



MEMORANDUM
Office of the City Attorney

Date: August 18, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan H. Montgomery, City Manager; Joshua McMurray, Senior Planner
Subject: Specialized Financial Services Ordinance; Preemption Issue

At the August 12, 2014 meeting, Council asked whether we could impose requirements on "Specialized Financial Services" businesses to prevent the taking of unfair advantage over the public. The answer is "no" because of the issue of state law preemption.

City ordinances that conflict with state law are void, *Cohen v. Board of Supervisors* (1985) 40 C3d 277, 290. An ordinance is considered to be "in conflict" if it:

- Duplicates state law;
- Contradicts state law;
- "Enters a field" which has been "fully occupied" by state law. (See *California Municipal Law Handbook 2014 Ed. Sec. 1.36.*)

As the staff report for this ordinance noted at the last meeting, car title loans and similar loans are regulated subject to the California Lenders Law (Financial Code Sec. 22000 *et seq.* and is administered by the California Department of Corporations. Among other things, this law requires copies of all loan documents be made available to the borrower, regulates loan size and duration, prohibits "ballooning" of payments, prohibits charges subsequent to the loan, requires posting a schedule of charges, requires that charges and interest rates be stated in a way "to prevent misunderstanding by prospective borrowers", etc. There is also a whole set of State administrative regulations, administered by the Director of the Corporations Department, found at 10 California Code of Regulations Sec. 1404.

Given this level of activity by the State, I have to conclude that our interest in regulating to protect borrowers would "enter a field" already "fully occupied" by State law, and thus be void. I think that we can have reasonable zoning regulations, since the State has not regulated in the area of

land use for these companies. (We could not prohibit them or make it unduly difficult to operate given the State's implied support because of its regulation of the aspects of the loans.)

Unfortunately, State law does not appear to limit the interest rates which may be charged, but does require those terms and conditions to be explained to the borrower. (It should be remembered that these are typically "higher risk" loans that may justify *some* higher interest rates). If Council believes that further protection of the borrowing public is necessary, the Director of Corporations could be contacted.

Because of this conclusion, I recommend that the ordinance remain as drafted.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY ADDING SECTION 9.1.1224 TO THE OAKLEY MUNICIPAL CODE, DEALING WITH CHECK CASHING, PAY DAY LOANS, CAR TITLE LOANS AND OTHER FINANCIAL SERVICE BUSINESSES

The City Council of the City of Oakley does ordain as follows:

Section 1. Section 9.1.1224 is hereby added to the Oakley Municipal Code, to read as follows:

9.1.1224 Check Cashing, Lending and Similar Financial Service Businesses.

“Specialized financial service businesses” mean, for the purposes of this section:

- a. Any business involved in making “pay day loans”, which is a transaction whereby a business defers depositing a customer’s personal check until a specific date, pursuant to a written agreement, as provided by California Financial Code Sec. 23035. The term personal check includes the electronic equivalent of a personal check. “Pay day loan” businesses are regulated by the State of California, Department of Corporations, and do not include consumer loans or commercial loans.
 - b. Any business involved in making “car title loans”, which means a short-term loan in which the borrower’s vehicle title is used as collateral. The borrower must be the lien holder (owns the vehicle outright). “Car title loans” can be regulated as either consumer or commercial loans by the State of California. The term does not include loans for vehicles regulated by the Federal Trade Commission.
 - c. Any business involved in “check cashing”, which is a commercial land use that generally includes some or all of a variety of financial services, including cashing of checks, warrants, drafts and other commercial paper serving the same purpose. “Check cashing” business does not include a state or federally chartered bank, savings association, credit union, or industrial loan company, nor a retailer engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cashes checks or issues money orders for a minimum flat fee not exceeding Two Dollars per transaction as a service to its customer that is incidental to the main purpose or business.
- 1) The following conditions shall apply only to Specialized Financial Services Businesses located in the C (General Commercial) Zoning District:
 - a) A Conditional Use Permit is required;

- b) Shall not be located within a one thousand two hundred fifty (1,250) foot radius of any other Specialized Financial Service Business;
- c) Windows shall not be obscured by placement of signs, dark window tinting, shelving, racks or similar obstructions;
- d) Exterior telephones, security bars and roll-up doors shall be prohibited;
- e) All fees and regulations associated with a loan or financial transaction shall be displayed near the cashier/checkstand and be provided to the customer upon checkout;
- f) The hours of operation shall be stated in the application and be subject to approval in the Conditional Use Permit. The hours of operation should fall within typical business hours, but in no case shall the business be open past 8:00 PM;
- g) All business shall be conducted completely inside of the office and the storage of vehicles associated with the car title loan business is explicitly not allowed.
- h) Interior and exterior video security cameras shall be installed at the front and rear of the business with full view of the public right-of-way and any area where the operator provides parking for its patrons. The cameras shall record video for a minimum of thirty (30) days and be accessible via the Internet by the Police Department. All video equipment shall be installed to the satisfaction of the Police Chief and the Community Development Department;
- i) The operator shall take and maintain thumb prints of all clients who apply for loans, cash advances or other financial services.

Section 3. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 4. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 5. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a

summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date