

**COMMISSION 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 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 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.

In 2010, the cities of Des Moines, West Des Moines, and Clive enacted new restrictions on the zones in which payday lending was permissible, and 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.

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.

## **PROPOSED AMENDMENTS:**

### Section 29.132. 1. Words and Terms Defined

a. Delayed Deposit Service Provider: Means any 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 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.

**ALTERNATIVES:**

1. The Planning and Zoning Commission may recommend to the City Council to adopt 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.
2. The Planning and Zoning Commission may recommend that the City Council not adopt the proposed text amendment.

**STAFF RECOMMENDATION**

The proposed text amendment would essentially end the growth of a particular class of commercial activity in the City. This may put the City in the rare position of having determined the desirability of one type of business over another. However, the proposed text amendment fulfills the City Council's direction to prepare an ordinance limiting payday lending to the extent legally possible. 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. Staff therefore recommends that the Commission act in accordance with Alternative 1, which is to recommend adoption of the limitations on payday lending locations as defined above.