



STAFF REPORT

Date: Tuesday, August 12, 2014
To: Bryan H. Montgomery, City Manager
From: Joshua McMurray, Senior Planner
Subject: **Specialized Financial Services Municipal Code Text Amendment**

Approved and Forwarded to City Council:

A handwritten signature in black ink, appearing to read "BHM", is written over a horizontal line.

Bryan H. Montgomery, City Manager

Background

This is a City initiated project to consider an ordinance adding Section 9.1.1224 of the Oakley Municipal Code regulating specialized financial service businesses including check cashing, pay day loans, car title loans or other financial services. Advance America, who currently operates in Oakley, approached the City to add a car title loan use to the existing store which provides cash advance services. At present, car title loans are not specifically allowed in the Municipal Code. The proposed addition of Section 9.1.1224 would set forth definitions, permit requirements and development standards for the car title loan business, as well as check cashing and pay day loan services.

Analysis

Car title loans and pay day loans are forms of collateral lending, similar to a pawn business in that collateral is put up in exchange for a loan. In the case of car title loans, a loan recipient uses the title of their vehicle as collateral but still gets to use the vehicle in the meantime. If the loan is defaulted upon, the vehicle can be repossessed as loan payment. This type of service is also similar to a pay day loan service in that the industry is subject to the California Finance Lender's Law. In the case of pay day loans, the collateral for the loan is a person's pay check and bank account instead of a vehicle. Check cashing services often allow a person to cash a check without having a checking account or without waiting for the check to clear. Often these types of businesses are grouped with the above two uses and therefore have been added into this ordinance.

Car title loan businesses are State regulated and are subject to the California Lender's Law, administered by the Department of Corporations. As such, loans less than \$2,500 are capped with regard to loan interest rates. However, loans of greater than \$2,500 are not limited and a lender may charge any interest that the market may bear. It can be assumed that many vehicles are worth over \$2,500, so the uncapped interest rate situation may be prevalent with this type of business. These types of loans are becoming more popular and increasing in demand as customers looking to obtain a more conventional loan may be turned down due to bad credit.

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Although similar to a pawn business, concerns with stolen property are not an issue with these types of loans. In order to be approved for a car title loan, the applicant must be the legal owner of the vehicle. In addition, the vehicle continues to be used by the owner for the life of the loan. Any repossession of the vehicle, if the loan was in default, would have to comply with applicable laws.

However, Staff does have concerns with allowing these types of businesses by right. Staff researched the code and surveyed cities in California to determine how to best address the Advance America request. The research indicated that most jurisdictions either have this use as a standalone use or group this use in with other uses such as pay day loans or check cashing services. It is also common to place additional development standards on these types of uses, including the requirement for a Conditional Use Permit, hours of operation, signage and window covering, and security. Requiring a Conditional Use Permit would allow Staff to analyze each request on a case by case basis and ensure that businesses operate in an appropriate manner and not contribute to existing issues with predatory lending.

Fiscal Impact

There is no ongoing negative fiscal impact created by amending the zoning code to further clarify the permit requirements for the establishment of a check cashing, pay day loan, car title loan or other financial service business's.

Recommendation

This project includes both an urgency ordinance and a regular ordinance. The purpose of having the urgency ordinance is for the regulations to take effect immediately and serve as a placeholder until the permanent ordinance can become effective after the normal 45 day period. Therefore, Staff recommends the City Council take two actions. The first action would be to approve the urgency ordinance. This action requires a 4/5 vote to be adopted. The second action would be to waive the first reading and introduce the regular ordinance. The recommendations are as follows:

- A. Staff recommends that the City Council read the attached urgency ordinance (by title only) and adopt the urgency ordinance (by 4/5 vote) adding Oakley Municipal Code Section 9.1.1224 (Specialized Financial Services).
- B. Staff recommends that the City Council waive the first reading and introduce an ordinance adding Oakley Municipal Code Section 9.1.1224 (Specialized Financial Services).

Attachments

1. Proposed Urgency Ordinance
2. Proposed Ordinance

ORDINANCE NO. _____

**AN URGENCY 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 twenty (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;
- 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. Urgency.

The City Council finds that it is necessary to adopt this ordinance as an urgency measure to protect the public health, safety and welfare as the Community Development Department has received inquiries from persons wishing to open

Specialized Financial Service Businesses within the City of Oakley. The regulations specified herein are necessary to protect public health, safety and welfare.

Section 6. Effective Date and Publication.

This ordinance shall take effect immediately upon its adoption and shall continue in effect for ninety (90) days from the date of its adoption, unless sooner repealed by an ordinance which has been adopted following a noticed public hearing. The City Clerk shall cause this ordinance, or a summary thereof, to be published in accordance with state law.

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

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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:

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NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date