

Date: November 8, 2010

COMMUNICATION from the City Plan and Zoning Commission advising that at a public hearing held on October 21, 2010, its members voted 11-1 to recommended approval of the proposed Zoning Text and Municipal Code Amendments regulating pawnbrokers and delayed deposit service businesses subject to conditions that 1) the ordinance exclude pawnbrokers; 2) delayed deposit service businesses be prohibited in the C-3R zoning district; and 3) notice shall be mailed to all neighborhood associations at least 30 days prior to issuance of an administrative decision by the Zoning Enforcement Officer to authorize the establishment of any new delayed deposit service business that otherwise complies with the proposed regulations.

MOVED by _____ to receive and file the P&Z Communication.

FORM APPROVED:


 Michael F. Kelley
 Assistant City Attorney

(10-2010-5.04)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

 Mayor

 City Clerk

Date November 8, 2010

Agenda Item 59A

Roll Call # _____

October 28, 2010

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held October 21, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 11-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus	X			
JoAnne Corigliano				X
Shirley Daniels	X			
Jacqueline Easley	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Joel Huston				X
Ted Irvine	X			
Greg Jones	X			
Jim Martin	X			
Brian Millard	X			
William Page	X			
Mike Simonson		X		
Kent Sovern	X			

APPROVAL of the proposed ordinance subject to the following conditions:

- 1) The ordinance excludes pawnbrokers;
 - 2) Delayed deposit service businesses be prohibited in the C-3R zoning district; and
 - 3) Notice shall be mailed to all neighborhood associations at least 30 days prior issuance of an administrative decision by the Zoning Enforcement Officer to authorize the establishment of any new delayed deposit service business that otherwise complies with the proposed regulations.
- (10-2010-5.04)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends that the Plan and Zoning Commission make the following findings of fact:

- The proliferation of delayed deposit services businesses (commonly known as "payday lenders") and pawnbroker businesses suggests a



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ALL-AMERICA CITY
1949, 1976, 1981
2003

commercial corridor and the adjoining neighborhoods are in economic and social decline, negatively impacting reinvestment, economic development efforts and property values along the corridor and the adjoining neighborhoods; and

- These businesses do not create much foot traffic for adjacent businesses and a proliferation of them at particular locations can overwhelm a neighborhood and can be a disincentive for the location of other neighborhood businesses in close proximity to them; and
- The regulations as proposed in the attached ordinances are reasonable and appropriate to regulate the placement and location of delayed deposit services businesses and pawnbroker businesses so as to avoid the clustering of such businesses and to protect the surrounding neighborhoods from distress and the appearance of commercial districts in decline, and to avoid the adverse effects upon the overall business atmosphere of the City, which are likely to result from an over-concentration of such businesses within the commercial corridors.

Staff further recommends approval of the proposed text amendments regulating delayed deposit service and pawnbroker businesses as presented by staff.

STAFF REPORT

I. GENERAL INFORMATION

There are currently 12 pawnbroker and 31 delayed deposit service businesses in the City of Des Moines. There are currently two pending applications for additional pawnbroker and/or delayed deposit service businesses.

On May 13, 2010 the Mayor and City Council held a Special Meeting to discuss delayed deposit services and pawnbroker businesses. On May 17, 2010 the Mayor and City Council held a public hearing and approved of a 6-month moratorium on the establishment of new or relocation of existing delayed deposit service businesses and pawnbroker businesses, pending a comprehensive review of the applicable regulations pursuant to Roll Call Number 10-773. The resolution specifically adopted the following statements as findings of fact:

- The proliferation of delayed deposit services businesses (commonly known as "payday lenders") and pawnbroker businesses suggests a commercial corridor and the adjoining neighborhoods are in economic and social decline, negatively impacting reinvestment, economic development efforts and property values along the corridor and the adjoining neighborhoods; and
- These businesses do not create much foot traffic for adjacent businesses and a proliferation of them at particular locations can overwhelm a neighborhood and can be a disincentive for the location of other neighborhood businesses in close proximity to them; and,

- It is reasonable and appropriate to regulate the placement and location of delayed deposit services businesses and pawnbroker businesses so as to avoid the clustering of such businesses and to protect the surrounding neighborhoods from distress and the appearance of commercial districts in decline, and to avoid the adverse effects upon the overall business atmosphere of the City, which are likely to result from an over-concentration of such businesses within the commercial corridors; and,
- A temporary moratorium on the establishment of new or relocation of existing delayed deposit services businesses and pawnbroker businesses is necessary and appropriate to prevent such businesses from locating at sites that are detrimental to the immediate area and the City as a whole, until appropriate regulations can be developed and implemented.

The moratorium expires November 9, 2010 unless it is extended by the City Council.

The Des Moines City Manager was directed to schedule meetings for input on both sides of the issue to include Neighborhood Associations, Citizens for Community Improvement (CCI) and business stakeholders. Notices were mailed to all Des Moines Neighborhood Associations, CCI, the owners of existing pawnbroker and delayed deposit service businesses in the City of Des Moines and any known applicants for pending businesses inviting them to public forums that were held by the Des Moines Plan and Zoning Commission on July 15 and August 5, 2010. The public forums allowed the opportunity to receive public comment regarding the issue and review preliminary research that was conducted by staff and the Regulation and Ordinance Subcommittee of the Plan and Zoning Commission. Staff also made a presentation and discussed the matter with Des Moines Neighbors at their meeting on July 22, 2010.

The City Council held two work-sessions regarding proposed regulations on August 23, and September 27, 2010.

II. ADDITIONAL APPLICABLE INFORMATION

The Regulation and Ordinance Subcommittee (R&O) reviewed the attached text amendments on October 13, 2010 and concurred with the proposed language.

In summary, the proposed text amendments to Chapter 134 implement the following:

- Provide definitions of “delayed deposit services” and “pawnbroker” that are consistent with State Code.
- Define “establishment” of a pawnbroker or delayed deposit service business as opening of a new, relocation of an existing or conversion of an existing pawnbroker or delayed deposit service business.
- Prohibit pawnbroker and delayed deposit service businesses in the “C-1” Neighborhood Retail Commercial and “NPC” Neighborhood Pedestrian Commercial zoning districts;

- Prohibit the establishment of any delayed deposit service or pawnbroker business within 0.5 miles from any other such business.
- Prohibit the establishment of any delayed deposit service or pawnbroker business within 250 feet of any R-District or portion of a PUD District devoted to residential use.

The above amendments to Chapter 134 will cause twelve (12) existing pawnbroker businesses and thirty-one (31) existing delayed deposit service businesses to become “legal non-conforming uses”. Pursuant to Section 134-1353 of the City Code, a legal non-conforming uses can have no expansion of existing land area and no expansion of the existing structure. If the non-conforming use ceases for period of 6 months, the use cannot be resumed. Appeals of determinations of the Zoning Enforcement Officer (ZEO) are heard by the Board of Adjustment (BOA).

The two pending applications for additional pawnbroker and or payday lender businesses will also be prohibited by the proposed regulations as their proposed locations are within 0.5 mile of other such businesses and/or within 250 feet of residentially zoned properties.

In addition, the amendments to Chapter 82 of the City Code require all applicants for a pawnbroker or delayed deposit service business to attend a pre-application meeting and to submit a site plan in conformance with the City’s Site Plan standards and Landscape standards.

Finally, the amendments to Chapter 30 of the City Code state that Zoning Enforcement Officer and Police Chief must review all pawnbroker license applications.

SUMMARY OF DISCUSSION

Mike Ludwig presented the staff report and recommendation.

Brian Millard stated he thinks all the neighborhoods should be noticed before an administrative review is made on something that is not desirable.

Mike Ludwig stated that this issue was discussed with the Council at both work sessions. The concern is when you have very objective criterias’ (½ mile separation and 250 feet separation from residential) there is no subjectivity to those criteria. Providing notice of a decision that is entirely objective could ultimately be more frustrating to a neighborhood as there really is no recourse to argue a yes or no answer on a separation distance. The key is if there is a variation from those standards that it does require a Board of Adjustment review and notice is provided of the Board of Adjustment review. The pre-application meetings were discussed with Council at one of the work sessions and ultimately numerous items come in for pre-application that never proceed any further. It is a meeting where the applicant comes in and gets information about the required permits and required processes involved in order to operate. It is not a public hearing, therefore, notifying neighborhoods would imply that the pre-application meetings are a public hearing process and it is clearly not. After presenting that information to the Council at their work session they were comfortable with what was outlined, as far as staff recommendation.

Ted Irvine concern is the creative use of names of some of these businesses. Is there some kind of connection with the State Banking Superintendent that can identify these businesses no matter what they call themselves?

Mike Ludwig stated yes, the definition of the delayed deposit services business in this proposed ordinance is mirrored after the State definition.

Ted Irvine asked is the City comfortable that it is good enough to capture them.

Mike Ludwig stated they have to go through the State Banking Superintendent to operate. They would have to have a license from the state and would ultimately capture any such business.

Mike Simonson asked about the language that requires separation from residentially zoned property and not residentially occupied property. There are a lot of properties that are not residentially zoned but are occupied by residences.

Mike Ludwig noted that in downtown, there are residential properties in commercially zoned districts. There are some impacts that should be expected living in a commercial zoning district. A lot of these retail corridors are "C-2" Highway Oriented Commercial Zoning Districts and a residential use in that district should expect some level of impact by commercial uses, traffic, light, and noise. The real concern was that predominately residential neighborhoods in residentially zoned district should be afforded protection under the proposed ordinance. The other issue is the uses change in a commercial zoning district all the time. Staff thought it would not be necessary to be regulating separation from a building that might go back and forth all the time from commercial to residential. Council did not express concern with not having separation from a residential use in a commercial zoning district.

Mike Simonson asked what kind of discussion occurred regarding not grouping payday lenders and pawn shop together.

Mike Ludwig stated staff received clear direction at August 23rd Council work session that they wanted both payday lenders and pawn shop treated equally.

Leisha Barcus stated her concern is about the ordinance including the pawn brokers. She asked if there was anyone besides Council asking staff to group the payday lenders and pawn shop together.

Mike Ludwig stated staff shared the comments from the public forums with the Council that the majority of the comments were regarding the payday lenders versus pawn brokers, but from the beginning the moratorium that was applied was to both pawn brokers and payday lenders.

Leisha Barcus stated she cannot support the ordinance because that is not enough reason for her.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the ordinance:

Matthew Covington, 2805 Cottage Grove #2, member of CCI, thanks staff for working on this issue along with the Commission and thinks that progress has been made, but not enough. He does not feel this ordinance goes far enough specifically about payday lending. He would like to see the separation of 750 feet from residential districts implemented. He would like to see an ordinance that has the distance of separation from social service agencies, government relief, etc. so there is not a payday lender sitting right there when people are at their desperate need. He agrees with Brian Millard that the neighborhoods should be notified of anything coming in. Still would like the strongest ordinance possible recommended to Council.

Shari Hawk, 401 NE Crestmoor Place, Ankeny, IA stated that even though she is not a resident of Des Moines she works in Des Moines and she works with a lot of disadvantaged, disabled, and mentally ill individuals who have been caught up in the payday lenders scandal and can't work their way out. Her concern with payday lenders is, if Des Moines does not pass a very strong, structured, well understood, ordinance then Ankeny, West Des Moines, Clive or any place else will not see it happen because they are looking to Des Moines for guidance and direction. She requests a stronger ordinance pertaining to payday lenders and thinks public notification is important also.

Ellen Grimes, 2022 40th Place encourages the City Council to pass the strongest ordinance and she also thinks that the neighborhood associations should be notified when the new applications come in. She also thanked the City Council and the Commission for helping to make this happen and improving the community.

Mike McCarthy, 2906 39th thanked the Commission stating this is an issue that needs to be discussed. He gave a brief overview of how the payday lender industry began. Des Moines needs to be a model, get that message to the legislature by a strong ordinance here in Des Moines.

Chris Neubert, 2419 Cottage Grove Avenue, #6 stated the ordinance could be stronger and the neighborhood associations should be notified in order to get the neighborhood input before a permit is issued. He agrees with the maximum 750 feet separation from residentially zoned properties, and separation from government relief agencies, social service agencies, schools, parks, any place where a payday lender would set up shop because it is a convenient location to catch people in a desperate situation. He urges the Commission to pass this ordinance with strong qualifications or outright oppose it, because he does agree that payday lenders and pawn shops are different business model.

The following spoke in opposition of the request.

Tom Friend, 420 Hollis, Iowa Falls, IA owner of Friends Electric, Friends Precious Metals stated that pawn shops and payday lenders are not the same. He will be at his shop at 9:00 a.m. Saturday if anyone wants to know how a pawn shop is operated in order to make an honest opinion. He takes in antique work, art work, lots of jewelry and does a lot of business with a lot of different people (i.e. doctors, lawyers) so he does not agree or understand why his business need to be 250 feet away from a residentially zoned property. He cannot expand with this new ordinance and his business has increased by

200% - 300% and he has outgrown the space, but move. This restriction will cause a financial burden. His pawn shop helps people who cannot be served by a bank.

Jay Berkshire, 5472 50th Avenue, Norwalk, IA stated he has been a pawn broker for 23 years in 10 different states. He has a pawn shop on E. University and everything he owns is invested in that pawn shop. Without that pawn shop he becomes another unemployed person. He will lose his house and everything he owns. There are not a lot of calls for someone who has been in this type of business for 23 years. When he opened his business the people in the neighborhood were glad that someone finally came over to the east side so they did not have to drive to the south side or the west side to do business. There is no hanging out in front of his business. He and the surrounding residential neighbors look out for each other. The police do not get called on a regular basis and he tries to be a model citizen. If this ordinance goes through his business will have no value, because he can't sell it and he may not be able to get financing when his balloon payment is due in 2012 because if anything happens to his building he would not be able to reopen or reopen anywhere close to where his customer base is. A payday loan store investment is an office, desk, and bank account. His investment as a pawn shop broker includes is product knowledge, wisdom to value items, and an investment of 20 plus years in what he is doing.

Brian Millard asked if Mr. Berkshire did any payday lending of any kind and does he consider that payday lending and pawn shops are the same in comparison.

Jay Berkshire stated he did not do any payday lending and there is no comparison when it comes to payday lending and pawn shops. His opinion is that payday lending has sucked the life out of this country. In his store he gives the full amount of what something is worth, if the loan cannot be paid back, he sells it. He will give that person a loan for something else, the next day; it does not get reported on their credit.

Brian Millard asked if he feels that he is already heavily regulated, has reporting to do and has to be accountable.

Jay Berkshire stated he does and on many occasions his hobby is to have people that steal stuff arrested in his store.

Brenda LaBlanc 3114 Scott Avenue, member of CCI stated that she is not speaking against the ordinance but would like to address some of the things Mr. Berkshire has been saying. Big banks are hurting people because of the way they operate. Payday lending is an offshoot of that because they cheat people; it is robbery in her opinion. Pawn brokers have always treated people fairly and she has never heard of them cheating anyone or over charging them. She does not know why the pawn shops are included in this ordinance. She wants an ordinance against the payday lenders because of the way they treat people, not because of how they look or where they are located. She thinks the pawn brokers should be taken out of the ordinance because they are not the same thing at all and should not be treated the same. People who are doing good business and making money honestly should be left alone and allowed to do business.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Kent Sovern asked for a friendly amendment to the ordinance in Section 134-992, to prohibit payday lenders in the C3-R District.

Mike Ludwig explained the reason why that use is proposed because of the prohibition in "C-1" Districts. "C-1" uses are permitted in C3-R zoning district. The discussion with the R&O was the downtown was a different consideration, predominantly commercial and recommendation was made to not exclude the pawn shops or payday lenders from downtown.

Mike Simonson moved staff recommendation accepting the friendly amendment.

Brian Millard stated that no one has been able to demonstrate to him the correlation between pawn shops and payday lenders. He understands why some neighborhoods have concerns about having a pawn shop, sometimes it might signal an adverse change in the economy of the neighborhood, but a payday lender is totally different. He is also concerned with the City's decision to withhold notification from neighborhoods in advance of an approval. Just because something can be administratively approved does not mean the public does not have the power to stop it. With no notification, the City removes the voice of the public. He disagrees with grouping the payday lenders with the pawn shops and he suggest a 30 day notification to the neighborhood associations or neighborhoods by email, which is easy to do before the administrative approval.

Dann Flaherty asked Brian Millard for clarification on 82-207 if he is asking that a provision be put in notifying the neighborhoods.

Mike Ludwig stated the focus should not be made on what section it goes in to because right now the City issues hundreds of permits on a daily basis with no notification. If the Commission wants notification, they should just make it part of their motion and if Council directs, staff will have to figure out a place to put in the code because it does not exist for administrative decisions currently. If the Council wants public notification staff has previously recommended that the uses be subject to Conditional Use Permit review by the Board of Adjustment.

Brian Millard clarified that his friendly amendment was for 30 days notification to all neighborhoods, (not a neighborhood, or just houses within 250 feet) but neighborhoods in advance of an administrative decision.

Mike Simonson asked Brian Millard is he saying Recognized Neighborhood Associations?

Brian Millard stated yes 30 days in advance of an administrative approval.

Mike Simonson stated he accepts that friendly amendment.

Mike Ludwig clarified that a payday lender and pawn shop proposed to locate at two new locations in the City that generated the interest in the initial moratorium. Some may now express that their only issue was with payday lenders, but when this all started six months ago the issue was a business that was going to operate as both. They subsequently indicated they were not going to do payday lending, they were only going to do pawn shop. Staff also heard comments at the forums that they did not like either use, so there was

some basis of why this started out as treating both the same, at least through adoption of the moratorium, the public forum and the Council work sessions.

Leisha Barcus asked if there could be a definition to determine that would not allow those two businesses together. Any payday loan lending activity would not be acceptable in combination of another business.

Mike Ludwig stated that the separation requirements would prohibit an existing pawn shop from expanding and providing payday lending services.

Dann Flaherty clarified that what Leisha Barcus is saying is if the Commission accepts Brian Millard's amendment that strikes the word pawn shop, could payday lending go into another business.

Mike Ludwig stated yes, if it was a half-mile from an existing payday lender business or 250 feet from any residentially zoned district.

Dann Flaherty stated that for example, can a payday lender be in with a convenience store?

Leisha Barcus stated that she saw no point in having pawn brokers in this ordinance at all.

Kent Sovern stated that he has not figured out how to divide the payday lenders and pawn shop.

John "Jack" Hilmes asked how have the payday lending business and pawn shop business changed in the last year.

Mike Ludwig stated there has been an increase in the number of payday lending businesses over the last few years. There are thirty-one in the City versus twelve pawn shops. Competition has had an effect; the City did adopt regulations on pawn shops within the last few years which require licensing through the police department, inventory requirements, tracking of merchandise, and an additional license fee that was applied to pawn shops which may have had an impact or reduced the number, from a cost standpoint to do business.

Ted Irvine asked if under this proposed ordinance if pawn brokers were to be extracted out of it and it was passed, would Pawn America be able to open up only doing pawn brokerage business on Merle Hay Road?

Mike Ludwig stated yes.

Will Page stated he has used pawn brokers in the past and was satisfied with the result from it. He would like to call the Commission's attention to that there is still a very high interest rate that others can charge.

Brian Millard stated that he had no problems with regulations on pawn brokers but they should be reasonable in accordance with their impact, what they do, where they locate. He does not think the impact is the same.

COMMISSION ACTION

Brian Millard moved to exclude the pawn shop from the ordinance.

Motion passed 7-5 (Brian Millard, Leisha Barcus, Jacqueline Easley, Dann Flaherty, Greg Jones, Jim Martin, and Will Page voted in support. Shirley Daniels, John "Jack" Hilmes, Ted Irvine, Mike Simonson, and Kent Sovern voted in opposition)

Will Page asked if the Commission still has the desire to explore the pawn shop issue as an issue in and of itself.

Brian Millard stated that the Council would have to send it back to the Commission that they agree.

Dann Flaherty stated to make that as a notation that the Commission would be glad to explore separate regulations for the pawn shops.

Mike Simonson made a friendly amendment to his motion to change the separation distance to 750 feet from a residential district.

Brian Millard stated that he is concerned that legal won't be able to defend the separation distance of 750 feet.

Greg Jones stated that at the R&O meeting discussion was made that even though they would like the most restrictive, there were no other examples of 750 feet separation for other uses. 250 feet did what they wanted it to do and would accomplish the same goals.

Mike Ludwig stated that there is currently a 75 feet separation in the ordinance for liquor, beer, wine sales from the school, church, etc. Concerns in the past are that this was not significant enough, but nothing has changed and this is what they used in comparison.

Motion failed 3-9 (Mike Simonson, Dann Flaherty, and Leisha Barcus voted in support. Shirley Daniels, Jacqueline Easley, John "Jack" Hilmes, Ted Irvine, Greg Jones, Jim Martin, Brian Millard, Will Page and Kent Sovern voted in opposition)

Brian Millard moved to require thirty (30) days advanced notification to all recognized neighborhoods before administrative approval occurs for payday lenders.

Motion passed 10-2 (Brian Millard, Jim Martin, Jacqueline Easley, Will Page, Mike Simonson, Dann Flaherty, John "Jack" Hilmes, Ted Irvine, Kent Sovern, and Leisha Barcus voted in support. Shirley Daniels and Greg Jones voted in opposition)

Mike Simonson moved to approve the proposed ordinance with the following amendments proposed by the Commission:

- 1) The ordinance excludes pawnbrokers;
- 2) Delayed deposit service businesses be prohibited in the C-3R zoning district; and
- 3) Notice shall be mailed to all neighborhood associations at least 30 days prior issuance of an administrative decision by the Zoning Enforcement Officer to authorize the

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establishment of any new delayed deposit service business that otherwise complies with the proposed regulations.

Motion passed 11-1 (Brian Millard, Jim Martin, Jacqueline Easley, Will Page, Dann Flaherty, John "Jack Hilmes, Ted Irvine, Kent Sovern, Leisha Barcus, Shirley Daniels, and Greg Jones voted in support. Mike Simonson voted in opposition as amended)

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

cc: File