

**COUNCIL ACTION FORM**

**SUBJECT: ZONING TEXT AMENDMENT CONCERNING DELAYED DEPOSIT SERVICE PROVIDERS**

**BACKGROUND:**

In September of 2011, the City Council directed staff to draft an ordinance “as restrictive as legally possible” to limit the locations in which payday lenders could operate. A payday lender is a business in which a check is accepted subsequent to the date it was written or where a check is held for a period of time prior to deposit pursuant to an agreement between the parties, typically for a fee.

Staff is aware of seven existing payday lenders in Ames. Under the current zoning code, payday lending is considered an Office Use and is permissible in any commercial base zone. Currently in Ames there are 794 existing parcels in commercial zones where payday lenders could locate.

**Regulating and licensing payday lenders are powers reserved by the state. However, cities can determine the conditions and locations in which commercial activity occurs.** A zoning ordinance that totally excludes a particular business from an entire municipality must bear a more substantial relationship to the public health, safety, morals and general welfare than an ordinance which merely confines that business to a certain area in the municipality.

In Ames, zoning restrictions have been imposed for specific uses that have an adverse impact on public health and welfare. For example, adult entertainment businesses may not be located within 1,000 feet of residential zones or each other.

**For activities that are not constitutionally protected, such as payday lending, it is permissible to pass any number of conditions—even if that creates no area of the City where such an activity is allowed—as long as each condition adopted can be shown to tie back to a substantial impact on public health, safety, and welfare. Such rationales used by other communities include eliminating or reducing negative effects associated with that economic activity.**

Ames itself would not necessarily have to have experienced those negative effects; evidence that other cities have experienced negative effects may be cited as justification for each condition. Negative impacts of payday lending can also be shown through published research reports indicating a correlation with economic distress and increases in crime, such as a 2011 article published in *Criminology & Public Policy*, which found payday lenders to be associated with both “a spike in neighborhood crime rates [and] a depressing impact on local property values.”

In 2010, the cities of Des Moines, West Des Moines, and Clive enacted new restrictions on the zones in which payday lending was permissible, with restrictions on minimum distances between payday lenders and other lenders, residential zones, and parks. The City of Des Moines noted the proliferation of payday lenders *“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 [...] 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 [...]”*

**In response to the City Council’s direction, staff drafted a text amendment that would add payday lenders, or “delayed deposit services,” to the list outlining additional requirements for specific uses. The section defines delayed-deposit services and requires that they not be located:**

- **Within 1,000 feet of other existing delayed deposit services**
- **Within 1,000 feet of residential zones**
- **Within 1,000 feet of schools, daycares, and parks**
- **Within 1,000 feet of any arterial street**
- **Within Highway-Oriented Commercial or Gateway Overlay zones.**

**Violation of these provisions would be a municipal infraction. If adopted, the conditions of this text amendment would not permit new payday lenders in any existing parcels within the city.**

**The payday lenders that already exist would be able to continue operation. Based on their locations, all would become nonconforming uses, and therefore could not be enlarged or increased in intensity unless certain conditions were met and a Special Use Permit were granted by the Zoning Board of Adjustment.**

**Recommendation of the Planning & Zoning Commission.** At its meeting of March 21, 2012, with a vote of 5-0, the Planning and Zoning Commission recommended approval of the language as proposed, creating a separate land use for delayed deposit service providers and enacting prohibitions against their locating in Highway-Oriented Commercial or Gateway Overlay Zones, or within 1,000 feet of certain specified facilities. No one from the audience spoke for or against the proposed text amendment.

#### **ALTERNATIVES:**

1. The City Council can adopt the language of the attached ordinance as proposed, creating a separate land use for delayed deposit service providers and enacting prohibitions against their locating in Highway-Oriented Commercial or Gateway Overlay Zones, or within 1,000 feet of certain specified facilities outlined above.

2. The City Council can decide to modify the proposed ordinance regulating delayed deposit service providers.
3. The City Council can decide not to adopt the proposed text amendment.

**MANAGER’S RECOMMENDED ACTION:**

The proposed text amendment fulfills the City Council’s direction to prepare an ordinance limiting payday lending to the extent legally possible. It would essentially end the growth of this particular class of commercial activity in the City. This could put the City in the rare position of having determined the desirability of one type of business over another. The proposed text amendment would reduce the number of parcels in which payday lending is an allowable land use, while remaining within both the precedent set by other cities and the confines of what is in the City’s power to control.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby adopting the limitations on payday lending locations as stated above.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 29.1312 THEREOF, FOR THE PURPOSE OF DEFINING THE LOCATION WHERE NEW DELAYED DEPOSIT SERVICE BUSINESSES CAN BE LOCATED; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the proliferation of delayed deposit service businesses suggests that a commercial corridor and the adjoining neighborhoods are in economic and social decline; and,

**WHEREAS**, delayed deposit service businesses can result in the disinvestment in the commercial corridor and can negatively impact property values in the surrounding neighborhood; and,

**WHEREAS**, it is reasonable and appropriate to regulate the placement and location of delayed deposit service businesses in order to protect the surrounding neighborhoods from the deleterious effects of such businesses, and to avoid the adverse effects on the health, safety and general welfare of the surrounding neighborhood that are likely to result from a concentration of such businesses;

**Therefore, BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

**Section One.** The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended enacting a new Section 29.1312 as follows:

“1. Words and Terms Defined

a. Delayed Deposit Service Provider: Means every person who for a fee does either of the following:

1. Accepts a check dated subsequent to the date it was written.
2. Accepts a check dated on the date it was written and holds the check for a period of time prior to deposit or presentment pursuant to an agreement with, or any representations made to, the maker of the check, whether express or implied.

2. The following shall apply to delayed deposit service providers:

a. Location: No person, whether as principal or agent, clerk, or employee, either himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any delayed deposit service business in the following locations:

1. Within 1000 feet of any parcel of real property upon which is located any of the following facilities:

- a. Existing delayed deposit service facilities;
- b. A children’s daycare, nursery school, preschool, elementary school, junior high school, senior high school;
- c. Park or recreational facilities operated and improved by the city, story county, the story county conservation board or the state of Iowa;

2. Within 1000 feet of any residentially zoned or used property, or any property designated on the city's land use policy plan as residential oriented;

3. Within 1000 feet of any arterial street;

4. In the highway-oriented commercial zones;

5. In gateway overlay zoning districts.

3. Measurement of distance: The distance between any two delayed deposit service facilities shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any delayed deposit service facility and any daycare, school, public park, or any property designated for residential use or used for residential purposes shall be measured in a straight line, without regard to intervening structures, from the closest property line of the delayed deposit service facility to the closest property line of any daycare, school, public park or any property designated for residential use or used for residential purposes. The distance between any delayed deposit service facility and any arterial street shall be measured in a straight line, without regard to intervening structures, from the closest property line of the delayed deposit service facility to the closest edge of the arterial street pavement.

**Section Two.** Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

**Section Three.** All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

**Section Four.** This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

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Diane R. Voss, City Clerk

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Ann H. Campbell, Mayor