live paycheck to paycheck. They do their best to manage their finances so that all their obligations are met. But when something unexpected crops up, such as a blown transmission, an unexpected doctor's bill or a badly needed roof repair, their financial schedules are thrown off and the need for short-term credit may arise.

Some turn to relatives or friends for help in a crunch. But many may face the Hobson's choice of deciding between having their electricity turned off, their car repossessed, their job lost, their rent

or mortgage unpaid or their check bounced. Payday

lenders offer a better way out.

Critics of payday lending cite the high interest rates they charge. A \$15 fee on a \$100 advance for two weeks amounts to a 391% annual percentage rate, or APR. That's high when expressed as an annual rate, but keep in mind that the typical term of these loans is a couple of weeks. It's also notable that the annualized interest rate on the average payday loans is much lower than it would be for the fee on a bounced check or a late mortgage or credit card payment.

The \$15 cost of a \$100 payday loan also pales in comparison with the lost income when a car is out of commission and a job lost. Good payday lenders clearly disclose their loan terms and conditions, including the dollar amount of any fees and the APR. Moreover, payday lenders are regulated and supervised by state agencies and also the new federal Consumer Financial Protection Bureau. My firm has worked with payday lenders to get them into compliance with regulations applicable to banks.

Some online lenders avoid regulation by setting up operations offshore or on an Indian reservation outside the reach of regulators. I applaud the regulators for attempting to shut down such operations by denying them access to the banking system.

But I also caution about the potentially unintended consequences of driving all payday lenders away from banks. This is the last thing we need at a time when the economy is languishing, in significant part because only the most creditworthy can qualify for a bank loan.

At this point, banks would be well advised to conduct proper due diligence on their payday lending customers to determine whether they are following state and federal laws, have established written regulatory compliance and anti-money laundering programs, follow trade association best practices and obtain from valid customer authorizations for automatic funds transfers. If a payday lender cannot answer these questions affirmatively, the bank is likely working with the wrong customer.

Some argue that payday loan portfolios have enormous losses imbedded in them because the

SAS | THE POWER TO KNOW.

ANALYTICS

Basel III is changing how banks manage capital.

BASEL

Find out how.
CLICK FOR WHITE PAPER

SAS | THE POWER TO KNOW.

loans are never really repaid – just rolled over and over again. But most states limit the number of rollovers, and most payday lenders impose similar limits, even in the absence of state laws.

The risks of payday lending are ameliorated due to the enormous diversification in the portfolios, and risks are priced into the fees. It's feasible for a reputable and efficient payday lender to maintain high loan loss reserves and substantial capital against payday loans and still achieve decent returns.

The regulators would do well to examine the welfare of borrowers in a variety of regulatory settings before they act in a way that might endanger the very people they are trying to protect – the underbanked. The truth is that millions of customers have a very favorable experience with the short-term lending product, and we should be careful not to disrupt this important lifeline.

William Isaac, a former chairman of the Federal Deposit Insurance Corp., is the global head of financial institutions for FTI Consulting, which has worked for payday lenders, and the chairman of Fifth Third Bancorp. The views expressed are his own.



© 2013 SourceMedia. All rights reserved.

Are Payday Lending Markets Competitive?

Despite their claims, credit unions seem unable to offer competitive payday loans.

BY VICTOR STANGO

The rapid and widespread growth of the payday loan market has sparked considerable controversy, in part regarding the “high” prices charged on payday loans. Are such accusations warranted? Payday lenders argue that their loans do not yield excess profits once one accounts for the full economic costs of the business. Banks and credit unions, however, argue that prevailing fees more than cover costs; credit unions in particular argue that they can effectively serve the same borrowers at lower prices.

This article presents several new pieces of evidence addressing the question. Can credit unions provide functionally identical payday loans at a lower price, or offer a different product with a price/characteristic mix that payday borrowers prefer? Considering both prices and non-price characteristics is critical, because even lower-priced credit union payday loans cannot compete with standard payday loans if they have qualitative characteristics that potential borrowers find extremely unattractive, or if they screen potential borrowers out of the market through tighter credit approval requirements.

The most direct evidence is the most telling in this case: very few credit unions currently offer payday loans. Fewer than 6 percent of credit unions offered payday loans as of 2009, and credit unions probably comprise less than 2 percent of the national payday loan market. This “market test” shows that credit unions find entering the payday loan market unattractive. With few regulatory obstacles to offering payday loans, it seems that credit unions cannot com-

VICTOR STANGO is an associate professor in the Graduate School of Management at the University of California, Davis and an associate editor of the *International Journal of Industrial Organization*.



pete with a substantively similar product at lower prices.

Those few credit unions that do offer a payday advance product often have total fee and interest charges that are quite close to (or even higher than) standard payday loan fees. Credit union payday loans also have tighter credit requirements, which generate much lower default rates by rationing riskier borrowers out of the market. The upshot is that risk-adjusted prices on credit union payday loans might be no lower than those on standard payday loans.

A final point—one that is too often ignored in policy discussions—is that borrowers find the non-price characteristics of standard payday loans superior to the non-price features of credit union payday loans. Credit unions have locations and business hours that consumers find less convenient than those of commercial payday lenders. Application times are longer at credit unions. And default on a credit union payday loan may harm one's credit score, while default on a standard payday loan does not harm one's credit score. Current payday loan customers view these restrictions negatively, expressing a preference for a less restrictive but higher-priced payday loan over a more restrictive and lower-priced payday loan. Borrowers also dislike the lack of privacy conferred because credit union payday loans do not "keep my payday borrowing separate from my other banking."

In short, the claim that other financial institutions can serve the market at lower prices does not seem justified. At lower rates

and fees, credit unions are either deterred outright from offering payday loans or are only willing to offer a type of loan that potential borrowers find unappealing.

Payday Lending: A Primer

A payday loan is a short-term advance against a future paycheck. A payday lender generally advances a customer \$100–\$500 per loan. In return, the borrower leaves a postdated check with the lender for the loan principal plus fees, and the lender deposits the check after two weeks. The loan fee, which one can view as an interest charge, is typically about \$15 per \$100 advanced.

Payday advances are uncollateralized, like credit cards and unlike home and auto loans. Approval requirements are minimal; a recent bank account statement, a pay stub, and photo identification are often enough for approval. In most cases, the only cause for denial is recent default on a payday loan. Because payday lenders generally track prior payday advance defaults using databases independent from the major credit bureaus, approval decisions and prior defaults do not affect borrowers' credit reports. For borrowers, the looser credit standards are attractive. The downside for lenders is more frequent default because the loans are uncollateralized and payday lenders lend money to riskier borrowers.

Payday lenders compete on location and convenience as well as price. The scale of a payday outlet can be quite small and startup costs are minimal compared to those of a bank. Payday lenders quickly saturate attractive markets. They can locate nearly anywhere and have longer business hours than banks. Borrowers seem to have little trouble understanding payday lenders' prices because the price structure is much simpler than that for most other loans.

Demand for payday lending is substantial and has become widespread in the United States during the last 20 years. There are currently more than 24,000 physical payday outlets; by comparison there are roughly 16,000 banks and credit unions in total (with roughly 90,000 branches). Many more lenders offer payday loans online. Estimates of market penetration vary, but industry reports suggest that 5–10 percent of the adult population in the United States has used a payday loan at least once.

Nor does borrowing appear confined to those who are "credit constrained." Recent research suggests that many payday borrowers take out loans even when they have lower-priced options such as credit cards. Payday borrowers are also aware that payday loan fees may be lower than those from overdrawing on a checking account or going over a credit card limit.

ILLUSTRATION BY MORGAN BALLARD



Are Payday Loans Usurious?

If one treats the standard \$15 per \$100 loan fee as an interest charge, the annual percentage rate (APR) on a typical payday loan is 391 percent. It is the APR that critics generally label as “too high,” both because it exceeds the levels on most other consumer loans and because it exceeds the usury ceiling in most states. Critics argue that high prices justify legislation capping payday loan APRs at lower levels; such legislation has passed in some states.

“Too high” can only be measured relative to a benchmark, of course, and for most economists and policymakers the right benchmark is “breaking even,” or earning zero profit in economic terms. That benchmark also helps to frame the debate as articulated by banks and credit unions. To argue that APRs charged by payday lenders are too high is to argue either that payday lenders are charging prices that are above their own break-even levels or that credit unions could break even at significantly lower rates and fees.

The existing academic research identifies some key issues in the analysis of whether payday lenders charge break-even prices. Like all lenders, a payday lender must cover the full set of costs (explicit and implicit) associated with its loans. But for payday lenders the makeup of those costs is quite different from that for costs on auto or credit card loans. For a payday lender, fixed costs—rent, utilities, and the portion of labor costs that is independent of loan volume—are substantial compared to revenue. For larger loans, fixed costs are covered by much greater revenue (loan revenue per mortgage far exceeds loan revenue per payday loan, for example).

Payday loan costs also include per-loan processing costs: labor and any costs associated with credit scoring. Again, on a payday loan, these costs are more substantial in relative terms than for home and auto loans because payday loan dollar amounts are so small.

Another difference between payday loans and other loans is that payday loans have higher default rates. Because payday loans are uncollateralized, it is almost impossible to recover the loan principal on a bad loan. This can dramatically increase break-even loan fees. Suppose a payday lender faces fixed and marginal costs of \$25 per loan, a figure supported by Mark Flannery and Katherine Samolyk’s 2005 study of payday lenders’ cost structure. With no risk of default, the break-even per-loan charge is \$25. But if 5 percent of customers default and the average loan is \$300, the break-even per-loan charge rises to \$40.

It is worth noting that in contrast to large-principal loans (such as mortgages) on which the cost of funds comprises nearly all of the per-loan costs, payday loans have a small cost of funds relative to other costs. So, using the APR as a measure of the “markup” on a payday loan is misguided; the APR is really only

a good metric of the loan markup when financing costs are the most important component of costs to the lender.

Beyond the evidence directly comparing payday lenders’ costs, a smaller body of work reviewed by Jonathan Zinman shows that the imposition of rate and fee caps forces payday lenders out of business. That is what one would expect if the caps lie below break-even price levels for payday lenders. Nor do payday lenders appear to earn “excess returns” in the stock market, according to a 2009 paper by Paige Skiba and Jeremy Tobacman.

The evidence of break-even pricing is also consistent with industry structure in general, which makes persistent economic profit-

An important difference between payday loans and other loans is that payday loans have higher default rates. Because payday loans are uncollateralized, it is almost impossible to recover the loan principal on a bad loan. This can dramatically increase break-even loan fees.

ability unlikely. Payday lending has many characteristics associated with perfectly competitive markets, including small scale and free entry. Nonetheless, many remain skeptical of such an argument.

How Many Credit Unions Offer Payday Loan Products?

For a brief period in 2009, the National Credit Union Administration (NCUA) required credit unions to report whether they offered payday loans. Those data are publicly available and cover the entire population of federally insured credit unions in the United States at the time. The data describe, for each credit union, whether it offers payday loans as well as other detailed information about its location, size, and characteristics.

The data show that as of March 2009, of the 7,749 credit unions covered in the data, roughly 6 percent (479) offered payday loans; by June, slightly more (503) credit unions reported offering payday loans. Unfortunately, these data do not include payday loan volume at these lenders.

A back-of-the-envelope calculation is instructive, however. If each of those 479 credit unions matches the loan volume of the typical payday lender, then credit unions represent roughly 2 percent of the national payday lending market. The figure will be smaller if one includes online payday lending. It will also be smaller in states that allow payday lending, because payday lenders are concentrated there.

While the situation may change over time, the available NCUA evidence suggests two things about entry by credit unions into the payday lending market. First, relatively few credit unions find it worthwhile to enter the market. Second, entry by credit unions to date is small compared to the size of the market now served by payday lenders.

Why don't more credit unions offer payday loans? | The fact that so few credit unions offer a payday advance product raises a simple question: What is the practical obstacle to offering payday advances at lower prices? To answer that question, a survey was conducted in May 2009 to ask credit union representatives about the downsides of offering payday loans. The surveyor (a graduate student research assistant) contacted 46 credit unions via phone calls, starting from a list of 250 credit unions randomly selected from the NCUA data file of 7,749. All respondents were credit union employees, and many were loan officers or branch managers.

Very few credit unions were responsive, but among those who did supply answers the most common reason for not wanting to offer a payday loan product was that such loans are "too risky." Some of the respondents reported that assessment came as a result of direct experience, e.g., "We used to offer payday loans but stopped because delinquencies were too high." The remaining respondents split their reasons between "insufficient demand" and "interest rates are too high." The latter response is, in essence, a risk-based explanation; the rates required to break even were either unattractive to customers or above a rate that the credit union was willing to set.

While the sample here is small and it is probably best to treat the responses as anecdotal, they are consistent with a view that most credit unions do not offer payday loans because, at below-market fees and rates, it is too difficult to offset default risk. In some sense, this evidence provides a market test of whether credit unions can be competitive providers of short-term credit, and right now that test suggests a negative answer. Another possibility is that credit unions (and commercial banks) stay out of payday lending because they earn greater marginal returns on checking overdrafts. Overdraft revenue is now the single greatest component of non-interest income for banks.

What Are the Terms of the Credit Union Payday Product?

Beyond the evidence regarding entry, we can also learn about the competitiveness of the market by examining prices at those credit unions that do offer payday loans. Do those credit unions substantially undercut prevailing payday loan rates? If so, we have evidence that prevailing payday loan rates might in fact be "too high."

Data are limited, but via online sources (Google searches), the phone survey mentioned in the previous section, and a credit union industry report published by the National Credit Union Foundation, we can learn terms at roughly half

of the credit unions that offered payday loans as of 2009–2010.

Two pieces of background information are necessary. First, federal credit unions face a regulatory prohibition against charging more than an 18 percent APR, which equals \$1.50 per \$100 of loan principal per month. Most credit unions comply with that requirement. Some state credit unions charge APRs of up to 36 percent. To offset lower loan APRs, credit unions do two things: they impose per-loan processing fees or annual loan program fees, and/or they impose restrictions on loan terms and access. The former raise prices, while the latter are intended to reduce default risk.

Second, many credit unions offer payday loans through alliances offering a standardized product and pooling default risk. The two largest alliances are Better Choice and StretchPay, located in Pennsylvania and Ohio. Better Choice has roughly 80 credit union members, while StretchPay has over 100, meaning that together these two alliances make up roughly 40 percent of the national total of credit unions that offer payday loans. So, the terms set by those alliances are very informative because they have been adopted by many credit unions. One other point worth noting is that the Better Choice program receives subsidies from the Pennsylvania state treasury. Its prices are therefore subsidized rather than market prices.

Both Better Choice and StretchPay charge an APR of 18 percent. Both also charge fees: StretchPay charges an annual fee of \$35 for loan amounts of \$250 and \$70 for loan amounts of \$500, while Better Choice charges a per-loan application fee of \$25 for loan amounts up to \$500. Better Choice has a 90-day repayment period, while StretchPay has a 30-day repayment period.

Table 1 shows terms of Better Choice and StretchPay loans, and shows terms at some other credit unions. Terms of other credit unions' payday loans vary somewhat, but are generally similar in structure: nearly all combine an 18 percent APR with fees. Some credit union payday loans forgo charging an APR altogether and simply charge per-\$100 fees. One of the more well known of such programs is the GoodMoney program, which has a fee of \$9.90 per \$100 borrowed and a two-week loan term.

TABLE 1
Terms of Credit Union Payday Loan Alternatives

	Fee	APR	Maximum Term	"Savings" held back	Other restrictions
Better Choice	\$35–\$70 per year	18%	90 days	5%	A, E
StretchPay	\$25 per loan	18%	30 days	10%	A, B, C
ADVANCPay	\$60–\$70 per loan	none	2 weeks	none	D
GoodMoney	\$9.90 per \$100	none	2 weeks	none	B
Rivermark	\$15 per loan	25%	30 days	none	A, B
Veridian	\$20 per loan	21%	180 days	50%	C, D
1st Financial FCU	\$50 per loan	10%	30 days	none	A, B, C
Four Corners	\$20	18%	120 days	none	B, D

Sources: <http://www.ohiocreditunions.org/StretchPay/CUInfo.htm>, <http://www.pacreditunions.com/betterchoice.html>, http://www.realsolutions.coop/assets/2009/3/24/REAL_Solutions_Payday_Loan_Toolkit_v032309.pdf.

Notes: Other restrictions include: (A) membership length requirement, (B) minimum income/employment tenure requirement, (C) internal credit check, (D) direct deposit, and (E) external credit check. An "E" indicates use of an external credit check different from that used by payday lenders (e.g., GoodMoney uses Teletrack, so it does not receive an "E").

On the high end is the ADVANCPay program operated by One Nevada Credit Union (formerly Nevada Federal Credit Union), which charges a flat fee of \$70 per loan, with loan amounts up to \$700. Because these data are not comprehensive, it is possible that other credit unions charge rates and fees that are either higher or lower than those in the sample shown here. But the data are representative of the range and variety of rates and fees nationally.

Comparing these terms to those of the standard payday loan is not straightforward. Total charges for a credit union payday loan will vary based on how quickly the loan is repaid. When a credit union imposes an annual fee rather than a per-loan fee, average charges per loan will fall as the number of loans taken rises. Finally, some credit unions require a “savings deposit” from the loan principal. StretchPay requires a 10 percent deposit, while Better Choice requires 5 percent. Lenders only grant borrowers access to those deposits after loan repayment, effectively reducing the loan amount by either 5 percent or 10 percent; for example, a \$500 StretchPay loan actually leaves the borrower with \$450 in short-term cash. The proximate effect of such savings deposits is to increase effective interest rates on credit union payday loans. For example, Veridian Credit Union holds back a full 50 percent of the loan amount, but charges interest on the entire amount; that effectively doubles the APR paid by the borrower.

In order to compare loan terms in light of these details, Table 2 chooses representative loan amounts and repayment periods,

Credit union payday loans are generally less costly than standard payday loans, but often not by much—and sometimes they are more costly. Borrowers needing a small sum for a short period of time may find the standard payday loan to be quite competitive in terms of total borrowing cost.

calculating the total cost of borrowing across different products. The table shows total borrowing costs for a small (\$180) and large (\$450) loan with two terms: two weeks and one month. For those loans with two-week terms, the latter scenario represents one “rollover” of each loan.

The table reveals that the standard payday loan compares favorably to some programs and unfavorably to others. There are no columns in which the standard payday loan is more costly in total than any credit union alternative. That stems in large part from the very high fee on the ADVANCPay loan. But for loans with smaller amounts and shorter terms, the standard payday loan beats most of the programs in terms of total borrowing cost. In particular, for the \$180 loan over a two-week horizon, the standard payday loan beats three of the other programs, essentially matches one other, and is more costly than two others. Note, however, that StretchPay is by far the most common benchmark for other credit unions, and for that term the standard payday loan costs almost exactly as much as a StretchPay loan.

The patterns in Table 2 suggest one general conclusion and some specific conclusions. The general conclusion is that credit union payday loans are generally less costly than standard payday loans, but often not by much—and that sometimes they are more costly. The specific conclusions pertain to how different types of borrowers would view the alternatives. All else equal, a borrower needing a small sum for a short period of time may find the standard payday loan to be quite competitive in terms of total borrowing costs. Borrowers who need money for longer periods of time, and who would therefore roll over a series of loans, should find credit union payday loans with longer terms attractive. Among those loans, ones with annual fees rather than per-loan fees should be the best choice. Loans with annual fees rather than per-loan fees appear to be rare, however. Borrowers wishing to borrow significant sums should find attractive the credit union payday loans with per-loan fees that do not increase at higher loan amounts.

Both the tilt toward longer terms and the tilt toward higher loan amounts suggest that credit union payday loans should appeal more strongly to those borrowers in greater financial distress, who would both borrow more and roll over their loans. Borrowers in better financial shape may not be so strongly drawn to the credit union product. That raises a question: Is it reasonable to expect credit unions to compete for the more-stressed borrowers currently served by payday lenders? One might expect that credit unions inherently would attract

borrowers who are more financially stable than average. Credit unions generally have lower loan default rates than commercial banks, suggesting that their customer base is less risky. Such a mismatch between products and borrowers might make it harder for credit unions to make inroads in this market. That mismatch

is, of course, a function of the interest rate caps faced by credit unions because credit unions must recoup the forgone interest revenue via application fees or annual fees. If consumers find the fee structure permitted by the NCUA unattractive or complex, then it would be fair to view the NCUA interest rate ceiling as an entry deterrent for credit unions.

It is possible that credit unions might eventually construct even more innovative business models that do compete effectively. North Carolina State Employees' Credit Union (NCSECU), for example, has a salary advance program with no fees, a one-month term, and a 12 percent APR. NCSECU retains 5 percent of each loan in a savings account that grows with each loan, and access to the funds is restricted; withdrawing funds bars the customer from obtaining another advance in the subsequent six months. Both the cumulative “savings” and restricted access effectively secure the loan for high-volume borrowers. For example, a customer who has borrowed for six consecutive months stands to lose 30 percent of the loan principal from defaulting, and

a customer who has borrowed for 12 consecutive months stands to lose 60 percent; in neither instance is the customer permitted to withdraw funds from “savings” without forgoing the opportunity to get another salary advance for six months. There is little doubt that NCSECU’s program has been successful, although its competitiveness against a standard payday loan cannot be measured because North Carolina currently prohibits payday lending.

As a final observation, the relatively high level of payday loan rates and fees charged by credit unions has proven somewhat controversial. In July 2009, the National Consumer Law Center issued a sharp critique of some credit unions for offering “false payday loan ‘alternatives’” that cost nearly as much as standard payday loans. The letter notes that some credit unions, “which by law have an 18 percent usury cap, add fees to manipulate the APRs.” In some of their examples, the effective APR on a credit union’s payday loan exceeds 400 percent (that is merely a restatement of the results in Table 2, although I prefer to compare borrowing costs rather than APRs). In the same month, the NCUA issued detailed guidelines for credit unions considering offering payday loans, with the intent of alerting credit unions to the “risks, compliance issues, and responsibilities associated with operating a payday lending program.”

The discussion highlights the difficulty that credit unions face in developing a payday loan product that breaks even at prices below those charged on a standard payday loan. It also suggests that political economy may provide a partial explanation for credit unions’ unwillingness to enter the market: if supervisory/regulatory authorities and consumer groups frown on payday lending, credit unions might fear that entering the market might simply spur tighter regulation or a loss of reputational capital.

Qualitative Differences between Payday Lenders and Credit Unions

Apart from the terms of loans, there are substantive differences between payday advance products offered by payday lenders and credit unions. Some differences are restrictions imposed by credit unions on approval and repayment. Credit unions generally impose stricter standards for loan approval. Most credit unions require that the borrower be a member of the credit union for 60–90 days before taking a payday loan. Most credit unions deny applications from customers with late payments on other loans or who have filed for bankruptcy. Some use credit bureau information to screen out bad risks. Some require that borrowers have direct deposit of their paycheck. Many only lend to borrowers above a minimum income threshold.

These restrictions have a natural economic connection to prices. It is well known that in credit markets, firms that set lower prices (typically interest rates) compensate by rationing credit—shutting riskier borrowers out of the market. By restricting access

TABLE 2

A Comparison of Borrowing Costs on Standard Payday Loans and Credit Union Alternatives

	\$180 LOAN		\$450 LOAN	
	Two weeks	One month	Two weeks	One month
Standard payday loan	\$ 27.00	\$ 54.00	\$ 67.50	\$ 135.00
Better Choice	\$ 36.41	\$ 37.84	\$ 73.54	\$ 77.09
StretchPay	\$ 26.50	\$ 28.00	\$ 27.50	\$ 30.00
ADVANCPay	\$ 70.00	\$ 140.00	\$ 70.00	\$ 140.00
GoodMoney	\$ 17.82	\$ 35.64	\$ 44.55	\$ 89.10
Rivermark	\$ 16.87	\$ 18.75	\$ 19.69	\$ 24.38
Veridian	\$ 23.15	\$ 26.30	\$ 27.88	\$ 35.75
Four Corners	\$ 21.35	\$ 22.70	\$ 23.88	\$ 26.75

Notes: Total costs include any annual or application fee and interest charges, from Table 1. Calculations assume a loan amount of \$450 for all loans except StretchPay, Better Choice, and Veridian—the programs with forced saving deducted from cash proceeds. StretchPay loans are for \$200/\$500 before the 10% savings deposit, leaving the borrower with \$180/\$450 in short-term credit. Better Choice loans are for \$189/\$472.50 before the 5% deposit, leaving the borrower with \$180/\$450 in short-term credit. Veridian loans are for \$360/\$900 before the 50% savings deposit. ADVANCPay uses the nondirect deposit rate to provide comparability to the standard payday loan.

only to long-term customers with no other delinquent accounts, the credit union uses different, and arguably better, information about creditworthiness than a commercial payday lender would have about a walk-in borrower. Using credit bureau information represents a greater investment in learning about risk compared to that made by a standard payday lender. The membership restriction, minimum income requirement, and direct deposit requirement change the set of customers who are eligible for loans, generally screening out the more distressed borrowers and keeping the less distressed borrowers.

These differences should produce lower default rates on credit union payday loans. Prospera Credit Union uses the GoodMoney program (which is quite similar to a standard payday loan), has no direct deposit or membership requirements, and only slightly more stringent approval standards; its loan loss rate is 4.6 percent. Wright-Patt requires 60-day minimum membership and a minimum monthly income of \$1,300, but does not require direct deposit; its loan loss rate is 1.7 percent. Veridian Credit Union uses the same credit scoring database used by standard payday lenders, but requires direct deposit; its loss rate is 1.8 percent. Four Corners Credit Union requires direct deposit; its loss rate is 0.3 percent. By comparison, the net loss rate for payday lenders is around 4 percent.

Lower default on credit union payday loans means that a simple comparison of terms or borrowing costs cannot answer the “Are standard payday rates too high?” question. Standard payday loan rates are set to cover default risk on standard payday loans. Credit union payday loan rates must also cover default risk, but that risk is lower. Consequently, default-adjusted rates and fees at credit unions may be quite comparable to (or even more expensive than) those on standard payday loans.

Credit loans and payday lenders differ in other ways that seem subtler but may matter just as much to consumers. One difference is in application and approval times, which are generally

shorter at payday lenders. Store hours at credit unions are limited relative to those at payday lenders, and are sometimes shorter than normal banking hours.

Consumer Preferences for Payday vs. Credit Union Products

To assess how important the non-price differences are, an independent survey research firm was commissioned to ask 40 current payday borrowers a series of questions about standard and credit union payday loans. The survey was conducted in a relatively high-volume location in Sacramento, Calif., on a high-volume day (Friday). Customers were selected at random and given a voucher for \$25 (redeemable at the lender) in exchange for participating in the survey.

The main body of the survey began by positing a credit union payday loan with terms slightly better than those offered by the Better Choice program:

In the next several questions, suppose that your bank or credit union offered a payday advance program that charged an 18 percent annual interest rate on each loan and a \$35 annual fee (paid regardless of the number of loans).

The survey followed up by asking a series of questions comparing that loan to a standard payday loan. Each question also asked the borrower to value one other feature of the credit union product. For example, the question focusing on direct deposit asked:

If the product had the fees/rates above but *required that the loan be repaid immediately when your paycheck was direct deposited*, and was otherwise just like a standard payday advance, would you use that product to meet short term needs for cash, or would you still prefer to use a payday lender?

The survey asked seven such questions, each varying the characteristics of the credit union product. The characteristics were:

- Direct deposit requirement
- Loans only available during normal banking hours
- Default negatively affects credit score
- 5 percent "savings deposit"
- 30-minute application and loan approval period
- No loan rollovers
- 60-day minimum membership requirement

The characteristics are simply the set of qualitative differences between standard payday loans and those offered by credit unions.

On the spectrum of prices charged by credit unions, the Better Choice product is quite attractive, meaning that any bias is probably in the direction of the credit union-like payday loan. And because it proceeds characteristic-by-characteristic, the survey also only asks borrowers to offset lower prices with one non-price benefit rather than the full set (which is presumably worth more than any one benefit). An advantage of the approach is that it elicits information

about which non-price characteristics are valued most highly by borrowers.

Table 3 summarizes the survey results. For every characteristic but one, three-quarters (30/40) or more borrowers preferred a standard payday loan to a credit union payday loan. In some cases, the preference was nearly unanimous.

The survey results suggest a ranking of characteristics. The least attractive characteristics were limitations on rollovers and short operating hours. Next were longer application and approval times and reporting of default to credit bureaus. Minimum membership requirements and savings deposits were also viewed as deterrents to taking out a payday loan. The least unattractive option was payroll direct deposit. Given the small sample, the standard errors on these estimates are fairly large, but a majority of borrowers preferred the higher-priced but less restrictive choice.

The survey also asked two other questions intended to elicit information about the less tangible differences perceived by borrowers across the products. One question asked a direct question about preferred lenders for identical products:

Suppose that your bank or credit union offered a short-term loan product that was *identical* to a standard payday loan. Would you use that product to meet short term needs for cash, or would you still prefer to use a payday lender?

This question elicited the borrower's preference for "soft" characteristics associated with each type of lender. It was followed by an attempt to understand what those soft characteristics might be:

If you answered [that you] ... would still prefer to use a payday lender, can you explain why? Please check any reasons that apply.

- a. **Location:** my payday lender is closer to my home or work.
- b. **Hours:** Payday lenders let me obtain cash before or after normal bank business hours.
- c. **Speed:** Payday lenders are able to give me cash quickly, with-

TABLE 3
Consumer Preferences for Standard and Credit Union Payday Loans

By credit union payday loan characteristic

Characteristic	CONSUMERS PREFERRING:	
	Bank/Credit union	Payday lender
Direct deposit requirement	33%	68%
Normal banking hours only	10%	90%
Default affects credit score	13%	88%
5% savings deposit	25%	75%
30-minute application time	18%	83%
No rollovers allowed	8%	93%
60-day membership requirement	25%	75%

Notes: Results from a survey of 40 current payday loan customers in Sacramento, Calif., in July 2009. Survey asked consumers to choose between a standard payday loan and a credit union loan with terms identical to those in the Better Choice program; the credit union loan also had the restriction listed in the "characteristic" column. With n = 40, the 90% confidence interval for any of the shares in the table extends +/- 16%.

out spending a lot of time in the store.

- d. **Privacy:** I prefer to keep my payday borrowing separate from my other banking, for personal reasons.

A majority (55 percent) of current payday borrowers said they would prefer to borrow from payday lenders even if a bank or credit union offered an identical product. That indicates that for some customers, the qualitative benefits of payday lenders are substantial. Responses to the second question indicate that the most important “soft” features of payday lenders were hours (checked by 77 percent of respondents), privacy (73 percent), speed (64 percent), and location (59 percent).

Overall, the survey results paint a fairly clear picture. The char-

The survey results indicate that the characteristics of typical credit union payday loans make those loans quite unattractive to most payday loan borrowers. Most of those borrowers reject a product with even one of the restrictions imposed by credit unions.

acteristics of typical credit union payday loans make those loans quite unattractive to most payday borrowers. Most payday borrowers reject a product with even one of those restrictions, even if the credit union payday loan has fees and rates that are lower than those offered by payday lenders. (The terms of the loan in the survey were less expensive than even the subsidized terms of the payday lender Better Choice program.)

Some of the unattractive features are restrictions on approval or repayment, implying that borrowers place high value on the option to default should they be unable to repay the loan. The high value that borrowers place on softer features such as hours of operation and privacy are in some sense more damaging to the credit union business model because such characteristics are inherent in credit unions. Even if credit unions decide to mimic the standard payday product as closely as possible, they might be unable to match those features.

Conclusion

The best available evidence supports a view that credit unions cannot viably serve as providers of short-term credit to the customers currently served by payday lenders. Most telling, very few credit unions choose to offer payday loans even though there are few legal or regulatory obstacles to doing so. That is a convincing market test: a standard payday loan out-competes the credit union version.

What is more, there is little to suggest that credit unions can offer a payday loan with competitive terms. Existing credit union payday loans often have total borrowing costs that are quite close to those on standard payday loans. And credit union payday loans

have lower default risk; risk-adjusted prices on standard payday loans may be no higher than those on credit union payday loans.

Finally, current payday borrowers strongly value the non-price benefits offered by payday lenders. Some of those benefits—such as longer operating hours and privacy—are intrinsic to the payday lender business model and would be nearly impossible for banks or credit unions to replicate.

While this article uses credit unions as the competitive benchmark, there is little reason to believe that deposit banks could be more competitive than credit unions in competing against payday lenders. Banks generally charge higher loan rates across the range of products. Evidence from the Federal Deposit Insurance Corporation’s Small Dollar Loan program for banks sug-

gests that loan rates under the program were below break-even levels for some banks. These findings suggest that expecting firms—whether they are more stringently regulated payday lenders or other unregulated financial institutions such as banks and credit unions—to provide borrowers with lower-priced but otherwise similar

short-term loan products is unrealistic.

Whether denying borrowers access to such products helps or hurts them is a separate question, of course. The evidence on that point is mixed, but it shows on balance that many borrowers are helped by access to short-term credit even at prices that some observers might consider “high.” In light of that work, the evidence here suggests that regulating payday lending would simply drive lenders out of the market, and that we should not expect other financial institutions to fill the void, particularly at lower prices. That would leave borrowers who benefit from access to short-term credit with fewer options, making them worse off. Any discussion of public policy in short-term loan markets must consider that downside. ■

READINGS

- “A Comparative Analysis of Payday Loan Customers,” by Edward Lawrence and Greg Eliehausen. *Contemporary Economic Policy*, Vol. 26 (2008).
- “Banking the Poor,” by Michael Barr. *Yale Journal on Regulation*, Vol. 121 (2004).
- “Payday Lending,” by Michael A. Stegman. *Journal of Economic Perspectives*, Vol. 21 (2007).
- “Payday Lending: Do the Costs Justify the Price?” by Mark Flannery and Katherine Samolyk. FDIC Center for Financial Research Working Paper, 2005.
- “Payday Loans and Credit Cards: New Liquidity and Credit Scoring Puzzles?” by Paige Skiba and Jeremy Tobacman. *American Economic Review Papers and Proceedings*, Vol. 99, No. 2 (2009).
- “Restricting Consumer Credit Access: Household Survey Evidence on Effects around the Oregon Rate Cap,” by Jonathan Zinman. *Journal of Banking and Finance*, Vol. 34, No. 3 (2010).
- “What Do Consumers Really Pay on Their Checking and Credit Card Accounts? Explicit, Implicit, and Avoidable Costs,” by Victor Stango and Jonathan Zinman. *American Economic Review Papers and Proceedings*, Vol. 99, No. 2 (2009).

Payday Lending Best Practices Help Prevent So-Called "Cycle of Debt"

There is little doubt that millions of Americans need access to short-term credit. A 2007 survey by the American Payroll Association found that sixty-seven percent of American employees are living paycheck to paycheck. For these Americans, a short-term loan is one credit option that provides an important service when a family is unable to absorb unexpected expenses between paydays.

The Community Financial Services Association of America (CFSA) represents more than half of the payday advance locations nationally. Through a set of Industry Best Practices, our members provide strong consumer protections to help ensure that customers use payday advances responsibly.

Full Disclosure

- To help a consumer make an informed decision about whether to use a payday advance, loan fees and rates are displayed on a clearly visible poster (no less than 18" x 22")¹ in stores and also posted on company websites.
- CFSA members must include a customer notice that encourages responsible use of the product on all marketing materials. The notice advises "Payday advances should be used for short-term financial needs only, not as a long-term financial solution. Customers with credit difficulties should seek credit counseling."

Right to Rescind

- Customers have the right to rescind, at no cost, a payday advance transaction before the close of the following business day.

Extended Payment Plan

- We recognize that unforeseen circumstances sometimes occur between pay periods. That is why under CFSA's Best Practices, all member companies offer an **Extended Payment Plan (EPP)**² to any customer who cannot repay their loan when due for any reason **at no additional cost**.
- Customers who enroll in the EPP pay off the transaction balance with no additional fees in four equal payments coinciding with the borrower's periodic paydays.

¹ In all cases where applicable state regulations require additional or different information, a member shall comply with the state regulation

² Subject to applicable state laws and the availability of an Extended Payment Plan in your state

Payday Advance: Fact vs. Fiction

Fiction: They prey on poor, uneducated and older consumers

Fact: Payday advance customers represent the heart of the working middle class¹

- 41% earn between \$25,000 and \$50,000; 39% report incomes of \$40,000 or more
- More than half are under 45 years old; 63% have children at home; less than 10% are 65 or older
- 90% have a high school diploma or better, with 54% having some college or a degree
- 85% use other forms of credit; 54% have credit cards
- 100% have a steady income and an active checking account, both required for an advance

Fiction: They charge outrageous rates

Fact: Payday advance fees typically cost less than customers' alternatives

- 98% of customers are aware of the finance charge; 81% recall it being disclosed as an APR²
- Payday advance APRs are often lower than customers' alternatives, even on same 2-week term
 - \$100 payday advance with \$15 fee = 391% APR
 - \$100 bounced check with \$56 NSF & merchant fees = 1,449% APR
 - \$100 credit card balance with \$37 late fee = 965% APR
 - \$100 utility bill with \$46 late/reconnect fee = 1,203% APR
- FDIC study: a bank customer repaying a \$66 check overdraft in two weeks would incur a 1,067% APR³

Fiction: They put customers into a cycle of debt

Fact: Most customers use payday advance responsibly

- 70% use payday advance to cover unexpected expenses⁴
- State regulator reports and public company filings confirm: more than 90% of payday advances are repaid when due and more than 95% are ultimately collected
- Research concludes that most use payday loans moderately
 - Financial Services Research Program study, The George Washington University School of Business: "...most customers used payday loans as a short-term source of financing."⁵
 - Public policy analysis by a Clemson University economist and The Brattle Group: "There is no statistical evidence to support the 'cycle of debt' argument often used in passing legislation against payday lending."⁶
 - Staff report by a Federal Reserve Research Officer: "Most of our findings contradict the debt trap hypothesis."⁷
 - FDIC's Center for Financial Research study: 72% of customers took out less than 12 advances per year⁸

Fiction: The typical borrower pays back \$793 for a \$325 payday advance

Fact: A typical customer pays \$52 for a \$325 payday advance

- Opponents of payday lending falsely represent the cost of an advance by counting the principal for only one loan and adding the fees for nine loans—claiming the typical customer takes out one advance and rolls it over 8 times. This scenario is impossible under state laws and industry Best Practices.
- The regulatory services company that tracks payday advance transactions for a number of state regulators reported that the opponents "misinterpreted their data to come to flawed conclusions."⁹

Fiction: They take advantage of unsuspecting customers

Fact: Across the country customers overwhelmingly appreciate the service

- Millions choose payday advance as a dignified, discreet, and often less costly solution for cash flow problems, without asking family for money or risking personal items as collateral
- 88% of customers reported being very or somewhat satisfied with their payday loan¹⁰
- State regulators report very few complaints out of millions of transactions

¹ "An Analysis of Consumers' Use of Payday Loans," by Gregory Elliehausen, Division of Research and Statistics, Board of Governors of the Federal Reserve System and Financial Services Research Program, The George Washington University School of Business, January 2009

² IBID

³ "FDIC Study of Bank Overdraft Programs," Federal Deposit Insurance Corporation, November 2008

⁴ Elliehausen, op. cit.

⁵ IBID

⁶ "Restriction on Credit: A Public Policy Analysis of Payday Lending," Petru S. Stoianovici of The Brattle Group and Michael T. Maloney, PhD of Clemson University, October 2008

⁷ "Payday Holiday: How Households Fare after Payday Credit Bans," by Donald Morgan, Federal Reserve Bank of New York, November 2007

⁸ "Payday Lending: Do the Costs Justify the Price?," FDIC's Center for Financial Research, By Mark Flannery and Katherine Samolyk, September 2005

⁹ "White Paper Analysis of CRL Report: Financial Quickstart," Veritec Solutions, LLC, January 2007

¹⁰ Elliehausen, op. cit.

Payday Lenders Provide Desired Service to Lower and Moderate Income, Middle-Educated, Young American Families

"An analysis of Consumers' Use of Payday Loans" by Gregory Elliehausen, Division of Research and Statistics, Board of Governors of the Federal Reserve System and Financial Services Research Program, The George Washington University School of Business, describes the demographic characteristics of payday loan customers and considers whether they make rational decisions and if they benefit from access to credit.

Elliehausen notes that only 2% of U.S. adults use payday loans at any one time and provides a detailed picture of the typical payday loan customer, including who they are, how they use the service and their decision-making process.

According to the monograph, customers that use payday loans:

- Skew young; 63% have children at home
- Have lower and middle incomes; 41% earn between \$25,000 and \$50,000; 39% report incomes of \$40,000 or more
- Are educated; 90% have a high school diploma or better, with 54% having some college or a degree
- Have limited liquid assets and savings, most use other forms of credit
- Have characteristics that may limit their access to credit
- Use payday loans moderately, as intended for short-term use
- Are aware of the cost of their most recent payday loan
- Consider the alternatives, are satisfied with their decision
- Benefit by having access to payday loans

Elliehausen concludes that, "Most payday loans are used to pay unexpected expenses or expenses that could not be postponed... If payday loan customers live from paycheck to paycheck with very little discretionary income, even small expenses may cause financial problems and make emergencies a frequent event. In such cases, even frequent use of payday loans may be better than the alternatives."

Full monograph available at <http://www.business.gwu.edu/research/centers/fsrp/pdf/m41.pdf>.

➤ Customers skew young; 63% have children at home

"By far, most payday loan customers were in younger age groups, which tend to use relatively large amounts of credit. Most payday loan customers were less than 45 years of age in 2007, and three-fourths were less than 55."

"Ten percent of payday loan customers were 65 years or older. This percentage is considerably less than the 19.9 percent of all consumers who were 65 years or older."

"...More than half (62.7 percent) of payday loan customers were from families with children."

➤ **Customers have lower and moderate incomes**

"Payday loan customers largely do not have profiles similar to the typical fringe banking customer...The requirement that customers have a checking account prevents many low-income consumers from qualifying for a payday loan."

"A large percentage of payday loan customers had higher incomes. Thirty-nine percent of payday loan customers had incomes of \$40,000 or more, about a quarter had incomes of \$50,000 or more, and 8.9 percent had incomes of \$75,000 or more."

"...It is notable that the higher income customers (income \geq \$50,000) are a larger share of payday loan customers than lower income (income $<$ \$15,000) customers."

➤ **Customers are educated; 90% have high school diploma or better**

"Almost all payday loan customers had a high school diploma or higher education, but customers were concentrated in the middle levels of educational attainment."

"Payday loan companies do not draw heavily on consumers from the lowest and highest education attainment groups."

➤ **Customers have limited liquid assets and savings**

"Payday loan customers' liquid assets are quite limited. Fewer than half (44.7 percent) of payday loan customers reported having savings or reserve funds in 2007...The size of most payday loans [\$315] suggests that customers' checking and savings balances could not have been very large."

"Most payday loan customers did not save regularly. Thirty-six percent of customers reported spending all the income that they receive, and 33.4 percent reported saving whatever was left over at the end of the month. Just 29.0 percent of payday loan customers said that they regularly set aside money for savings."

➤ **Nearly all customers use other forms of credit, but may have limited access**

"Eighty-five percent of customers used other types of consumer credit in 2007."

"...Payday loan borrowers were less likely to have open-end credit than all consumers. Fifty-four percent of payday loan customers had a bank credit card, compared to 74.5 percent of all consumers; and 21.7 percent of payday loan customers had a retail credit card, compared to 50.4 percent of all consumers."

"Fifty-five percent of payday loan customers experienced credit limitations in the previous five years. An even higher percentage of customers considered applying for credit but did not because they thought that they would be denied."

"Many more consumers are credit constrained than use payday loans. According to the Survey of Consumer Finances, 25.7 percent of consumers had incomes less than \$50,000 and were under 45 years of age or unmarried with children. Nearly half of these consumers in the last five years had been turned down or did not apply for credit because they thought they would be turned down. Thus, being credit constrained does not by itself appear to be sufficient to cause consumers to turn to payday loans."

➤ **Customers use payday loans moderately, for short-term use to deal with unexpected expenses**

"The stimulus by far for most payday loans was an unexpected expense or an expense that could not be postponed. Seventy percent of payday loan customers agreed strongly with the statement "I had an unexpected expense that could not be postponed." Forty-seven percent agreed strongly with the statement "I knew that an expense was coming but did not have the cash when the expense was due."

"The survey evidence indicates that most customers used payday loans as a short-term source of financing. They used payday advances a small or moderate number of times during the past year, typically for less than a month at a time...Such use seems consistent with the intended purpose of payday loans as short-term borrowing to pay unexpected expenses or relieve temporary shortfalls in income."

"Frequent use is not necessarily evidence of a debt trap, however. If payday loan customers live from paycheck to paycheck with very little discretionary income, even small expenses may cause financial problems and make emergencies a frequent event. In such cases, even frequent use of payday loans may be better than the alternatives."

"Most payday loan customers had relatively short sequences of consecutive loans (which include a new loan and subsequent renewals). Thirty-five percent of customers reported that their longest sequence was two weeks or less. Another 29.4 percent reported longest sequences between 3 and 4 weeks."

"Few payday loan customers considered payday loans as a debt trap. Only about three percent of payday loan customers mentioned difficulty of getting out of debt as a reason for being dissatisfied or only partially satisfied with their most recent new payday loan."

➤ **Customers are aware of the cost of their most recent payday loan**

"...nearly all payday advance customers are aware of the finance charges for their most recent new payday advance. That customers are aware of the finance charge suggests that this measure of cost is useful and relevant to them. They can readily compare the finance charge for a payday loan with a dollar amount of savings or avoided costs from use of a payday loan to make a decision."

"Payday loans are a simple product. Price is the key term. Payday loan customers receive two price disclosures, the finance charge and annual percentage rate. Truth in Lending requires disclosures of these two prices. Customers likely would be aware of the finance charge regardless of regulation since the finance charge is the difference between the amount of the check and the amount of cash they receive."

"Eighty-one percent of payday loan customers recalled receiving information on the annual percentage rate for their most recent new payday loan, but far fewer customers were able to recall the actual annual percentage rate...That most payday loan customers are not aware of the annual percentage rates suggests that they may not have found the annual percentage rate very useful in their most recent decision. Penalties, late fees, or other costs that customers save through use of payday loans are not normally expressed as annualized percentages."

Prepared by:

➤ **Customers consider the alternatives, deliberate, and are satisfied with their decision**

"Nearly half [46.4 percent] considered other sources of credit before obtaining a payday loan. The most frequent other source was a friend or relative, but a bank, finance company, or credit union were also frequently mentioned.

"Despite the urgency, the small size of the loan relative to income, and perception that few alternatives were available, many payday loan customers showed signs of deliberation in their decisions."

"...overall, 50.6 percent of customers reported believing that a payday loan was their only choice at the time they obtained their most recent new payday loan."

"Many customers perceived that they had few options to payday loans. Less than one-fifth of customers had sufficient funds in a checking and savings account. Customers frequently either did not have a credit card or if they had a credit card would have exceeded their credit limit. A considerable percentage of customers believed that they could have borrowed from a friend or relative."

"Nearly all payday loan customers said that they were satisfied or somewhat satisfied with their most recent new payday loan. Receiving the funds quickly, the easy loan process, and courteous treatment accounted for by far most reasons for satisfaction."

➤ **Customers benefit by having access to payday loans**

"By far most customers agree that payday loan companies provide a useful service to consumers (86 percent) and that most people are satisfied in their dealings with payday loan companies (75.8 percent)."

"Fifty-nine percent of customers disagreed that the government should limit the number of payday loans they can get in a year."

"...The predominant users of payday loans are consumers that economic theory predicts are most likely to benefit from high-price consumer credit."

"Payday loans may be a transitional product for many consumers: As families age and income rises, consumers may become less vulnerable to financial distress."

"In giving consumers access to additional credit for unexpected expenses or shortfalls in income, payday loans give the consumers a little control over their financial situations that they otherwise would not have."



Payday Loans in the State of California

- To Get A Payday Advance You Must Have The Following:
 - A checking account (proof of your checking account)
 - Two valid forms of identification (generally a drivers' license or ID and an utility bill)
 - A job or steady income (with two recent paystubs)
- A payday loan is a flat fee per transaction product.
 - **California law mandates:**
 - Stores can charge NO more than 15% of the face amount of the check. The maximum loan of \$255 plus the \$45 fee equals a total of \$300.
 - There are NO accruing interest charges and NO late fees.
 - It is illegal to charge any more than the initial fee.
- How are payday loans regulated?
 - Payday loan companies are regulated by the Department of Corporations (DOC) and are subject to audits.
 - Every payday loan store is individually licensed and must abide by federal, state, county and city laws.
 - State law governs payday loan terms, fees, and consumer protection.
- In the State of California ...
 - The vast majority of customers pay back their loan, on time, in two weeks.
 - The average customer earns approximately \$55,000/year and more than half own a home.
 - It is illegal to 'rollover' a loan - a customer cannot take out a new loan to pay off an existing one.
 - Payday loan companies are regulated by the Department of Corporations (DOC) and are subject to auditors by the DOC every two years
- APR vs. Fee-based Product: (*Federal Truth and Lending Guidelines*) The industry is mandated by the federal government to display Annual Percentage Rate (APR).
 - Though this is only a two-week loan, if amortized (one took out this loan every two weeks for an entire year), it would amount to 391 percent.
 - Under California law, payday lenders are only allowed to charge a one-time upfront fee for a transaction. Compounding interest or late fees are NOT allowed.
- Payday advance compares favorably to many consumer alternatives, even when expressed as annual percentage rates for two-week terms:
 - \$100 payday advance with \$15 fee is 391% APR.;
 - \$100 bounced check with \$54.87 NSF/merchant fee is 1431% APR;
 - \$100 credit card balance with \$37 late fee is 965% APR;
 - \$100 utility bill with \$46.16 late/reconnect fees is 1203% APR;
 - \$100 off-shore Internet payday advance with \$25 fee is 651.79% APR;
 - \$29 overdraft fee on \$100 is 755%.
- How Do Payday Lenders Compare As Employers?
 - The entry-level employee makes between \$10-15/hour - offering employees full medical insurance and 401k options.

Why Payday Advance is Not Predatory Lending

The term “predatory lending” has received a lot of attention; but its definition is unclear and the distinction between predatory lending and subprime lending is blurred. This vagueness of the term has been used to portray certain financial services inaccurately. Payday advance has been the target of just such an attempt, and it is clearly unwarranted.

In general, predatory lending is defined as a harmful form of subprime lending in which consumers are pressured to take loans they don't need, putting valuable assets at risk. Federal Reserve Governor Edward Gramlich said in an address to the Texas Association of Bank Counsel 27th Annual Convention at South Padre Island on October 9, 2003 that predatory lending typically involves at least one, and perhaps all three, of the elements listed below. **Not one** of these elements applies to payday advance and here's why.

Three Elements of Predatory Lending, according to Federal Reserve Governor Gramlich:

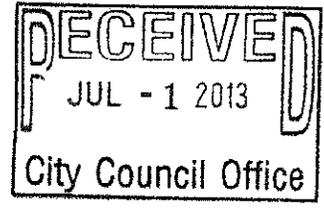
- Making unaffordable loans based on the **assets** of the borrower rather than on the borrower's ability to repay an obligation.
- Inducing a borrower to refinance a loan repeatedly in order to charge high points and fees each time the loan is refinanced (“loan flipping”).
- Engaging in fraud or deception to conceal the true nature of the loan obligation from an unsuspecting or unsophisticated borrower.

Why Payday Advance is NOT Predatory Lending:

- Payday advance is a small denomination, un-collateralized, unsecured short-term financial transaction based on the borrower's steady income.
- Most state laws prohibit the extension of a payday advance by paying an additional fee (rollover). CFSA members do not encourage rollovers and, in states where rollovers are permitted, limit them to 4 or the state limit, whichever is less.
- The cost of a payday advance is fully disclosed to customers on signage and in disclosure agreements. Terms and fees are simple and transparent. There's a one-time, flat fee with no hidden charges, balloon payments or accruing interest.

CFSA members also provide an educational brochure emphasizing responsible use of the product and offer a free right of rescission should the customer change his mind.

Research shows customers are middle-income and educated; 92% believe payday advance is a useful service; 96% are aware of the cost and how it compares to alternatives.



Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, California 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I'm writing as a resident of Sunnyvale; I live at 125 N. Mary Ave Spc. 96, Sunnyvale, CA 94086.

I am writing in regard to the "Payday Lending Study Issue," which I understand is scheduled to be heard by the Planning Commission in August and the City Council in September. I agree with Sunnyvale Community Services, the Coalition Against Payday Predators (CAPP), and numerous other local churches and community-based organizations serving Sunnyvale in supporting an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts. I believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region.

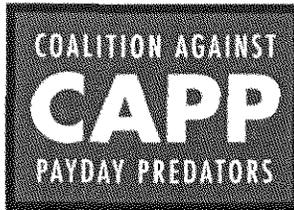
I'm concerned about the unfair and predatory practices of this industry, especially the shocking 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community. Adopting a cap and developing a permitting process and zoning restrictions for these businesses would limit the number of these irresponsible businesses, ensure that the community has a say about the placement of any future payday lenders, and protect vulnerable communities against overcentration.

I respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in September.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandi Hines".

Brandi Hines



RECEIVED

AUG 26 2013

PLANNING DIVISION

ATTACHMENT 1
Page 54 of 59

SENT VIA E-MAIL.

August 26, 2013

Maria Dohadwala, Chair
Members of the Planning Commission
c/o Trudi Ryan, Planning Officer
Community Development Department, Planning Division
456 W. Olive Ave.
Sunnyvale, CA 94086

Re: Item 6—Payday Lending Establishments

Dear Chairwoman Dohadwala and Members of the Planning Commission:

We write on behalf of the Coalition Against Payday Predators (CAPP),¹ a broad coalition of individuals and over 40 community-based organizations who support policy reforms regarding payday lending and local restrictions on payday lenders in Santa Clara County. CAPP believes that sensible regulation of payday lending will lead to greater economic security and prosperity. **We urge the Planning Commission to recommend a strong policy limiting the number, placement, and operation of payday lenders to City Council.**

We have reviewed the Planning Department's memo and recommendations, and we appreciate the care that staff took in researching and analyzing this issue. We encourage the Commission to adopt staff's recommendations to:

1. Clearly **define payday lending establishments** in the Zoning Code;
2. **Exclude payday lending establishments** from all zones except C-2;
3. Impose **operational standards** on new payday loan establishments; and
4. Impose a **distance requirement** for new payday lenders.

¹ CAPP's core leaders include the Law Foundation of Silicon Valley, California Reinvestment Coalition, Sunnyvale Community Services, Asian Law Alliance, United Way of Silicon Valley, Catholic Charities of Santa Clara County, Community Solutions, St. Joseph's Family Center, and Working Partnerships USA. CAPP's efforts are funded in part by a grant from the Silicon Valley Community Foundation.

Additionally, we ask that the Commission improve on staff's recommendation by recommending further restrictions on payday lenders, including:

1. A **numerical cap** on the number of payday lenders, as described in Option 3 of staff's memo. Because there are currently 7 payday lenders in Sunnyvale, we suggest a cap of 7 or lower. Such a cap would prohibit new payday lenders from locating in Sunnyvale unless existing stores close.
2. A requirement that new payday lenders obtain a **Use Permit** so that neighbors receive notice of the proposed payday lender and have the opportunity to provide public comment before the permit is approved.
3. A requirement that new payday lenders locate at least **1320 feet** (one quarter mile) from existing payday lenders, an increase from the 1000 feet recommended by staff.
4. **Distance separations** between payday lenders and bars, liquor stores, and adult stores.

These policy recommendations are consistent with other cities' regulation of payday lenders, as described in our memo to staff, included with your agenda packet as Attachment I. We believe such strong regulation of payday lenders will benefit Sunnyvale's residents and strengthen its economy.

We plan to attend this evening's Planning Commission meeting, and we will be happy to answer any questions and to address any concerns of the Commission.

Many thanks,

/s/

Kyra Kazantzis
Directing Attorney, Public Interest Law Firm, Law Foundation of Silicon Valley

/s/

Liana Molina
Organizer, California Reinvestment Coalition

cc: Amber El-Hajj, City of Sunnyvale Planning Division
Mayor Tony Spitaleri
Members of the City Council
CAPP Members

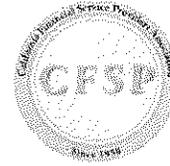
RECEIVED

AUG 26 2013

ATTACHMENT 1
Page 56 of 89



PLANNING DIVISION



August 26, 2013

City of Sunnyvale Planning Commission
456 W. Olive Avenue
Sunnyvale, CA 94086

Dear Planning Commissioners:

This letter is in response to the Planning Commission study issue report dated August 26, 2013, regarding Payday Lending Establishments.

First, a brief description of who we are:

The Community Financial Services Association of America (CFSA) is the only national payday lending association solely dedicated to promoting responsible regulation of the payday lending industry. Both CFSA and our state association, the California Financial Service Providers Association (CFSP), have always worked with legislators and local government officials to create laws and regulations that allow this regulated credit option to best serve the needs of California residents.

First and foremost, we want to continue working with staff, the Planning Commission, and City Council, as well as be a part of stakeholder discussions. We believe the payday loan industry can offer valuable perspective in helping craft reasonable regulations.

According to staff recommendations released on August 23, 2013 we have the following concerns:

- 1) The language regarding proposed zoning exclusions, buffer, hours of operation, and increased security measures.
- 2) The ability for an existing company with a business license to transfer ownership to another party and retain the existing location.

We appreciate your consideration of our concerns regarding the issues discussed in this letter and appreciate the opportunity to submit comments. Please let us know if you have any questions concerning the matters outlined in this letter.

We respectfully request an opportunity to continue working with you in understanding who our customers are, why they use our businesses, and discuss how we as an industry can address your concerns without damaging existing businesses and depriving Sunnyvale residents of a legal and regulated source of short term credit.

Sincerely,

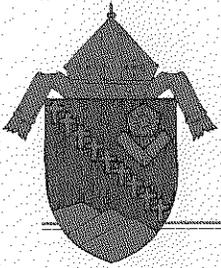


Randy Perry, State Director
Community Financial Services
Association of America (CFSA)



Chuck Cole, President
California Financial Service Providers

CC: City of Sunnyvale, City Council
City of Sunnyvale, City Attorney
City of Sunnyvale, Community Development Director
City of Sunnyvale, Planning Officer
City of Sunnyvale, Senior Planner



Diocese of San Jose

Office for Parish Services

August 21, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 West Olive Avenue
Sunnyvale, CA 94088-3707

RECEIVED

AUG 26 2013

PLANNING DIVISION

Dear Mayor Spitaleri and Members of the City Council:

I am writing in regard to the "Payday Lending Study Issue" scheduled to be heard by the Planning Commission on Monday, August 26th and by the Council on Tuesday, September 24th. We are standing with Sunnyvale Community Services and the Coalition Against Payday Predators (CAPP) in urging you to adopt an ordinance putting a cap on the number of payday lenders in the city and setting forth permitting and distance requirements for any new payday loan storefronts.

Having heard about the activities of these lenders, we are concerned about the predatory practices of this industry, particularly as they affect working people who face hardships due to the irresponsibility of these lenders, including the 459% APR and cycle of debt encouraged by these lenders. Through these short term loans at exorbitant rates often targeted to low and middle-income communities, families and individuals become trapped in a cycle of debt from which they cannot escape.

The Catholic Diocese of San Jose represents fifty-four parishes and missions in Santa Clara County. Three of these parishes are located within the City of Sunnyvale. The Catholic Church has a long tradition of standing with the poor and marginalized. As the US Bishops stated:

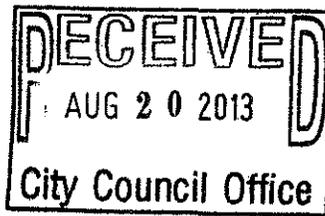
All economic life should be shaped by moral principles. Economic choices and institutions must be judged by how they protect or undermine the life and dignity of the human person, support the family and serve the common good. -A Catholic Framework for Economic Life, 1996

In this spirit, we stand with the working families and those on the margins who are victimized by predatory lenders and respectfully encourage the Council to approve a restrictive payday ordinance when it comes before you.

Sincerely,

Linda L. Batton
Director of Social Ministries

Cc: Amber El-Hajj, Senior Planner, Department of Community Development, Sunnyvale Planning Commission



August 19, 2013

Sunnyvale City Council
Honorable Mayor and Council Members
Sunnyvale City Hall
456 W. Olive Avenue
Sunnyvale, California 94088-3707

Dear Mayor Spitaleri and Members of the City Council:

I'm writing as a resident of Sunnyvale; I live at 388 Beemer Ave. Sunnyvale, CA 94086. I am writing in regard to the "Payday Lending Study Issue," which I understand is scheduled to be heard by the Planning Commission in August and the City Council in September. I agree with Sunnyvale Community Services, the Coalition Against Payday Predators (CAPP), and numerous other local churches and community-based organizations serving Sunnyvale in supporting an ordinance that would put a cap on the number of payday loan outlets in the City, and set forth permitting and distance requirements for any new payday loan storefronts.

I believe it is in the interest of Sunnyvale communities for the Planning Commission and City Council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our city, consistent with other cities in the region. I'm concerned about the unfair and predatory practices of this industry, especially the shocking 459% APR interest rates on payday loans and the inescapable cycle of debt the loans create for consumers, which create an asset-stripping effect that impacts both the individual and the entire community.

Adopting a cap and developing a permitting process and zoning restrictions for these businesses would limit the number of these irresponsible businesses, ensure that the community has a say about the placement of any future payday lenders, and protect vulnerable communities against overcentration.

I respectfully ask the Council to approve a restrictive payday ordinance when it comes before you in September.

Sincerely,

Elizabeth Fitting