

# **Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions**

**A Guide for Advocacy Groups and Government Officials**

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## Preface

Neighborhoods across America are witnessing the resurgence of predatory small loan operations. In the last twenty years or so, payday lenders have exploited deregulated interest rates, won special treatment from state legislatures, or designed products that slip through legislative or regulatory loopholes. As a result, payday lending legally operates in 32 states, while 18 states either prohibit it, curb it with rate caps, or have other restrictions that disrupt the payday loan business model costing consumers as much as \$7.46 billion a year in interest for over \$44 billion in loans from both storefront and online lenders. Payday loans cost cash-strapped borrowers triple-digit interest rates, trap borrowers in repeat loans, foster coercive debt collection practices, and endanger bank account ownership for families that live on the financial edge.

Payday lending has become increasingly controversial as the consequences of this defective financial product have become painfully apparent. Payday lenders now outnumber Starbucks and Burger King outlets across the country. Billions of dollars in usurious interest flows out of communities to the national chain lenders. Mapping of payday loan locations by neighborhood characteristics and studies of payday loan use issued by regulators and academics document that these high cost loans disproportionately harm minority families and low to moderate-income borrowers. (For more information, please visit Consumer Federation of America's [www.paydayloaninfo.org](http://www.paydayloaninfo.org))

Local leaders see the impact of payday lending on economic development, requests for financial assistance, and financial distress in communities with high levels of low-to-moderate income and minority families. While industry lobbying and campaign contributions have thwarted reform in many state legislatures, local officials are taking action to stop payday lenders from exploiting their neighborhoods by enacting restrictive zoning requirements and local ordinances.

Local policymakers interested in preventing predatory payday lending can also lend their support to state-level reform efforts to cap annual interest rates at an all-inclusive 36 percent or repeal payday loan authorization outright. As documented in North Carolina, reinstating small loan caps allows responsible credit to flow, while saving consumers the billions of dollars now lost to predatory payday lenders. Resolutions urging state legislative reform were adopted by local governments in Virginia and Ohio, starting in 2007. Local officials who are closest to their communities have a powerful role to play in the nationwide campaign to stop predatory payday lending and improve the financial lives of millions of families.

This guide has been developed to assist community consumer advocates and government officials take action to combat payday lending in local communities and at state legislatures. The guide is divided into the following sections:

- \* Introduction - How payday loans work and their harmful effects on consumers and communities.
- \* How to pass an ordinance for advocates.
- \* Assistance for Government Officials - Understanding payday loans, the type of ordinance that might be best for their community, and legal challenges that have been faced in the past. Along with this section are the following appendices:
  - o Appendix 1 - List of Payday Lending Ordinances
  - o Appendix 2 - Legal Challenges to Local Payday Lending Ordinances
  - o Appendix 3 - Ordinance and Resolution Examples

## Introduction

Local governments have a right and a responsibility to protect the economic health, welfare and safety of their communities using whatever tools they have available to them. High cost payday lenders are proliferating in low-to-moderate income areas of cities and towns in states where this form of lending is authorized or loopholes are exploited. As a result, land use code amendments, commonly known as ordinances, have been enacted to reduce the negative impacts of payday lending in areas within their jurisdictions that are particularly vulnerable.

In most cases, payday lending presents a classic example of an industry that creates local community financial drain. The more money that is exported out of the local economy by excessive fees, the less money there is to spend within the local economy. This creates not only individual financial spirals, but community economic spirals as well. The capital that could be circulated within a local economy is lost to outside interests.

Payday loans are small cash advances typically ranging from \$100 to \$500. The average loan amount is nearly \$400 and the full amount of the loan plus interest is typically due and payable in full on the borrower's next payday. Because the borrowers cannot afford to live until the next payday after repaying their high-cost payday loan, they find they must take out another loan to make ends meet. On average, in America borrowers renew their loan 8 times before they are able to pay the loan in full and ended up paying \$800 on an original \$325 loan.<sup>1</sup> Finance charges are generally calculated as a fee per hundred dollars borrowed. This fee is usually \$15 to \$30 per \$100 borrowed. The average interest rate for a payday loan is between 391% and 782% APR for a two-week loan from stores or online.

The loan is secured by the borrower's personal check or some form of electronic access to the borrower's bank account. These balloon payment loans can equal 50 to 95% of bi-weekly paychecks of the typical borrower. Loans secured by personal checks or electronic access to the borrower's bank account endanger the banking status of borrowers, facilitate coercive collection tactics, and constitute unfair wage assignments.<sup>2</sup>

Simply put, payday loans are bad for business because the lender is going to get paid first even if the borrower entered into an obligation with other businesses before getting into a payday loan. The payday lender is going to get paid even before basic living expenses such as rent, utilities and child support payments. This is because the payday lender is holding the borrower's checking account hostage, thus having the effect of a "super priority lien."

Local economies rely heavily on viable small businesses. Ordinances to restrain the supply of payday loan outlets are not likely to have an adverse impact on the price of loans to consumers. Competition does not drive down the price of payday loans. An FDIC report found "payday advance stores tend to charge an effective APR near the applicable statutory limit"<sup>3</sup>. SEC annual filings by publicly traded payday lenders show consistently high rates even in seemingly saturated markets.

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<sup>1</sup> Center for Responsible Lending, "Modern Day Usury: The Payday Loan Trap," Nov. 2010

<sup>2</sup> Jean Ann Fox, Director of Consumer Protection Testimony before the Subcommittee on Domestic Policy of the House Committee on Oversight and Domestic Reform, March 21, 2007

<sup>3</sup> Flannery & Samolyk, "Payday Lending: Do the Costs Justify the Price?," FDIC, June 2005, endnote 34 at 9

Payday lenders, irrespective of the number of storefronts in the local market, consistently charge the maximum interest rates allowed by state law.

Tucson, Arizona illustrates the growing interest in restraining high-density payday loan storefronts. The results of a study released by the Southwest Center for Economic Integrity *conservatively* estimated that \$20 million dollars in fees were being extracted annually from residents in Pima County, which includes the City of Tucson. These fees were being extracted from the very neighborhoods where the city and the county were investing approximately \$8 million dollars in federal revitalization grant monies. The number of payday loan storefronts in Tucson and Pima County had increased exponentially. In 2002, there were 78 payday loan storefronts in Tucson. By 2005, there were 130. Further mapping studies initiated by the Southwest Center for Economic Integrity report that 83% of the payday loan storefronts were located within ¼ mile of low-moderate income neighborhoods.<sup>4</sup>

Arizona voters soundly rejected a ballot proposition that would have allowed payday lending to continue charging residents triple digit interest rates in 2008. In July 2010, the payday lending industry lost its exemption from the state's small loan law capping interest rates at 36%. This hard won policy victory could not have happened without the efforts of advocates at the local level working with their local elected community leaders. The enactment of local ordinances helped raise the state's collective policy I.Q. on the issue of predatory payday lending.

A study by the Center for Responsible Lending found that African-American neighborhoods have three times as many payday lending stores per capita as white neighborhoods. "The findings show that race matters, even when we control for other factors. Variables the payday industry claims are key demographics of its customer base - income, homeownership, poverty, unemployment rate, age, education, share of households with children and gender - do not account for the disparity."<sup>5</sup>

Ace Cash Express, a leading nation-wide lender, reported in an SEC filing that its growth strategy is to open new stores, franchise stores in new and existing markets, opportunistically acquire stores, and introduce new services into its store network. This illustrates intent to saturate specific markets and to maintain existing customers caught in the payday loan trap. These storefronts crowd out local businesses such as non-franchised restaurants and cafes.

Given that we are able to geographically demonstrate that the payday lending industry continues to expand its storefronts into minority, low-middle income, economically distressed neighborhoods within cities and counties brings us back to the local land use issue. Local governments restrict all types of businesses and enterprises from liquor stores to adult entertainment facilities. Restricting payday lenders through ordinances can be an effective strategy in curbing economic blight while efforts at the state and federal levels to reign in these abusive lending practices proceed.

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<sup>3</sup> Payday Lending in Pima County, AZ, Southwest Center for Economic Integrity, December 2003

<sup>5</sup> "Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina" Delvin Davis, Keith Ernst, Uriah King, Wei Li, Center for Responsible Lending 2005

## Payday Lenders Cluster in Poor and Minority Neighborhoods

Payday lenders cluster in low to moderate-income neighborhoods in urban areas, in rural communities and around concentrations of lower wage workers, and military bases. Steve Graves, a geographer at California State University, Northridge, found in a 2009 study that payday lenders cluster in tight bunches in specific neighborhoods. Several cities, including Denver, Columbus Ohio, Louisville, Phoenix and the Los Angeles' San Fernando Valley demonstrated similar patterns.

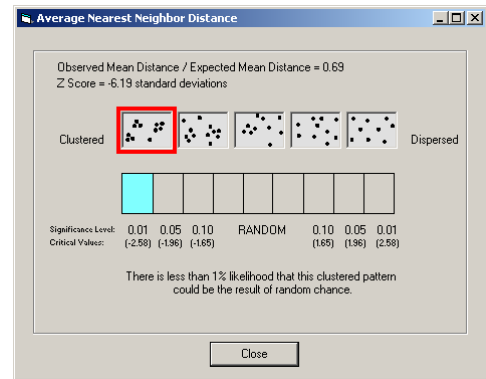
The spatial behavior of this industry suggests that there is little price competition and that, as many observers have suggested, payday lenders may generate business for additional payday lenders. In other words, once payday lenders gain a foothold in an economically challenged neighborhood, they tend to multiply as numerous citizens enter a debt spiral.

The first map, found on the next page, is of the San Fernando Valley, California which would be Americas' fifth largest city if it were separate from Los Angeles. What you will see from this map is the concentration of payday lenders in the Latino neighborhoods of the East Valley.

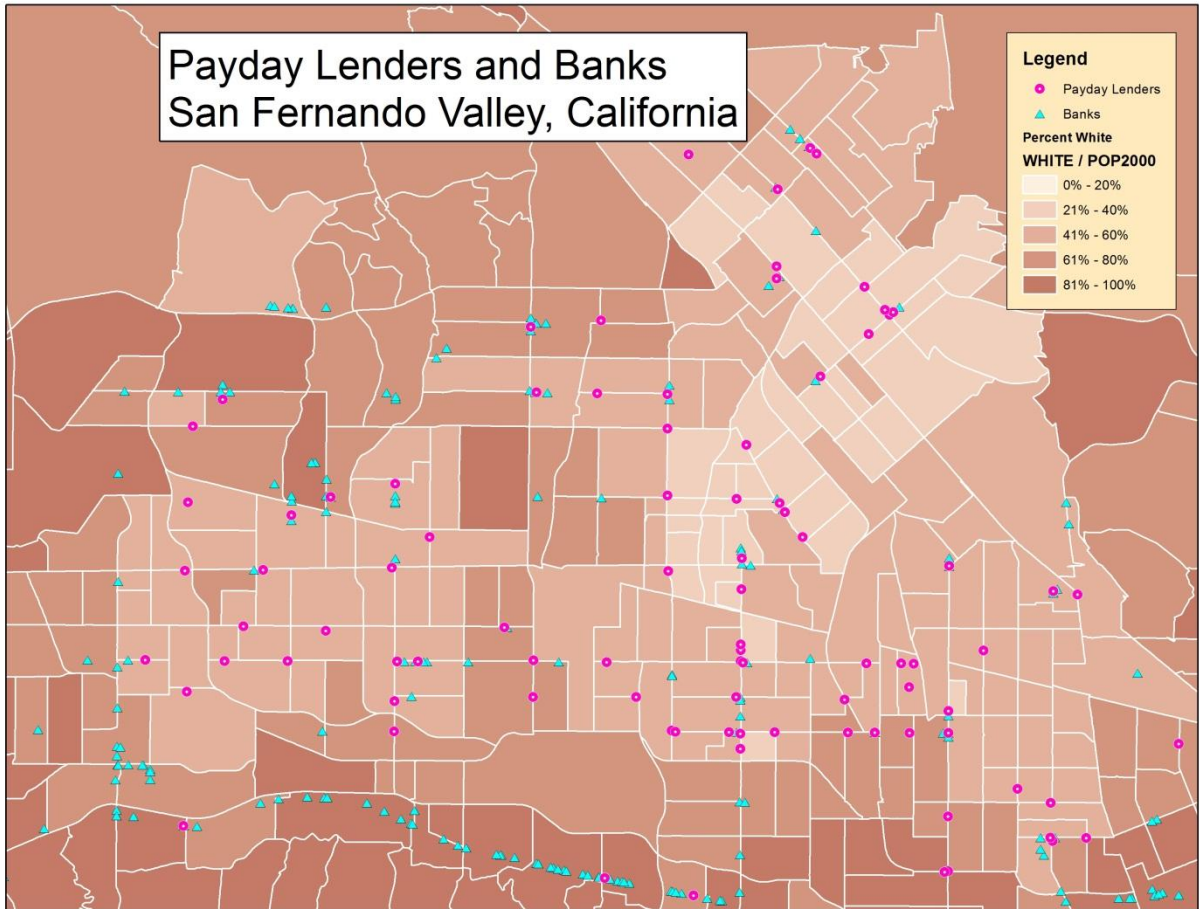
Alex Padilla's 20th State Senate district in the San Fernando Valley has 96 payday lenders and 76 banks, an inverted ratio that is quite rare in California. Padilla's district, gerrymandered to insure a heavily Latino constituency, also has a very high per capita density of payday lenders, earning it the distinction of 'worst' in California. Meanwhile, the adjacent, but largely white and middle class 23rd Senate district has 31 payday lenders and 270 banks, making it 38th out of 40 statewide for payday lending. Other nearby, largely white middle class districts have similar figures<sup>6</sup>.

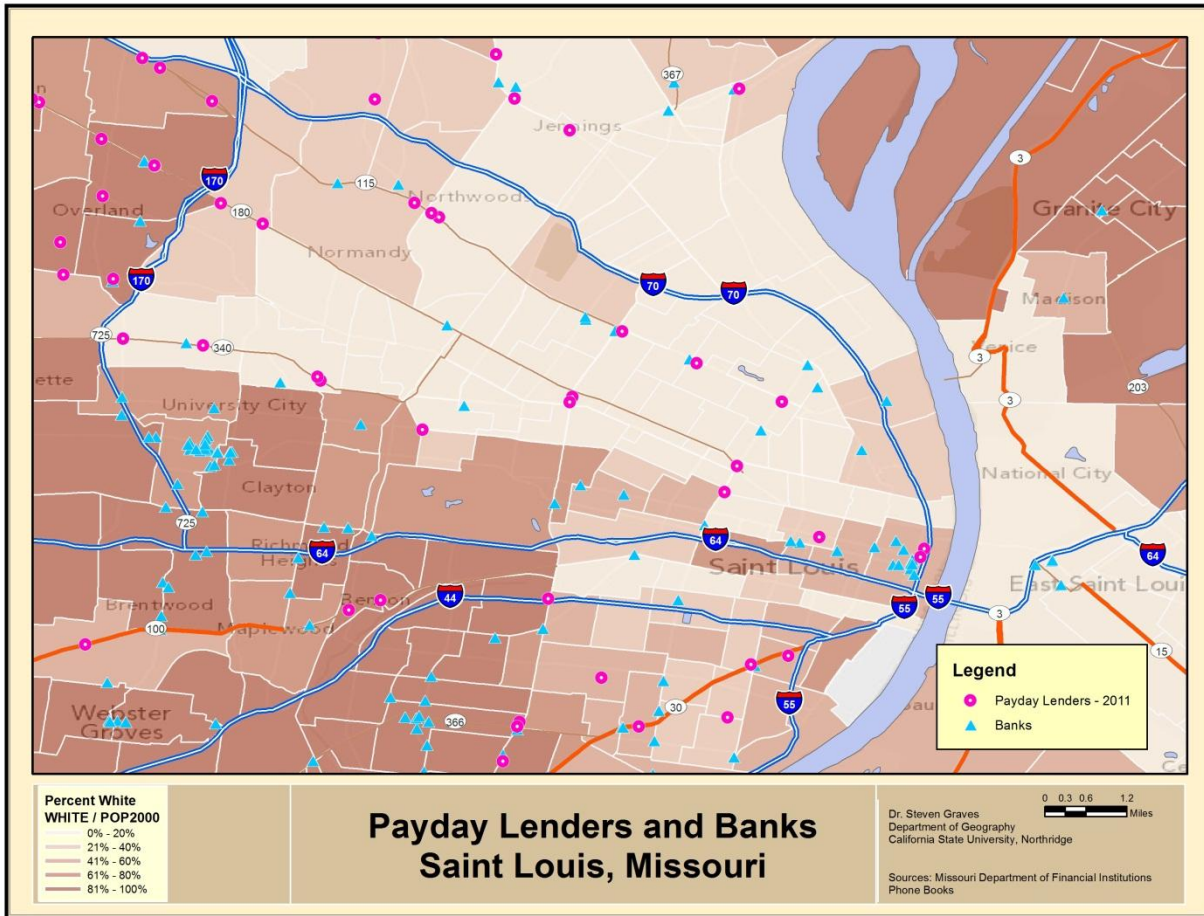
In California, the Van Nuys zip code, 91406, also heavily Latino, has eight payday lenders and only one bank. Zip codes in Pacoima, North Hills, North Hollywood, Reseda and Panorama City also have zip codes with badly inverted ratios. Meanwhile, neighboring white neighborhoods have very few payday lenders and many banks. Woodland Hills, in the West Valley, has 27 banks and only one payday lender. Encino has 24 banks and no payday lenders. It is absolutely clear that Latinos are a favorite target of payday lenders. This business robs capital poor areas of the city of precious resources and has been shown to lead to higher crime rates.

(see Kubrin, Charis E., Squires, Gregory D, Graves, Steven M. and Ousey, Graham C., *Does Fringe Banking Exacerbate Neighborhood Crime Rates? Investigating the Social Ecology of Payday Lending* (2011). *Criminology and Public Policy*, Vol. 10, pp. 437-466, 2011. Available at SSRN: <http://ssrn.com/abstract=2028137>)



**Figure 1: This graphic notes that the clustering pattern of payday lenders can not be due to random chance**

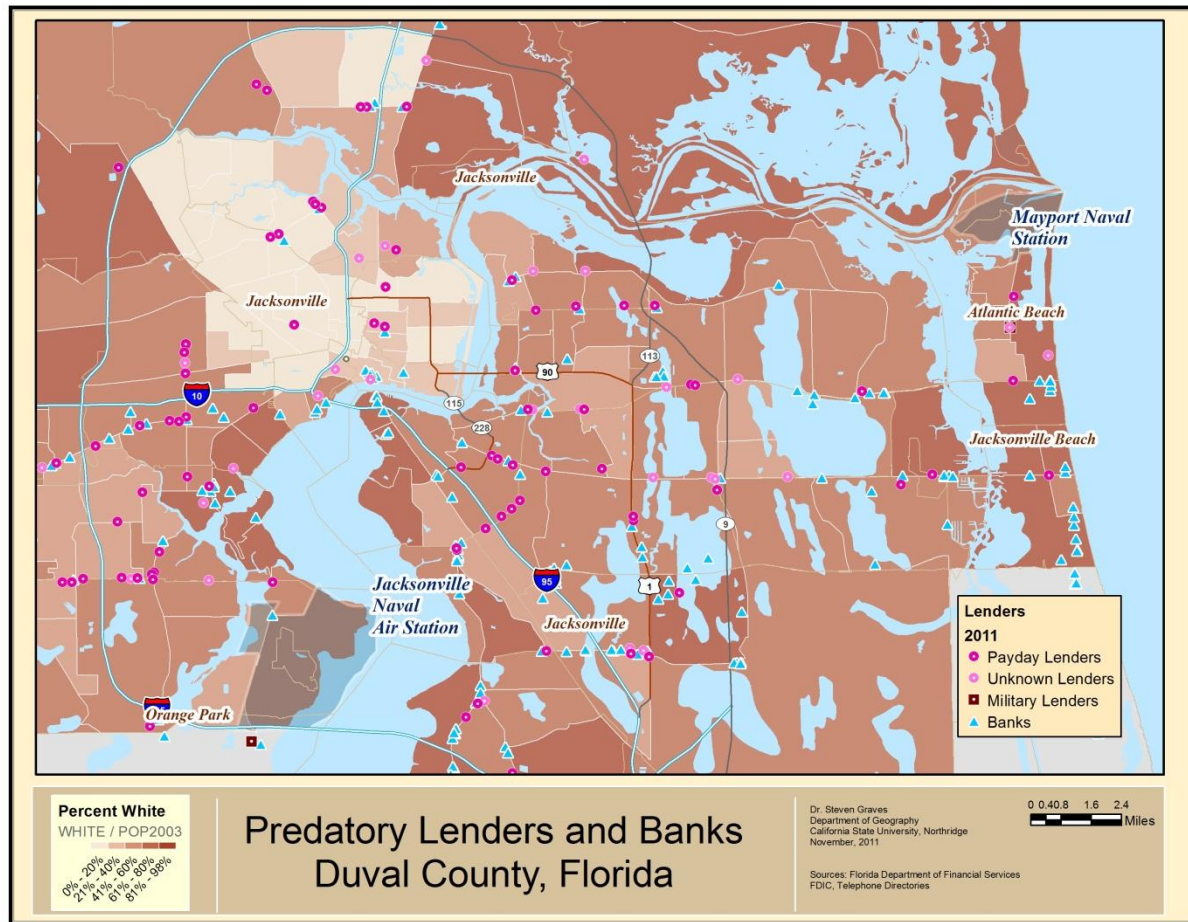




## St. Louis, Missouri

St. Louis is typical of many larger cities in the United States where payday lending remains legal. Missouri, a state with a particularly friendly regulatory environment for predatory lenders, has a far greater number of payday lenders than one would expect for its population. The rural densities in the southeastern part of the state are among the nation's highest.

St. Louis itself has a moderate density of payday lenders, but as is the pattern across most metropolitan areas, the minority neighborhoods host a disproportionate number of high cost lenders. The map shown above demonstrates this condition well. Banks, which indicate the mainstream financial sector, are commonplace and clearly outnumber payday lenders in white neighborhoods. The non-white areas on the other hand have as many payday lenders as banks and in some areas payday lenders clearly outnumber banks. Note how access to banks in the University City/Clayton districts stands in contrast to the lack of such access in St. Louis' near northwest side.



## Jacksonville, FL

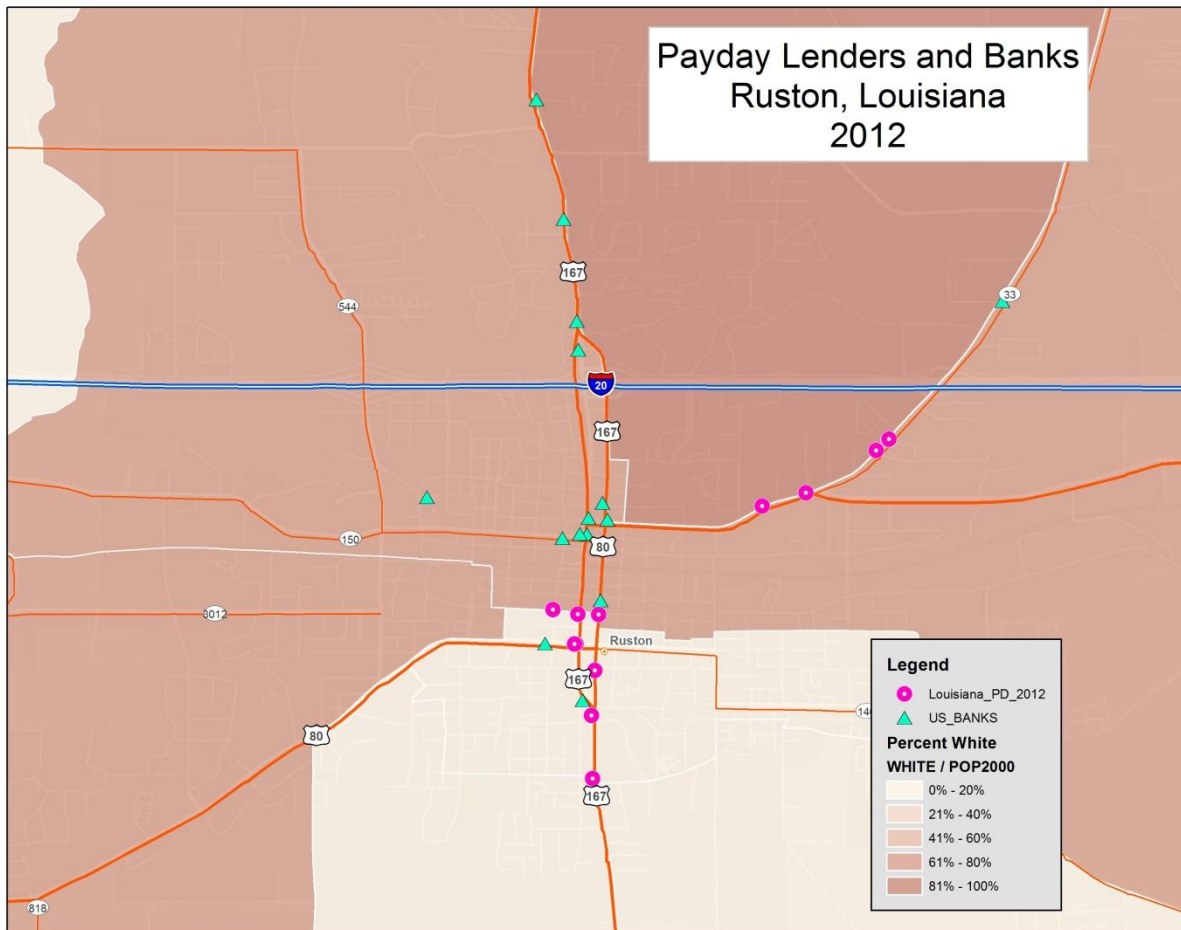
In Florida and other parts of the country, payday lenders are disproportionately located in counties with military installations. This phenomenon was amply demonstrated in the 2005 Graves and Peterson study which compared payday lending in military towns against civilian counterparts. This exhaustive study found cities and counties that contain large military installations almost without fail have the highest concentration of payday lenders in their respective states.

Typical of this pattern was Jacksonville, Duval County, Florida; home to Jacksonville Naval Air Station and Mayport Naval Base and home of two recently closed facilities at Whitehouse Field and Cecil Field Naval Air Station. Duval County ranked first in the state for payday lending. Hillsborough County, Florida which is home to MacDill Air Force Base had the second highest payday lender density statewide. Professors Graves and Peterson found that ZIP code data confirmed payday lenders disproportionately target sailors and Marines stationed in Jacksonville. For example, out of 916 ZIP codes statewide, ZIP code 32210, which is adjacent to the Naval Air Station in Jacksonville, ranked first in the state for total number of payday lenders (11) and ranked 15th worst in a composite measurement of payday lender density relative to bank density and population. Moreover, ZIP code 32205, which is a commercial district near the base, had the second worst composite density of payday lenders in the state. Together, these two ZIP codes have approximately 87,000 people; 24 banks and 22 payday lenders; 15.2 more than are statistically justified by the local population." Similar patterns were found to hold true for all major military bases in the study, with the exception of Fort Drum in New York where usury laws had not been significantly eroded during the 1980-90s and state regulators remained committed to enforcing the law.



A recent update to the original Graves-Peterson study found that even though the federal Military Lending Act had been enacted to protect military families from predatory loans, many military areas around the United States (particularly Florida and Texas) remained awash with payday lenders.

See: "Predatory Lending and the Military: The Law and Geography of "Payday" Loan in Military Towns," 66 Ohio State Law Journal 653 (2005), Stephen Graves, Ph.D., Associate Professor of Geography, California State University Northridge and Christopher L. Peterson, J.D., Assistant Professor of Law, University of Florida College of Law.



### Ruston, Louisiana

Payday lenders have certainly affected many lives in large cities and around military bases, but small towns are where poverty and sluggish economic prospects have created conditions prime for predatory lending. In many small towns, there are significant densities of payday lenders that threaten to disrupt the relatively fragile economic health of such places.

The map below shows Ruston, Louisiana, a small college town and regional service center in North Central Louisiana, which had roughly the same number of banks as payday lenders. Most of the payday lenders and only one of the banks were in the largely black southern portion of town. None appeared to be in the college-town area on the western side of the city.

Similar densities of payday lenders can be found throughout rural communities throughout the Midwest, Appalachia and the Deep South.

(Maps courtesy of Professor Steve Graves, California State University, Northridge)

# How to Pass an Ordinance

This section has been written to educate advocates on how to get an ordinance presented to local government officials and get it passed. A six step process is proposed. Following this section is information that can be given independently to a government official.

## **Step 1 - Learn all you can about payday lenders in your area.**

Before you can approach an elected official for help in curbing payday lending in your city or town, you will have to do a little legwork and answer a few questions. How many outlets are there within your community limits? Your state licensing agency should be able to answer this question for you. Once you obtain a list from your state licensing agency of all the licensed check cashers/payday lenders in your area (ask for it in city order if possible) you can compare that list to your local government licensing. You will often find that they do not match and local check cashers/payday lenders do not have the required local license. Or you might find that local check cashers/payday lenders have the required local license, but are not licensed with your state licensing agency. This issue will need to be resolved. You may be able to get some outlets closed immediately due to improper licensure.

Obtain a map of your local community by district, neighborhood, or other division of your community. This is usually available on-line on your community's web site. Try to also obtain the population of and income level for each district. This information may be old, dating back to the last census, but may be the best available information in the local community. This will help you understand and show your local government officials the clustering of payday lenders within your community.

In what areas of town are most payday lenders located? The easiest way to get addresses for payday lenders is through your local or state licensing agency. As a double check look in your yellow pages. These businesses often advertise under more than one heading. Try check cashing, loans, payday loans, and financing.

Are outlets in close proximity to one another? Look for strings on major streets in lower income neighborhoods. Pay attention to their proximity to low-income housing, community colleges, or any other place you think lenders may be targeting vulnerable clients.

Find out if adjacent suburbs or nearby towns have passed ordinances relating to payday lending. This may add motivation for you to pass an ordinance, as lenders who cannot open outlets in an adjacent incorporated area will move into your community and open more outlets there.

Is their appearance gaudy or rundown? What types of businesses surround payday lenders? This will help determine if payday lenders are contributing to neighborhood blight.

## **Step 2 - Choose the type of ordinance that fits your community and will help you accomplish your goals.**

A number of local constraints on payday lenders have been used throughout the country. More often, cities have used a combination of constraints in an ordinance to achieve their goals. Types of ordinances includes:

- a. Moratorium During Study Period – Suggest passing a moratorium before the word gets out you are considering a payday lending ordinance. Otherwise lenders will rush to open outlets before your doors are “closed”, or before the process becomes more difficult.
- b. Permanent Moratorium – Existing outlets can be grandfathered in forever, or phased out over time.
- c. Limits on Density and/or Distance – Limits allow only a certain number of outlets per number of residents; grandfather existing outlets and make a waiting list for others. Consider setting the density level three times higher than currently exists in your community. For example, if the current density is 1 store per 3,000 residents, the ordinance should limit density to 1 store per 10,000 residents. Prescribing how far outlets must be from each other can also regulate density; ranges that have been used are 600 ft. to one mile. Consider an ordinance combining both density and distance.
- d. Special Zoning – Limit payday lending outlets to special zoning districts or a limited number of existing zoning districts.
- e. Special/Conditional Use Permit – Requires special non-conforming use permits for payday lending outlets. Some cities also require public hearings in conjunction with issuance of special permits.
- f. Prohibition – Place an immediate moratorium on new outlets and set a deadline for closure of existing outlets.

Other ordinances include restrictions on use of neon signs, hours of operation, size/type of building the outlet must occupy, distance of outlets from schools, military bases, certain types of housing etc. All existing outlets will have to be grandfathered in. The one feature of payday loans that generally cannot be regulated by local ordinance is interest rate limitations. Examples of ordinance types can be found in Appendix 1.

## **Step 3 - Learn what system your city or town has in place for passing ordinances.**

Call your local planning and zoning offices, listed in the local community’s governmental pages of your phone book. In most communities you will start the process by finding a sponsor such as the mayor or an elected city or county official. Sometimes you must start work with a planning commissioner. Usually citizens cannot present ordinances without an official government sponsor.

Ask your sponsor if an ordinance has been proposed before and defeated. If so, research the ordinance and why it was defeated. That will help determine a successful strategy for getting a future ordinance passed.

Find out if your payday loan ordinance must first be presented to a planning or zoning board in your local jurisdiction. Does this group hold public hearings where people can testify or is the ordinance presented to the committee for their discussion only? How many readings of a proposed ordinance are required and can multiple readings occur at the same meeting?

If the ordinance will go directly before the city council/board of supervisors, ask if a public hearing will be part of the agenda. If so, it is imperative that you gather a variety of advocates, citizens and victims to testify. The payday loan industry will show up in force.

#### **Step 4 - Talk to your local mayor, neighborhood, city or county elected official.**

See if the representative you have chosen is supportive of the issue. If not, talk to the person who represents a low-income neighborhood where a large number of payday loan stores are located.

Talk to your local mayor and determine the best approach to getting an ordinance passed. The mayor knows the political climate of the community and can give you ideas of how to best proceed. In some cases it may be better to work with county government instead of a local governmental body. Call your local city government office to obtain a list of council/board members, their aides and their contact information. Call or email your local representative and ask for a meeting to present your idea for a new city ordinance and draft if available.

Ask if they are aware of the number of payday lenders in town. Present the information you have gathered. Find out if they are sympathetic to your cause. Ask if they would be willing to sponsor an ordinance for the community and present the facts you have gathered.

Ask your sponsor who else in the governing body would be supportive of the ordinance. Talk to those members well in advance of any hearing and give them talking points that will support your position.

#### **Step 5 - Get a temporary moratorium in place immediately!**

Once you get a sponsor, ask him/her to pass a measure imposing a six-month to two-year moratorium on new payday lenders at the next possible council meeting. Often, when payday lenders learn that you are working on a more restrictive ordinance there is a rush to open outlets before they lose the chance or the application process becomes more difficult.

#### **Step 6 - Find some advocates and payday loan victims to testify at your planning, zoning or council hearing.**

Presenting a variety of views at a public hearing will give more credence to the issue than testimony from your group alone. Seek out other groups in your community who support your position. Sympathetic groups may include those who work with minority, low income, elderly, military, or refugee populations. Places where you might find payday lending victims include: outside payday lending stores, local legal services office or at an unemployment office, social services office, local credit counseling agency, bankruptcy attorneys, Habitat for Humanity affiliates, the unemployment office, food banks and soup kitchens, churches that provide emergency assistance, and any large membership organizations with low and moderate income members (local chapters of NAACP, AARP, Latino organizations, etc.).

Ask around to see if you can find a builder, developer or investor to speak about how payday loan stores contribute to blight. Also, contact your local law enforcement authorities to see if they have established or could establish a relationship between higher instances of crime near payday loan stores.

### **Step 7 - Be prepared to counter payday loan industry and council member arguments.**

These will probably include:

- **A certain type of business cannot be singled out for special zoning restrictions. That's illegal/unfair/restricting free commerce.** Certain types of business are probably already restricted in the community. Among them may be liquor stores, bars, strip clubs, and adult bookstores.
- **Payday Lenders contribute to the local economy by providing jobs and 410(k) benefits to their employees.** The amount these storefronts add to local economies is miniscule compared to the amount of money they take out of communities (see Financial Quicksand CRL Report for exact dollar amounts being extracted from your state <http://www.responsiblelending.org/issues/payday/>). The vast majority of these storefronts are owned by major corporations whose corporate offices are located out of state.

### **Step 8 – Ask your local officials to support state legislative reforms.**

City Councils, City Commissions or County Boards of Supervisors can adopt resolutions calling on the state legislature to repeal payday loan laws or enact rate caps to protect borrowers from triple-digit interest rates and to enact other consumer protection. Local governments can also include payday loan reform in their legislative agendas that form the basis for lobbying by the unit of local government. This shines a local spotlight on the case for reform, and brings influential local governments to work with reformers at the state legislature.

In Virginia, a number of cities, including Saunton, have adopted local resolutions calling for a 35% annual rate cap for payday loans. Other cities and counties in Virginia are considering similar actions. (See appendix for Saunton resolution.). The Ohio Coalition for Responsible Lending is promoting a similar local government resolution in support of state legislation to cap rates at 36% APR and “other measures to break the cycle of chronic borrowing payday lending creates.” The York County Board of Supervisors in Virginia put a payday loan state bill on the County’s legislative agenda, calling for a state bill to “cap rates at 36% annual interest.”

## Assistance for Government Officials

This section will assist government officials to better understand the type of ordinance that might be best for their community and past legal challenges to those ordinances. The following appendices supplement it:

- Appendix 1 - List of Payday Lender Ordinances
- Appendix 2 - Legal Challenges to Local Payday Lender Ordinances
- Appendix 3 – Ordinance and Resolution Examples

### **Step 1 - Learn what you can about payday lenders in your town.**

Identify consumer advocates and nonprofit groups doing economic justice work in your community. Utilize these resources to gain a broader depth of knowledge about the negative social and economic impacts of payday lending.

### **Step 2 - Choose the type of ordinance that fits your community and what you want to accomplish.**

You may want to have staff review similar ordinances that have passed in other communities around the country. Planning staff will have a good idea of what types of ordinances your charter allows and what might work best in your community. Review options for having the ordinance drafted.

### **Step 3 - Have your city or county attorney review the ordinance.**

You may want to have legal staff contact Lynn Drysdale at [Lynn.Drysdale@jaxlegalaid.org](mailto:Lynn.Drysdale@jaxlegalaid.org) for a consultation. There is always the potential for legal challenges with any type of ordinance. A number of relevant cases are reviewed in Appendix 2.

### **Step 4 – Prepare the document and prepare for the vote**

Revise the ordinance if necessary. Contact local advocates to arrange for their presence at any public hearing held before the final vote. Ask them to bring victims, advocates, media, and government officials from other communities near yours who have successfully passed similar ordinances.

### **Step 5 - What else can cities do?**

City or county governing bodies can adopt resolutions calling on the state legislature to close the payday lending loopholes by having all small lenders meet the same small loan usury cap, usually about 36%, repeal laws that allow payday lending, or to enact rate caps to protect borrowers from triple-digit interest rate caps or other consumer protection. Local governments can also include payday lending reform in their legislative agendas which form the basis for lobbying by the unit of local government. This shines a local spotlight on the case for reform, brings influential local government bodies into the fight, and authorizes lobbyists for local governments to work with reformers at the state legislature.

Several cities in Virginia are passing formal resolutions asking that the state General Assembly cap payday interest rates at 36% APR. The first city was Staunton, Virginia followed by Harrisonburg, Shenandoah, Blacksburg, Lexington, and Winchester Virginia. Rate cap resolutions are a great way to put pressure on your state legislature. They focus on the rate cap solution, the only proven way to rein in this industry. The vice-mayor of Harrisonburg was quoted as saying, “Four times prime rate sounds like a good cap to me. I think that covers a lot of risk.”

## **Summary -**

Growth of usurious payday lending outlets continues to be a problem across America in states that authorize or do not effectively prohibit this form of small-dollar lending. Passing local ordinances to restrict growth and activities of payday lenders in your community is a step forward in addressing this problem.

Ideally state legislatures should pass effective laws to protect consumers from triple digit loans that quickly become debt traps, but that is not the case in many states. Local governments are left to address the problem of payday lenders on their own. West Valley City, Utah, a large suburb of Salt Lake City, was one of the pioneers in using local ordinances to control growth and density. Payday lenders who wish to do business in the city are now placed on a waiting list for years. Since 1996, the year the ordinance was passed, no new payday loan stores have been allowed to open. Growth has bumped lenders to adjacent cities that are now passing similar ordinances.

Local attention to the issue of payday lending has many benefits. Media coverage of council hearings regarding zoning ordinances helps publicize the problem to city residents. Coverage also educates citizens and local community leaders on the pitfalls of payday loans and the problems associated with having numerous, often gaudy, outlets throughout their town. Above all, coverage starts to build critical mass for a united front against payday lending in your state. This in turn pressures state lawmakers to pass more restrictive laws that provide uniformity across your state. Oregon is a shining example of this success where a threatened local ordinance led to statewide reforms enacted by the legislature.

Payday lending is now prohibited or severely restricted in 18 states and the District of Columbia. Until all other state legislatures join this movement it is important to keep the issue of usury and usurious loans in the news. Passing a local community ordinance to restrict, prohibit, or otherwise regulate payday lenders in your community keeps the dangers of payday lending in the forefront and helps build momentum for other steps.



# PAYDAY LENDING ZONING LAWS/LEGISLATION

## APPENDIX 1 – List of Payday Lender Ordinances

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Anniston, AL	Moratorium	Six months - 2007	
Birmingham, AL	Distance	No new outlets within 2000 ft of existing store	
Decatur, AL	Moratorium	12/13, length unknown	
Midfield, AL	Moratorium	No more outlets than the current 12	Summer 2011
Homewood, AL	Permit	Restrictions on new payday lender businesses	Citation not available
Mobile, AL	Moratorium	6 month moratorium on payday loan outlets as of April 2010	City Code Chapter 64
Montgomery, AL	90 day moratorium	9/13 – applies to payday, car title and pawn shops	
Selma, AL	60 day moratorium		1/30/2014
Tuscaloosa, AL	“Similar to Birmingham”	From article 9/13	
Casa Grande, AZ	Distance	Cannot operate within 1,320 feet of same - regardless of whether same is located within city limits or another jurisdiction	Title 17, Chapter 17.12, Section 17.12.415
Gilbert, AZ	Distance/Permit	Cannot operate within 1,000 feet of each other. Must apply for conditional use permit after going through public hearing for approval.	Citation not available
Mesa, AZ	Permit	Payday businesses must get a special permit	Title 11 “Zoning”, Section 11-1-6
Phoenix, AZ	Distance	Cannot operate within 1,320ft of each other and within 500ft of residential areas	Ordinance G-4817

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Pima County, AZ	Permit/Density	New payday lenders not allowed to locate within 1,320ft (one quarter mile) of existing operations or 500ft. of homes or residentially zoned property. Also requires a special permit.	Chapter 18.45.040
South Tucson, AZ	Zoning/Density	Limited to three business zones. Cannot open within 1,000ft. of existing operations or within 500ft. of residence districts, schools, playgrounds, or parks. Application required.	City Ordinance Section 24-526
Tempe, AZ	Density	Cannot operate within 1,320ft. of each other and 500ft. of residential areas	Chapter 4, Section 3-423
Tucson, AZ	Density	No payday lender within 1,320 feet of same; at least 500 feet from R-3 or more restrictive zoning	Article 3, 3.5.4.5. – Financial Service
Youngtown, AZ	Moratorium	Banned in Town Limits	Section 17.16.040
Berkeley, CA	proposed		5/2013
Contra Costa County, CA	Moratorium	One year beginning Oct 2012 for new payday, car title, and short-term consumer finance lending businesses.	
East Palo Alto		Passed, no other details	
Gilroy, CA	Moratorium	Ten month moratorium on payday lending establishments beginning April 2013.	Ord. 2013-06
La Mirada, CA	Distance	Cannot operate within 1,000 feet of each other. Must be 500 feet from residential areas. Hours are limited to 7am-7pm. Restrictions on building.	Municipal Ordinance 21.45.010

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Long Beach, CA	Permit	Check Cashing institutions must be located in commercial districts.	Municipal Ordinance 21.15.480
Los Altos, CA	Zoning	Payday lending and check cashing is not an allowed use.	Municipal Code 14.02.070
Los Angeles, CA	Increase credit unions	Ordinance provides incentives for credit unions to expand into areas where payday lenders are prevalent	No citation.
Menlo Park, CA	Moratorium	Moratorium on new check cashing, car title loan, and payday lending establishments, extended in November 2012 for a total of two years.	
National City, CA	Zoning	Number of outlets capped at 12, must be located in shopping centers of at least 50,000 sq. ft.	Municipal Ordinance 18.30.330
Norwalk, CA	Distance/ Prohibition	Outlets must be 1320ft. apart from each other. Only allowed in C1, C3 and M1 zones. No more than 8 outlets in the city.	Municipal Ordinance 17.04.095
Oceanside, CA	Permit	Requires special operating permit, payday lenders classified as adult businesses, not permitted within 1000ft. of similar businesses or within 500ft. of home, church, park, or school.	Resolution 07-R0621-1 LCPA -2-07 and ZA-4-07

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Oakland, CA	Permit	Special Permit, must not be closer than 1000ft. from another check casher/payday lender; must be at least 500ft. away from: 1) schools 2) state or federally chartered banks, savings associations, credit unions, or industrial loan companies 3) churches 4) Recreational assembly activities 5) liquor stores (excluding full service restaurants or liquor stores with 25 or more full time employees).	Oakland Planning Code 17.102.430
Pacifica, CA	Moratorium	After two year moratorium ending 12/11 still studying ord.	
Pico Rivera, CA	Distance/Zoning	Outlets must be 2,640ft. from each other. <sup>7</sup> Only permitted in C-M and C-G zones.	Municipal code 18.04.202, 18.40.040 (D26) 18.40.050 C(72)
Redwood City, CA	In process		
Rialto, CA	Permit	Must go before planning commission to receive approval and conditional use permit.	City Ordinance 18.66.030
Sacramento, CA	Distance	Bans Payday Lender from being within 1000ft of another lender, check casher, church, school or bank. Prohibits new stores from opening within 500ft of homes and limits hours from 7 a.m. to 7 p.m.	City Code 17.24.050
San Diego, CA	Zoning	Restricted to commercial zones.	Municipal Code Section 158.0302

<sup>7</sup> Changed from a year long moratorium on payday advance establishments.

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
San Francisco, CA	Special District	Referred to as “Fringe Financial Services”. Outlets are prevented from opening in six specified special districts. <sup>8</sup>	Planning code, Article 2, section 249.35
San Jose, CA	Zoning	Caps # of outlets at current level (39); cannot be within 1,320 ft. of a very low income census tract (as defined by HUD). New lender must obtain zoning code verification certificate unless existing lending site within 6 mo, of vacancy then distance requirements waived.	Municipal Code 20.70 (table 20-140) and 20.80.1050 - 20.80.1060
San Mateo County, CA	Zoning	500 ft. from residential zoning, financial institution, religious institution, school or day care, bar or liquor store, pawn shop. Other restrictions on hours, having security guard.	Zoning reg. 6102.63.1, 6251 (f)8
Santa Clara County, CA	Prohibition	Payday lenders and check cashers prohibited in unincorporated areas.	Ordinance NS-1200.333
Santa Monica, CA	Permit	Must get conditional use permit	
South Gate, CA	Special	Restricts hours of operation and lists minimum security req.	
Washington, DC	Interest Rate	Pay day lenders can charge no more than 24% interest on a loan not secured by real property and under \$2500.	DC Stat. 28-3301

<sup>8</sup> Changed from no law concerning payday advance establishments

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Ft. Lauderdale, FL	Permit	City Zoning Code does not prohibit or permit check cashing serves- decision on a case-by- case basis. Special Permit required.	* <sup>9</sup>
Pembroke Pines, FL	Permit	City Zoning Code does not prohibit or permit check cashing serves- decision on a case-by- case basis. Special Permit required.	* <sup>10</sup>
Columbus, GA	Business restrictions/ zoning	Payday lenders must have borrower database, loan caps, and a ban on multiple loans in a seven day period. Zoned to certain areas.	Municipal Code Section 3.1.5
Caldwell, ID	Zoning	Stores not allowed in commercial area, only industrial and manufacturing unless given special permission	Ordinance #2946
Belleville, IL	Permit/Outlet Cap	Outlets require permit. City limits number of outlets in city to three,	Municipal Ordinance 7-24
Bellwood, IL	Permit	Outlets required to go through special licensing process	City Ordinance section 117.187
Chicago, IL	Zoning and Density	Outlets may only be in specified districts, payday/title secured lenders must be 1,000 ft. apart from each other, and 1,000 feet from pawn shops.	City Code Chapter 17-3 (zoning) 17-9-0125-0127 (density)

<sup>9</sup> Citation not available

<sup>10</sup> Citation not available

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Decatur, IL	Zoning	Proposed, passed? 2012/13?	
Fairview Heights, IL	Permit/Outlet Cap	Outlets requires permit which are limited to 2 stores within the city limits.	Article XI
Glendale Heights, IL	Permit	Special use permit required.	City Code Title 4, chapter 1
Lansing, IL	Density	Restrict # of payday loans	March, 2013
Springfield, IL	Distance	Requires that outlets are at least 1500ft. apart	City Ordinance Section 8155.048.1
Ames, IA	Zoning	Outlets must be more than 1,000 ft. schools, childcare centers, other payday lenders, land zoned for residential uses, any arterial street, commercial highway zones and overlay districts.	Section 29.1312, ordinance #4111
Cedar Rapids, IA	Zoning	Conditional use permit required. Must be 1,000 ft. from church, school, day care, park or similar business.	
Clive, IA		Cited in news reports, no details found	
Des Moines, IA	Moratorium	Temporary 3 month ban beginning May 2010	Citation not available
Iowa City, IA	Zoning	Outlets banned within 1,000 ft of daycares, schools, parks and churches	Passed first vote, One more vote to finalize (8/12)
West Des Moines, IA			

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
DeSoto, KS	Distance/Permit	Requires a Permit at a cost of \$250 annually. Requires that outlets are at least 5280ft. apart and 500ft. from residential districts. Periodic inspections may be made however, the inspection must be reasonable and cannot unreasonably interfere with business. <sup>11</sup>	Article 5 of the Municipal Ordinances
Kansas City, KS	Zoning	Prohibits payday lending or check cashing on parkways or boulevards.	Citation not available
Shawnee, KS	Distance/Permit	Requires a Permit at a cost of \$300 annually. Requires that outlets are at least 5280ft. apart and 200ft. from residential districts. Periodic inspections may be made however, the inspection must be reasonable and cannot unreasonably interfere with business. <sup>12</sup>	Municipal Ordinances Section 5.53.000
Smithville, KS			
Prince George, MD	Permit	Restrictions on new check cashing businesses.	Municipal Code Section 27-341.01
Arnold, MO	Permit	Conditional Use Permit for “small loan business to certain commercial areas.	Appendix B Zoning
Bellefontaine, MO	Moratorium	Ban on check cashing businesses and predatory lenders.	Municipal Code Section 29-9

<sup>11</sup> Changed from complete prohibition of Cash Advance businesses within the city limits.

<sup>12</sup> Changed from prohibition of Cash Advance businesses on the eastern side of the city



<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Berkeley, MO	Permit	Requires that outlets (including cash advance, pawnshops and similar businesses) are at least 1400ft. and not within 300ft. from place of worship, schools, or residential zone property. <sup>13</sup>	Municipal Code section 400.130(d)(19)
Blue Springs, MO	Permit	Outlets must have permits and be in proper districts. <sup>14</sup>	Municipal Code Chapter 405
Fairview Heights, MO	Density/Permit	Must be not more than 2 payday lenders within city limits.	Article XI of City Code
Gladstone, MO	Density	One mile between outlets, 200ft. from residential area, outlet must be in a multi-tenant commercial building housing at least four separate entities.	Municipal Code section 7.135.020
Independence, MO		Said to have regulation similar to Blue Springs and KC. Cannot find in code.	
Jackson County, MO – unincorporated areas	proposed	Cannot be within 2500 ft. of another lender, 1000 ft of school, park, church, hospital, day care, public building or 500 ft. of a home.	Jan 2012
Kansas City, MO	Permit	Outlets are required to have a permit. Ordinance allows city to inspect the outlets. <sup>15</sup>	City Ordinances Section 43-1

<sup>13</sup> Creates a classification for payday loan establishment different from “financial institutions.”

<sup>14</sup> Previously cited as having distance requirements however, no citation was provided and no matching ordinance was found.

<sup>15</sup> Changed from total ban on payday loan establishment in certain districts.

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
City of North Kansas City, MO	Permit/Distance	Requires Permit. At time of establishment must be: 1) one mile apart from each other 2) must be one mile from any hotel or motel 3) must be 1000ft. from liquor store, school, religious inst., senior citizen housing dev., museum, or landmark /historic property or district 4) No accessory services may be offered 5) May not be across the street from specified residential districts 4) Applicant for new establishment must demonstrate no negative impact on property within 500ft. of proposed location 5) permit limited to 2 years.	City Ordinances section 7.135.020
Oak Grove, MO	Permit	Outlets limited to 1 outlet per 5000 residents and requires a special permit.	Citation not available
St. Ann, MO	Outlet Cap	No more than 3 payday lenders allowed within city limits.	Municipal Code Section 400.390
St. John, MO	Outlet Cap	No more than 2 payday lenders allowed within city limits. <sup>16</sup>	Municipal Code section 636.010
St. Joseph, MO	Density	Per capital limit of 1/15,000 residents.	No citation

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<sup>16</sup> Changed from creating a special licensing procedure.

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
St. Louis, MO	Density	Applies to “small loan business” and check cashing establishments. Conditional land use permits required. Must be 1 mile from each other and 500 feet from residence, school, or church	Municipal Code section 26.08.101; 26.08.384
St. Louis County, MO	Distance	Outlets must be 5280ft. apart from each other and 300ft. residential districts. <sup>17</sup>	Municipal Code section 1003.133
Valley Park, MO	Permit	Must obtain permit. Hours limited to 7a.m. – 9p.m. Outlets must be 1,000 feet from each other.	Municipal Code section 605.340 et.seq
Byram, MS	Moratorium	Moratorium beginning November, 2009.	Citation not available
Canton, MS	Moratorium	Moratorium on new check cashing businesses	Citation not available
Clinton, MS	Moratorium	90 day moratorium beginning March 2, 2010.	Citation not available
Flowood, MS	Zoning	Payday lending businesses are restricted to industrial zoned areas.	Municipal Code section 207.07
Starkville, MS	Moratorium	12 month moratorium beginning in 1/10. <sup>18</sup>	*

<sup>17</sup> Changed from requiring a conditional use permit with a public hearing.

<sup>18</sup> <http://www.mpbonline.org/news/story/cities-crack-down-new-payday-lenders>

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Clark County, NV	Permit/Density	Special use permit required. May not be within 200ft. of residences. Must be 1000ft. from other financial institutions, auto title loan businesses, and pawn shops. Restricted hours.	Municipal Ordinance Title 19.06
Henderson, NV	Distance	Outlets must be 1000ft. apart and 200ft. from residential district. <sup>19</sup>	Municipal Ordinance section 19.4.3
Las Vegas, NV	Permit/Density	Special use permit required. May not be within 200ft. of residences. Must be 1000ft. from other financial institutions, auto title loan businesses, and pawn shops. Restricted hours.	Municipal Ordinance Title 19.06
North Las Vegas, NV	Distance	Outlets must be 2500ft. apart from each other (or like business) and must be 500ft. from residential districts. <sup>20</sup>	Municipal Ordinances Chapter 17.24(25)
Hackettstown, NJ	Permit	Payday lenders must get permission from city council to open downtown.	Citation not available

<sup>19</sup>

<sup>20</sup> Changed from a 6 month moratorium on new payday lenders which started on July 2005

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Clayton City, OH	Permit/Distance	Permit is required and operation hours are confined to 8 a.m. till 6 p.m.. The loans given: must not exceed \$500, must be less than 6 months, the interest rate must not exceed 36%, and all terms and conditions must be written. Outlets must be 1000ft. apart and 1000ft. from residential districts.	Municipal Ordinance 1124.93
Cleveland, OH	Density	Ordinance limits outlets to one per 20000 residents, must be at least 1000ft. apart.	Ord. #670-12 Code sec 347.17 Proposed ord # 944-08 in Oct 12
Cuyahoga Falls, OH	Density	Ordinance limits outlets to one per 10,000 residents, must be at least 1000ft. apart.	Citation not available
Lakewood, OH	Density/permit	Ordinance defines number of terms and limits location of payday loan business. They cannot be within 750ft. of any other payday loan or similar business.	Municipal Ordinance 1365-2006
Parma, OH	Density/Prohibitions	Stores cannot exceed one per 10,000 residents or locate within 1,000 feet of same. Limited to certain zoning districts.	Chapter 1170
Xenia, OH	Distance/Zoning/Permit	Outlets must be 5,000 ft. apart, restricted to certain zones, and a permit is required	Municipal Ordinance 1294.21
Oklahoma City, OK	Zoning	Restricted to certain zones.	Municipal Ordinance 8300.57

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Beaverton, OR	Loan Restriction	Borrower may cancel loan within close of next business day with restrictions. Lenders may not renew loans more than twice. Lender may not renew unless borrower has paid at least 25% of principle plus interest on balance. After max number of rollovers, lender shall allow borrower to convert to payment plan prior to default with no additional fees assessed. Passage of 2007 Oregon state law capping rates at 36% had no effect on local ordinances.	Title 7, Chapter 7.12, Sections 7.12.005 - 7.12.060
Bend, OR	Loan Restriction	Same as Beaverton, OR	Chapter 7, Sections 7.850 - 7.895
Eugene, OR	Loan Restriction	Same as Beaverton, OR	Chapter 3, Sections 3.550 - 3.560
Gresham, OR	Loan Restriction	Same as Beaverton, OR	Chapter 9, Sections 9.90.010 – 9.90.110
Oregon City, OR	Loan Restriction	Same as Beaverton, OR	Title 5, Chapter 5.32, Sections 5.32.010 – 5.32.100
Portland, OR	Loan Restriction	Same as Beaverton, OR	Title 7, Chapter 7.26, Sections 7.26.010 – 7.26.110
Troutdale, OR	Loan Restriction	Same as Beaverton, OR	Title 5, Chapter 5.06, Sections 5.06.010 – 5.06.110

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Pittsburgh, PA	Density	Operating hours restricted. Cannot locate within 1,000 feet from same/pawn shop/gaming enterprise or within 500 feet from residential zone.	Chapter 911, Section 911.04.A.93
Providence, RI	Prohibition	Restrictions on any city dealings with predatory lenders	Municipal code section 2-18.2
Easley, SC	Cap	Restrictions on new payday lender businesses.	Citation not available
Greenville, SC	Density	Cannot locate less than 3,000 feet from same. Location must be in a shopping center/grocery store which has a minimum of 30,000 square feet. Lender cannot have separate exterior access.	Chapter 19, Article 19-4, Section 19-4.3.3(D)(6)
East Ridge, TN		Studying check cashing outlet restrictions	Citation not available
Memphis City and Shelby County, TN	Distance	Outlet must be 1000ft apart and 1,320 from residential or landmark district.	Appendix A (24)
Nashville, TN	Zoning	Zoning restrictions.	Ordinance BL2008-169 <sup>21</sup>

<sup>21</sup> In East Nashville lawsuit filed by title lender Tennessee Quick Cash in June 2010

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Austin, TX	Distance/ Prohibited District/ Loan restrictions	Loan restrictions same as Dallas, zoning: outlets cannot be within 1000 ft of each other, within 200 ft of property with residential zoning, within 500 ft of rights-of-way for I-35 and other listed highways, no outlets in specified overlay or boundary areas.	
Brownsville, TX	Moratorium	6 month moratorium running through 5/10	
Bryan, TX	Loan restrictions	Same as Dallas except no refinance and renewal time limit of seven days.	2/2014 passed, effective 8/2014
College Station, TX	Loan Restrictions	Same as Dallas	2/2014 passed, effective 8/2014
Dallas, TX	Loan restrictions	Requires registration with city, outlines maintenance of records, cannot loan more than 20% of customer gross monthly income, installment payments cannot exceed 4, and 25% or more of each payment must go toward principle, no rollover of installment payment loan; lump sum payment loans cannot be rolled over more than three times, proceeds from rollover must be 25% or more toward principle, no refinance or renewal, less than 7 days = rollover.	Chapter 50, Article XI, adding to sections 50-144 through 50-151.3
Denton, TX	Loan Restrictions	Same as Dallas	
El Paso, TX	Loan Restrictions	Cannot loan more than 20% customer's gross income, cannot roll over more than three times.	2013



<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Garland, TX			
Houston, TX	Loan Restrictions	Same as Dallas	Ord. 2013-1163
Irving, TX	Distance	Outlets must be 1000ft. apart from each other and more than 200ft. away from residential district. <sup>22</sup>	Municipal code Section 52-35
Little Elm, TX	Distance/ Prohibited District	Outlets must be 1000ft. apart from each other and must be 500ft from residential districts. Outlets are prohibited in town center and must be a free standing structure	Municipal Code Section 106-7
Mesquite, TX	Distance/ Prohibited District	Outlets must be 1000ft. apart, in freestanding buildings, at least 200ft. from residential areas and 500ft. from freeways. Cannot be in special “overlay” dist.	Municipal Code Section 3-505
Richardson, TX	Distance	Outlets must be 1000ft. apart. <sup>23</sup>	Municipal Ordinance Supplemental regulations for certain uses section 9
Sachse, TX	Permit/Distance/ Prohibition	Permit required. Payday Cash advance business (and like businesses) must be 1000ft. apart. Outlets are prohibited 500ft. from city line and George Bush Highway. Additionally, a cap of 36% annually is put on loans. <sup>24</sup>	Municipal Ordinance Article 3 section 11

<sup>22</sup> Changed from no statutes concerning payday lenders

<sup>23</sup> Changed from limit on number of outlets

<sup>24</sup> Changed from requiring only a permit

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
San Antonio, TX	Regulation	Ordinance is the same as Dallas, TX and adds the following component: payday lending and car title loan documents must be provided in the customer's preferred language; for those who are illiterate the lender must read the entire contract aloud in the customer's preferred language.	Municipal Codes chapter 35
American Fork, UT	Density	Limited to 1/10,000 residents	Municipal Code chapter 5.30
Brigham City, UT	Density	Cannot locate within 5,280 feet of same inside or outside city limits. Stores cannot exceed one per 10,000 residents.	Title 29, Chapter 29.13, Section 29.13.020
Clearfield	Density	Limited to 1/10,000 and cannot be within one mile of other payday lender	11-13-29
Logan, UT	Density	Defined as "nondepository lender" and restricted to 1/10,000 residents	Municipal Code 5.19.020
Murray, UT	Moratorium	Payday lenders not permitted in mixed use zone.	Title 17, Chapter 17.146, Section 17.146.020
Ogden, UT	Density	Limited to 15 outlets. Must be 1,000 ft from each other and 660 ft from pawnbroker or sexually oriented business. Must have sign that says that short terms loans should not be used as a long term solution	Not yet codified – passed 6/10
Orem, UT	Density	Cannot locate within ½ mile of same. Stores cannot exceed one per 10,000 residents.	Chapter 22, Article 22-14, Section 22-14-21

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Riverdale, UT	Permit	Requires conditional use permit, only allowed in C3 zones, 1/4000 for payday or check cashing.	10-10A-3: E and F
Roy, UT	Moratorium	No new payday cash advance business.	Article from Standard-Examiner
Salt Lake City, UT	Distance	Payday loan / check cashers prohibited within ½ mile of each other.	21A.26.080
Salt Lake County (unincorporated)	Density	Stores cannot exceed one per 10,000 residents.	Title 5, Chapter 5.73, Sections 5.73.010 – 5.73.030
Sandy, UT	Density/Zoning/Distance	Outlets must be 5,280 ft from each other. Limited to 1/10,000 residents. Conditional use permit. Zoned to certain areas.	Chapter 15A-11-20
South Salt Lake City, UT	Density	Cannot locate closer than 600 feet of same or residential zone. Stores cannot exceed one per 5,000 residents.	Title 17, Chapter 17.26, Section 17.26.030
South Jordan, UT	Density	Cannot locate within 1 mile of same.	Title 17, Chapter 17.52, Section 17.52.030
Taylorsville, UT	Density	Cannot locate within 600 feet of same. Stores cannot exceed one per 10,000 residents.	Title 13, Chapter 13.04, Section 13.04.103
West Jordan, UT	Density	Cannot locate within 1,000 feet from same. Maximum of 12 stores allowed in city.	Title 13, Chapter 13.5, E-5
West Valley City, UT	Density	Cannot locate within 600 feet of same. Stores cannot exceed one per 10,000 residents.	Title 7, Chapter 7.1, Section 7.1.103
Burlington, VT	Zoning	Does not allow check cashing	

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Chesterfield County, VA	Zoning	Stores must be in shopping center or structure with three or more uses, no free standing stores, separation of one mile, cannot be next to residential property or special designated revitalization area.	Chapter 19, Sections 19.145 & 19.175
Norfolk, VA	Permit	Must receive permission form the city council in the form of “special exception use” permit	Chapter 6-4
Green Bay, WI	Density	Cannot locate within 5,000 feet of same or 150 feet of residential zone. Cannot operate between the hours of 9 p.m. – 6 a.m.	Chapter 13, Section 13.1606
Madison, WI	Density	Cannot locate within 5,000 feet of same.	Chapter 28, Section 28.09
Milwaukee, WI	Density	Cannot locate within 1,500 feet of same or within 150 feet of residential zone.	Subchapter 6, Section 6.295.603
Racine, WI	Density	Cannot locate within 2,500 feet of same or within 250 feet of residential zone.	Chapter 114, Article V, Division 3, Section 114.468
Superior, WI	Zoning/Density	Limited to commercial highway zones only. Cannot locate within 2,500 feet of same or within 300 feet of residential zone. Stores cannot exceed one per 5,000 residents. Hours of operation limited to 8 a.m. – 10 p.m.	Chapter 122, Article V, Section 122.614
Waukesha, WI	Density	Cannot locate within 3,000 feet of another payday lender or within 500 feet of residential district.	

<b>JURISDICTION</b>	<b>BASIS FOR LIMITS</b>	<b>DETAILS</b>	<b>CITATION</b>
Wauwatosa, WI	Density	Cannot locate within 2,500 feet of same or within 250 feet of residential zone. Cannot operate between the hours of 9 p.m. – 9 a.m.	Title 24, Chapter 24.46, Section 24.46.100
West Allis, WI	Distance	Outlets must be 3,000 ft apart and restricted to regular business hours	City Ordinance 9.32 and 12.43

## **APPENDIX 2 – Legal Challenges to Local Payday Lender Ordinances**

Often advocates find that local governments are much more approachable and willing to enact consumer protection payday loan legislation than state and federal legislators. Potential reasons for this phenomenon are that often local residents are unable to participate in statewide or national legislative actions in distant locations logistically inaccessible to most citizens. Local legislation is also more widely covered by local press, putting civic leader under much more of a microscope than state legislators.

The main challenges to local legislation tend to be based upon preemption arguments (express, implied and/or conflict). Samples of specific preemption arguments involve arbitration clauses or price controls. Challenges can also be based upon procedural irregularities. Advocates can look to home rule provisions for support of local legislation and can fashion legislation that addresses gaps in state and federal legislation. Local governments generally have more leeway in enacting local land use and zoning legislation. A discussion of arguments used to defeat and support local ordinances and a discussion of home rule, land use and zoning principles follow. Lastly, a sample of court decisions addressing challenges to local ordinances regarding credit products is included below.

### **Preemption Arguments**

Lenders argue that local ordinances are “preempted” from enacting ordinances by pre-existing state or federal law. There are three types of preemption: 1) express or complete preemption, 2) field or implied preemption and, 3) conflict preemption. Express preemption is when the federal or state law explicitly recites intent to preempt state or local law. Field preemption applies when federal or state laws are so pervasive, that there is no room left for states or local governments to supplement them. Conflict preemption occurs when it is impossible to comply with both federal or state law and the local law, for example when a local law prohibits what a federal or state law allows.

### **Express or Complete Preemption**

Express preemption is often found in language contained in the “policy and legislative intent” section of the state or federal law. This language clearly prohibits enactment of ordinances or other laws to the contrary or gives exclusive jurisdiction in all matters addressed by the law to the state or federal government. The legislature usually claims the need for uniformity in the subject matter throughout the state or country.

An example of a price control express preemption is found in Florida Statutes. §125.0103(1)(a):

Except as hereinafter provided, no county, municipality, or other entity of local government shall adopt or maintain in effect an ordinance or a rule, which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency unless specifically provided by general law.

### **Implied or Field Preemption**

If there is no express preemption, there may be field or implied preemption. Implied preemption occurs when preemption is not specifically stated but the state or federal legislative scheme is so pervasive that it is deemed to “occupy the entire field of potential regulation” creating a danger of conflict between local and state laws.

Implied preemption is actually a decision by the courts to find preemption when there is no explicit legislative directive. The courts are understandably reluctant to “find” a state or federal government intent to prevent a local elected governing body from exercising its local or “home rule” powers. (*See Home Rule below*). If a state or federal legislative body can easily create express preemption by including clear language in a statute, there is little justification for the courts to interject such an intent into a statute. In the absence of express preemption, normally a court will only find implied preemption if there is a direct conflict between the state or federal law and a local law or they can reasonably find the legislative scheme is so pervasive that there is little or no room left for enacting additional laws covering the area. The court usually finds strong public policy reasons for finding such an area to be preempted by federal or state law. With implied preemption courts tend to limit the preemption to the specific area where the federal or state legislature has expressed a will to be the sole regulator.

### **Conflict Preemption**

Even if there is no express or implied preemption, portions of a local ordinance that expressly conflict with state or federal law are unenforceable. It is well established that no local ordinance may specifically conflict with a federal or state law. A conflict exists when a local ordinance directly prohibits what the state has expressly licensed, authorized or required, or authorizes what the state has expressly prohibited. It is not necessarily a conflict when an ordinance imposes requirements not provided by state or federal laws. Instead, an ordinance conflicts with a federal or state law when the ordinance and the state or federal law cannot coexist. Put another way, legislative provisions conflict when in order to comply with one law you must violate another.

An ordinance is not superseded or preempted by a federal or state law where their subjects are at most only incidentally related. The fact that an ordinance covers a topic that relates to, but is not specifically covered by a subsequently enacted federal or state law dealing with the same topic, does not make the ordinance in conflict with, or repealed by, the law. Where the statute is silent, the ordinance may speak. So long as the ordinance is within the scope of municipal power and does not exceed or is

not inconsistent with the new state or federal law, there is no conflict which would render the ordinance void. Courts are reluctant to find conflict unless there is a direct conflict between local legislation and state or federal law and generally indulge every reasonable presumption in favor of an ordinance's constitutionality.

Generally speaking, a properly enacted ordinance will be presumed to be valid until the contrary is shown, and a party who seeks to overthrow such an ordinance has the burden of establishing its invalidity.

### **General Strategies for Avoiding Successful Preemption Challenges**

Draft your ordinance to complement preexisting state or federal law. A local ordinance has a greater chance of avoiding a successful conflict preemption challenge if the ordinance references the potentially conflicting state or federal law as its guideline. Local authorities should determine what the state or federal law covers and how it operates so they can determine how to draft an ordinance in terms meant to “complement” the state or federal law in the area they regulate.

Draft your ordinance to fit within the exception provided to state or federal law. State and federal laws may contain gaps in coverage in the subject matter the local government seeks to regulate. For example, a state or federal law may reserve certain subjects for local regulation; draft the ordinance to fit within those subjects. Even if the state or federal law does not specifically reserve subjects for local regulation, attempt to draft the ordinance so it falls outside of the category of state or federal laws that are expressly preempted. If the ordinance deals with an area traditionally left to local governments, such as zoning, the courts may be less inclined to find preemption.

Use a statement of legislative purpose. If a state or federal law expressly preempts local ordinances enacted for a specific purpose, include a statement of legislative purpose in an ordinance to show the ordinance is enacted for a different purpose.

### **Home Rule**

Home Rule is the principle of local self-government arising from a state constitutional grant of a charter or right to draft a charter that creates a structure and powers for city or county governments. The specific character of home rule varies by state. Some home rule states allow a “structural home rule” permitting communities to incorporate and create local governments. Another form of home rule is often called “functional home rule” where city or county governments can exercise power in such areas as public works, social services, and local economic development.

Advocates of the expansion of home rule claim that local control makes government more responsive, allows for flexible and innovative approaches to local problems, and relieves state legislatures of addressing local issues. Detractors claim few issues are strictly local in nature, especially as the populations of central cities decline and metropolitan areas become more important. They argue greater local autonomy may thwart cooperation among neighboring local governments and create disputes over policies involving overlapping federal, state and local jurisdictions.

An example of home rule is found in the Jacksonville, Duval County, Florida Municipal Charter. The consolidated county and city government:

- (a) Shall have and may exercise any and all powers which counties and municipalities are or may hereafter be authorized or required to exercise under the Constitution and the general laws of

the State of Florida, including, but not limited to, all powers of local self-government and home rule not inconsistent with general law conferred upon counties operating under county charters by s. 1(g) of Article VIII of the State Constitution; conferred upon municipalities by s. 2(b) of Article VIII of the State Constitution; conferred upon consolidated governments of counties and municipalities by section 3 of Article VIII of the State Constitution; conferred upon counties by ss. 125.85 and 125.86, Florida Statutes; and conferred upon municipalities by ss. 166.021, 166.031, and 166.042, Florida Statutes; all as fully and completely as though the powers were specifically enumerated herein.

(b) With respect to Duval County, except as expressly prohibited by the Constitution or general laws of the State of Florida may enact or adopt any legislation concerning any subject matter upon which the Legislature of Florida might act; may enact or adopt any legislation that the council deems necessary and proper for the good government of the county or necessary for the health, safety, and welfare of the people; may exercise all governmental, corporate, and proprietary powers to enable the City of Jacksonville to conduct county and municipal functions, render county and municipal services and exercise all other powers of local self-government; all as authorized by the constitutional provisions mentioned in subsection (a) and by ss. 125.86(2), (7), and (8) and 166.021(1) and (3), Florida Statutes

### **Regulating by Land Use and Location Restrictions**

Local governments have historically had jurisdiction to regulate local land use and planning ordinances couched in zoning terms. Many states have adopted comprehensive land use plans that act as a guide for cities. Often there are state and federal limitations regarding land use in special geographic locations such as coastal areas. Many cities have successfully enacted land use ordinances that limit the saturation of title and payday lenders and excluded them from certain areas of town unless allowed after a request for an exception or “variance” to local zoning laws or unless allowed by request for a “special use permit.”

A variance is a device that permits a property owner to do something on the land which is prohibited by zoning laws. Variances are awarded to avoid practical difficulties or unnecessary hardships in individual cases. Generally speaking the difficulties or hardships must be a function of the nature of the land and not personal issues.

A special use permit allows the property owner to put property to a use expressly permitted by the law after obtaining a special permit. Special uses are specifically permitted under certain circumstances specified by the local government in the zoning law. This amounts to a finding that the use permitted is harmonious with neighborhood character and ought to be allowed. Special use permits are referred to by a variety of terms in local practice and court decisions. These terms include special exception use, special permit, special exception permit, conditional use permits, and special exceptions.

An example of a special use is the use of a home office or home occupation in an area zoned for single-family use. An ordinance may permit single-family homes without seeking a special use permit



in a residential district and allow a home occupation upon the successful request for a special use permit. This means the local government body has concluded this special use is harmonious with the residential district, but that conditions may need to be imposed on the use to ensure that the size, layout, parking, and lighting do not adversely affect the residential neighborhood.

Generally local government staff will review the application for a variance, permit for special use or use by exception and make a recommendation to a local board which ultimately makes the decision or makes a recommendation to the city's governing body. Decisions granting or denying an application are "quasi-judicial" in nature. This means the local governmental authorities are required to explain the basis for their actions. The explanation must show the decision was not arbitrary and was based upon factors set out in the ordinances as the bases for granting or denying an application. The decision must also be based upon facts presented to the authority at a public hearing and on the record. If these decisions are reviewed by the court, the court must determine if the decision is supported by "substantial evidence."

### **Specific Judicial Challenges and Legislative Actions against Local Legislation**

#### **Milwaukee, Wisconsin Title and Payday Loan Ordinance**

The court in *Title Lenders, Inc. d/b/a USA Payday Loans v. Board of Zoning Appeals*, Milwaukee County, Circuit Court, Case No. 04-000115, July 29, 2004, reviewed the City of Milwaukee Board of Zoning's decision to deny Loan Max's application to open a title loan business in an area where other title and payday loan businesses were already located. The Alderman for that area opposed the request based not upon inconsistencies with the local land use plan but because he objected to the interest rates charged. The City zoning board considered: 1) protection of public health, safety and welfare, 2) protection of property, 3) traffic and pedestrian safety and, 4) consistency with the comprehensive plan.

When Loan Max sought judicial review of the Board's decision, the court was bound by these standards: 1) whether the Board kept within its jurisdiction, 2) whether it proceeded on a correct theory of law, 3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment and, 4) whether the Board might reasonably make the order or determination in question, based on the evidence.

The Board denied the special use permit because the payday loan entity: 1) attracts clientele that are in financial trouble or unable to manage money; 2) may attract robbers and other criminals to the area and, 3) did not comport with the efforts of the Department of City Development to develop the area. The Board was also concerned that there was another payday loan agency in the immediate area. The Court upheld the denial of the special use permit.

#### **Madison, Wisconsin Payday Loan Ordinance**

The Payday Loan Store filed an equal protection and due process violation claim against Madison, Wisconsin as a result of its ordinance prohibiting payday lenders from operating between the hours of 9:00 p.m. and 6:00 a.m. The District Court in *The Payday Loan Store of Wisconsin, Inc. d/b/a Madison's Cash Express v. City of Madison*, 333 F.Supp.2d 800 (W.D.Wis. 2004) upheld the ordinance finding the city was attempting to regulate location and hours of operation and not the financial terms or conditions of the loans and, therefore, was acting within its authority as a local government to regulate the "good order of the city and for the health, safety and welfare of the public."

### Philadelphia, Pennsylvania Predatory Lending Ordinance

In June, 2001, Pennsylvania Governor Tom Ridge signed a state law explicitly overriding the Philadelphia Predatory Lending Ordinance. The state law specifically prohibits local governments from regulating sub-prime lending practices in Pennsylvania. The rationale was to guarantee lenders would face a uniform set of regulations throughout the state.

The ordinance regulated mortgage lending practices on loans of less than \$100,000 that otherwise are covered under the federal Home Ownership and Equity Protection Act. The new state law claimed a well-developed sub-prime market was important and provided benefits and placed some restrictions on these loans. The state law provided protections already contained in HOEPA and did not require mandatory pre-loan counseling required by the ordinance when consumers obtained sub-prime loans.

### Oakland, California Predatory Lending Ordinance

The California Constitution has a home rule provision: Article XI, Section 7 “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinance regulation not in conflict with general law.” Charter cities such as Oakland, California may adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a “municipal affair” rather than one of “statewide concern.” Cal.Const., Art. XI, §5, Oak City Charter, §106. Pursuant to California law “A conflict exists if the ordinance duplicates or is coextensive with a state law, is contradictory or inimical to the state law, or enters an area either expressly or impliedly fully occupied by general law.

Oakland’s predatory lending ordinance was struck down because even though the state Legislature did not expressly preempt the field of mortgage lending, the Court found field preemption by implication because the state law “fully occupied the field” of regulation of predatory practices in home mortgage lending. The Court found local regulation is invalid if it attempts to impose additional requirements in a field which is fully occupied by statute.

Factors California Courts consider as indicia of legislative intent to “fully occupy a field of regulation” are: 1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern, 2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action or, 3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality. *American Financial Services Association v. City of Oakland, et al.*, 34 Cal.4th 1239 (2005)

### Norwalk, California Zoning Ordinance

After the Court found Oakland’s predatory lending ordinance invalid, Norwalk, California took an alternative approach to regulating payday lending. The City Council passed a zoning ordinance limiting the number of payday lending businesses allowed in the city to eight (8) and providing spacing/location limits. The ordinance grandfathered certain then-existing payday lending businesses. City officials met with representatives of several payday lending institutions. These representatives also attended the Planning Commission and City Council meetings and did not oppose the ordinance. The ordinance was passed on February 23, 2010 and has not been challenged. It can be distinguished from many of the other ordinances because it regulates the industry from a zoning perspective, a function traditionally associated with municipalities.

## Jacksonville, Florida Payday Loan Ordinance

The City of Jacksonville enacted a payday loan ordinance that reduced the interest rate to 36% per annum and added consumer protections not provided by the Florida Deferred Presentment Act. The ordinance also included distance requirements between other payday lenders and the area military bases. All sections, except those relating to zoning, were overturned by the Court in a summary final judgment. The Court found the interest rate sections of the ordinance created unlawful price controls that conflicted with a state law that expressly preempted local price control legislation. The Court also found express preemption by applying the Florida mortgage predatory lending law to payday loan transactions. The Court found the mortgage law prohibited enactment or enforcement of local laws regulating all financial entities licensed by the Florida Office of Financial Regulation. The Court also found that the Florida Deferred Presentment Act implicitly preempted the field of payday loan legislation and, if not, there was a direct conflict between the local ordinance and state payday lending law because the local ordinance reduced the rates lenders were allowed to charge by state law.

The Court also found the arbitration provisions were preempted by the Federal Arbitration Act (FAA), rendering arbitration agreements valid and enforceable, finding the FAA's breadth is consistent with Congress's liberal federal policy favoring agreements to arbitrate. Under the FAA, which applies in both state and federal courts, states may not "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."

The Court disregarded the City's argument that payday lending involves relatively small loans and does not encompass loans that involve interstate commerce, finding that Courts, not legislatures, determine when a transaction involves interstate commerce. The Court found a legislative body may not simply declare that certain categories of transactions do not involve interstate commerce. *Advance America, Cash Advance Centers of Florida, Inc. v. The Consolidated City of Jacksonville, Florida*, In the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida, Case No. 16-2005-CA-7025-MA, summary judgment order entered June 1, 2005 After the summary judgment order was entered the City repealed the entire ordinance including the zoning provisions which were upheld by the Court.

## St. Ann, Missouri Ordinance Prohibiting Payday Lenders Within the City Limits

Sunshine Enterprises was licensed by the state to operate a business providing unsecured, under-\$500 loans, but was denied a merchant's license by the City of St. Ann pursuant to a city ordinance prohibiting the operation of short-term loan establishments within the city. The ordinance defined a short-term loan establishment as a business engaged in providing short-term loans to the public as a primary or substantial element of its operations and prohibited their operations in all zoning districts of the City of St. Ann. Sunshine challenged the city's ordinance as being a complete prohibition, rather than a regulation, and therefore in conflict with state law. The Court held cities may not enact ordinances that conflict state statutes or regulations. While ordinances that are regulatory are allowed, those that prohibit activities permitted by state law are in conflict and invalid. Because the state law allowed the operation of lending businesses and the Court determined that Sunshine's primary business was lending, Sunshine was in compliance with state law and its operations could not be prohibited by the city ordinance. The Court held that it was the city's burden to show that the ordinance did not conflict with state law, and the City of St. Ann was unable to do so. *State of Missouri, ex rel. v. Sunshine Enterprises of Missouri, Inc. d/b/a Sunshine Title and Check Advance*, Case Number: SC83502, Appeal from the Circuit Court of St. Louis County, January 8, 2002.

## St. Louis, Missouri Title Loan Ordinance

Missouri Title Loans appealed the denial of a permit to operate a title lending business within an area of St. Louis zoned for limited commercial purposes. The ordinance set requirements for businesses to satisfy for operation in this particular commercial zone. The St. Louis Board found that Missouri Title Loans did not satisfy those requirements. The ordinance provided the commercial district's purpose was to establish and preserve the commercial and professional facilities found useful in close proximity to residential areas, so long as the uses were compatible with the residential uses. The types of businesses allowed in the commercial district included general office uses, financial institutions, and other similar uses.

Title Loans challenged the denial of its permit by stating that it was a financial institution as defined in the St. Louis code. The Court looked to the definition of "financial institution" and determined by state law that Title Loans was not a bank, savings and loan association, or similar to one, and therefore did not qualify as a financial institution for the purposes of the ordinance. Title Loans further alleged that it intended to use the property for general office purposes allowing it to qualify for the permit. The Court held "general offices," as used in the code, referred to general business offices where employees do not engage in regular contact with the public, and the operations of Title Loans did not fit this category.

Title Loans further argued that it qualified for a conditional use permit as allowed under a separate section of the code, claiming that it would satisfy the required standards. The code would allow a business to operate under a conditional basis if the business would contribute to the general welfare and convenience of the location, would not reduce or impair property values, and would not impact the adjacent uses or community facilities in a negative way. The Court accepted testimony from numerous sources that Title Loans would not satisfy the standards and would have an adverse impact on property values and the ability to attract other businesses to the area. Because the evidence supporting the denial of the permit was competent and substantial, the Court upheld the Board of Adjustment's decision and denied the permit. *Missouri Title Loans, Inc. v. City of St. Louis Board of Adjustment*, Case Number: ED77866, Appeal from the Circuit Court of the City of St. Louis, decided May 1, 2001.

#### Cleveland and Dayton, Ohio Predatory Lending Ordinances

The Ohio Supreme Court struck down the Cleveland and Dayton, Ohio predatory lending ordinances in *American Financial Services Association, et. al. v. City of Cleveland*, 858 N.E.2d 776 (Ohio 2006). The Court was reviewing predatory mortgage ordinances enacted by Cleveland and Dayton, Ohio. The American Financial Services Association (AFSA) claimed these ordinances were preempted by or in conflict with the Ohio predatory lending law that mirrored the federal Home Ownership and Equity Protection Act in providing protections in high cost or high interest loans. The ordinances lowered the thresholds for loans included in the ordinance widening the restrictions and protections to more loans.

The Court was asked to determine: 1) if the state predatory lending law which did not expressly preempt local ordinances constitute such a wide ranging law so as to preempt the entire field of consumer lending regulation and bar local governments from adopting local ordinances regulating lending practices enforceable as "general laws" and, 2) does the "home rule" provision of the Ohio Constitution permit a municipality to impose on local consumer lending institutions regulatory requirements that are different from or more restrictive than the state predatory lending law as long as the local requirements are not *in conflict with* the state requirements?

Ohio's home rule law provides "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other

similar regulations, as are not in conflict with general laws.” In their respective briefs, the key issue argued by the industry group and Cleveland is what standard the Court should apply in determining whether a local ordinance is or is not “in conflict” with the provisions of the state statute. The AFSA argued an “implied permission” standard applied claiming when the state enacts a law that sets specific numerical limits or spells out specific procedural requirements for a certain type of conduct or activity, the state law is *presumed to permit* conduct or activity that falls within the prescribed numerical limits and/or does not violate the prescribed procedure. In this case, AFSA claimed imposing the restrictions on more loans improperly included them for restrictive regulations not imposed by state law. They claimed the ordinance was unconstitutional and invalid because the city ordinance clearly “prohibits that which the state law permits.”

The City of Cleveland responded that a more demanding “affirmative permission” standard should be applied. Under this standard, a local ordinance may only be voided for direct conflict with a state law if the local ordinance affirmatively permits something that the state law plainly prohibits, or the local ordinance prohibits something that the state law explicitly permits.

Cleveland argued both the state law and the Cleveland predatory lending ordinance were written in prohibitive (rather than permissive) form – meaning the text of both laws lists predatory terms and conditions that may not be imposed on borrowers. In terms of “home rule” analysis, Cleveland claimed the language of the state law could not be read to “permit” specific actions prohibited by the city ordinance because the state law did not permit anything, it only listed prohibitions.

AFSA argued that the state express preemption of all regulatory authority over commercial lending activity should be read broadly to cover all lending activity because the state law sets forth a detailed statewide regulatory scheme for oversight of mortgage and home improvement lending, including civil fines, rescission of loan contracts and other remedies that borrowers may pursue in state courts and that statewide laws provide a more necessarily uniform statewide regulation of the mortgage loan industry.

Cleveland argued because the constitution granted municipal governments power to adopt and enforce police regulations within their own borders, no state law could take away that power. In the absence of a clear and explicit contradiction between the terms of a state law and a local ordinance the Court must uphold the ordinance.

The Ohio Supreme Court answered both questions above in the affirmative and found the state law was a general law as it affects the ordinances at issue, found the ordinances conflicted with the state law and deemed the ordinances unenforceable.

**CASH AMERICA NET OF NEVADA, LLC, Petitioner v. COMMONWEALTH of Pennsylvania**

In July 2008 the Secretary of Banking published, in the Pennsylvania Bulletin, a “Notice to those Engaging or Considering Engaging in Nonmortgage Consumer Lending to Pennsylvania Residents.” This notice stated that the Department of Banking considered engaging in nonmortgage consumer lending to Pennsylvania residents by any means, including through the internet or mail, would constitute engaging in such business in “this commonwealth” as defined by section 3.A of the Consumer Discount Company Act. This section provided that “No person shall engage or continue to engage in this Commonwealth, either as principle, employee, agent or broker, in the business of negotiating or making loans or advances of money on credit in the amount or value of twenty-five thousand dollars or less, and charge, collect, contract for or receive interest, discount, bonus, fees, fines, commissions, charges, or other considerations which aggregate in excess of the interest that the lender would

otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned, or advanced, or on the unpaid principle balances when the contract is payable by stated installments except a domestic business corporation organized under or existing by virtue of the [Business Corporation Law of 1988, 15 Pa. C.S. §§1101 – 41611], after first obtaining a license from the Secretary of Banking of the Commonwealth of Pennsylvania in accordance with the provisions of this act.

This had the effect of requiring any non-depository entity engaged in making such loans at more than 6%, who were not already licensed, to obtain a license by February 2009. Prior to this notice, a non-depository entity without offices of any kind in Pennsylvania, or people physically present in the state and acting on behalf of the entity as principal, employee, agent or broker, was not considered to be engaging in business “in this commonwealth” within the meaning of Section 3A and would not be required to obtain a license. The department changed its policy in part because Pennsylvania consumers were being exposed to the exact lending practices that these laws were created to prevent through internet based lenders.

Cash America Net of Nevada, LLC filed a petition in 2009 to have the Notice declared unlawful and to prevent its enforcement. The Court first established that the Department was allowed to change its interpretation of the statute that it is attempting to enforce. Cash America then tried to defend their claim that they ought to be considered an out-of-state lender by claiming that if a lender does not have a “principle, employee, agent or broker” in Pennsylvania then the lender is not “in the Commonwealth” because the first phrase modifies the second. This was the interpretation that had been used for the past 70 years. The Department claimed that the interpretation of the requirement that the lender be engaged in business “in this Commonwealth” is analogous to the language used the Pennsylvania Long Arm Statute which allows courts to exercise general jurisdiction over corporations that have “a continuous and systematic part of [their] general business within this commonwealth.” The Department also uses the Uniform Interstate and International Procedure Act which allows personal jurisdiction over a person “transacting any business in the commonwealth.” 42 Pa. C.S. §5322(a)(1).

Cash America’s website was aimed towards Pennsylvania citizen and the company operated with the knowledge that it was lending to Pennsylvania residents and was transmitting money to Pennsylvania. This makes it an active website rather than a passive one, which would simply disseminate information. Active websites are more likely to be subject to personal jurisdiction because they reach out to the citizens of the state in an attempt to conduct business transactions.

Cash America claimed that these arguments are irrelevant because, even though they may be subject to personal jurisdiction within the state of Pennsylvania that does not apply to the interpretation of §3.A of the CDCA. They argue that the legislature could not have intended to reach lenders who were not located in the state and have no physical presence in the state.

The Department argues that the statute was drafted in general terms to allow for flexibility as new situations, which may not have existed in 1937, come to be. The Department also argues that if there is any ambiguity to be found in §3.A of the CDCA, its specialized experience with internet lending supports its interpretation. Its interpretation and change of policy, which is reflected in the Notice, is based on its experience in dealing with the rise of these internet lenders and special knowledge of the effect such lending has on the community. Cash America countered by claiming that the Department’s change in policy should not be afforded any deference because common law supported the idea that deference would be yielded in situations where a long-standing policy was suddenly changed.

The Court notes that the Supreme Court has expressed the belief that payday lending is a predatory lending practice and that the public policy prohibits usurious lending. It is, therefore, well

established that the regulation interest rates is well within the police powers of the state, particularly in cases of small loans which can have great effects on the community.

The Court granted summary relief for the department and stated that Cash America's practice of making payday loans to Pennsylvania residents was not authorized by the Commonwealth and that its lending practices specifically violated the CDCA and LIPL.

**Sunrise Check Cashing & Payroll Services., Inc. v. Town of Hempstead, 91 A.D. 3d 126, (2011)**

In 2006 the Town of Hempstead adopted section 302(K) of article XXXI of the Building Zone Ordinance of the Town of Hempstead (Section 302[K]). Section 302(K) prohibited check-cashing establishments within the Town of Hempstead in any districts other than those which were industrial or involved in light manufacturing. Preexisting check cashing establishments were required to terminate by amortization no later than five years after the effective date of Section 302(K).

The Plaintiff, each of whom operated a check-cashing establishment in the Town's business district, sought a judgment declaring that Section 302(K) was void and of no effect. They claimed that it was preempted by State law, that it was not a valid exercise of the zoning power of the Town, and that it was unconstitutional. The Plaintiff's brought five causes of action:

- 1) Section 302(K) conflicts with New York State Law,
- 2) The five-year amortization period that is in Section 302(K) constituted an unlawful taking of their property without due process of law,
- 3) Section 302(K) was not reasonably related to promoting public health, safety, morals, or the general welfare of the town and that it was not a valid use of the Town's zoning power because it did not deal with zoning, it dealt with the operation of the Plaintiff's businesses,
- 4) Section 302(K) deprived the Plaintiff's of their right in property without the due process of law,
- 5) Plaintiffs' sought to permanently enjoin the Town from enforcing Section 202(K) against them.

The Plaintiffs also claimed that banking law preempted Section 302(K) because it sets forth a detailed and comprehensive regulatory scheme that shows the State's intent to reserve the field of banking for State oversight and control. Therefore the field was preempted by the State, which would preclude the Town from enacting legislation in the same area. They also claimed that Section 302(K) conflicted with provisions of the Banking Law and therefore was preempted on the basis of conflict and field preemption.

The Plaintiffs claimed that Section 302(K) was not a valid use of the Town's zoning powers because it was enacted with exclusionary and discriminatory purpose, and it has an exclusionary effect. They also stated that Section 302(K) was arbitrary and capricious because it was not enacted to further a legitimate government purpose and it was not reasonably related to the end result that the Town was seeking to achieve. In terms of unconstitutionality the Plaintiffs claimed that Section 302(K) violated their due process rights because they were not afforded sufficient notice or an opportunity to be heard (even though there was a public hearing held prior to the enactment of Section 302(K) they claimed to not have received adequate notice of the specific risk of having their businesses terminated). Plaintiffs also argued that Section 302(K) violated the Equal Protection Clause of the Constitution because of its discriminatory and disparate impact. It was also asserted that this created an unconstitutional taking of their property.

The Town asserted that absent any substantial evidence to the contrary the Supreme Court was required to assume that the Town had acted rationally in enacting Section 302(K). It also claimed that the plaintiffs had no vested property interest that was constitutionally protected in the prior zoning classification of their properties and therefore there could be no actionable claim of a de facto taking and the plaintiffs were not denied due process. They also submitted a memorandum in which the Superintendent of Banks of the State of New York, as a defendant in, American Broadcasting Cos. v Siebert (110 Misc 2d 744, 442 N.Y.S.2d 855), acknowledged that check-cashing businesses held and inherent risk of robberies – providing a rationale for the Town’s concern that check-cashing businesses were not good for the public welfare.

On April 16, 2010 the Supreme Court, Nassau County, granted the Town’s cross motion for summary judgment that had the effect of declaring that Section 302(K) was valid in all respects. The Court concluded that the Legislature had not indeed to occupy the field of regulating check-cashing establishments, the plaintiffs failed to demonstrate that the doctrines of field or conflict preemption prevented the Town from enacting Section 302(K), the plaintiffs failed to rebut the presumption of validity which applied to Section 302(K), and that the plaintiffs failed to demonstrate that Section 302(K) violated the Equal Protection Clause of the Constitution.

On appeal the Court explained that New York has a constitutional home rule provision which confers broad police powers upon local governments relating to the welfare of its citizens, but the powers of local government are still subject to the fundamental limitation of the preemption doctrine – they cannot adopt laws that are inconsistent with the Constitution or with any general law of the state. State preemption can occur in two ways: when a local government adopts a law that directly conflicts with a State statute, or when a local government legislates in a field for which the State Legislature has assumed full regulatory responsibility. The Court noted that the relevant Banking Law addressed the conditions precedent to the issuance of a license, the issuance and filing of a license, and the posting of the license. The Legislature had stated that check cashers provided important services and that their business would be regulated through the banking department.

The Court decided that even though separate levels of regularity oversight can coexist (Incorporated Vil. of Nyack v Daytop Vil., 78 NY2d at 507). Section 302(K) has more than a tangible impact on the relevant Banking Law Provisions. According to the Court, Section 302(K) purports to accomplish the same functions delegated by the Legislature to the Superintendent by making a determination as to which locations are appropriate for check-cashing establishments. Section 302(K) was therefore preempted by State law in that it took away a right or benefit that was expressly given by State law to another entity.

Because the Court established that Section 302(K) was invalid by preemption they did not address any other concerns about the validity of the statute. The plaintiff’s motion for summary judgment was granted and the matter was remitted to the Supreme Court, Nassau County for entry of a judgment stating that Section 302(K) was void and of no effect.

**Midwest Title Loans, Inc. v. Mills, 593 F.3d 660 (7<sup>th</sup> Cir. 2010) [title loans, but also looks at some payday loan issues]**

Indiana added a provision to its version of the model code in 2007 called the “territorial application” provision which states that a loan is deemed to occur in Indiana if a resident of the estate “enters into a consumer sale, lease or loan transaction with a creditor . . . in another state and the creditor . . . has advertised or solicited sales, leases, or loans in Indiana by any means” Ind. Code§ 24-4.5-1-201(1)(d). If this provision is triggered, the lender is then subject to the code and must obtain a license



from the state to make consumer loans, the lender is also then subject to a variety of restrictions on their lending practices. If a lender who is required to have a license does not obtain one, they may be subject to administrative and/or civil remedies; failure to obtain a loan also voids the loan.

Until 2007 Midwest had made loans to Indiana citizens at annual percentage rates that were almost ten times higher than the maximum permitted by the code. These loans were all made in person, in Illinois. Midwest had no offices in Indiana; however their loans were advertised on Indiana television stations and through direct mailings to Indiana residents.

The Court noted that nondiscriminatory local regulations are invalid when states actually attempt to regulate activities outside of their state. The Court quotes *Healy v. Beer Institute*, 491 U.S. 324, 337, 109 S. Ct. 2491, 105 L. Ed. 2d 275 (1989), “the Commerce Clause dictates that no State may force an out-of-state merchant to seek regulatory approval in one State before undertaking a transaction in another.”

After establishing that Midwest did not purposefully avoid setting up an office in Indiana in an attempt to circumvent Indiana law the Court concluded that the Indiana legislation could not be enforced on an Illinois company, even though Midwest advertised in Indiana, the loan proceeds were most likely spent mostly in Indiana, and the location of the collateral was in Indiana.

### ***EZMONEY Wis., Inc. v. City of Wauwatosa Bd. of Zoning Appeals***

In 2006, EZMONEY began discussions with the City of Wauwatosa about EZMONEY’s interest in opening a business in Wauwatosa’s trade district. This district was governed by Wauwatosa, Wis., Code (Wauwatosa Code) ch. 24.22 (2005); this section defined the purpose of the trade district:

The purpose of the trade district is to encourage and support the development of areas of small businesses and retail stores that are compatible in scale and type with the surrounding residential neighborhoods. These are uses that do not generate large amounts of traffic and primarily serve the needs of local residents.

The code also acknowledged several prohibited uses, which included check cashing establishments.

In March 2006, the Wauwatosa Direct of Community Development responded to EZMONEY’s business description and stated that she did not believe that they fell under the category of “check cashing”. Based on this, EZMONEY applied for and received a permit to erect two signs at the proposed location in March, and then in May of 2006 they entered into a five-year commercial lease for building in the district.

When Wauwatosa aldermen and area residents saw the signs for EZMONEY there was a negative reaction. In July, 2006 EZMONEY was sent a letter advising that the Common Council had expressed concern about EZMONEY’s signs and that the prohibition on check cashing businesses in the trade district was to prevent businesses such as EZMONEY from locating there. They were also informed that their building permit would not be issued until there was clarification over the Common Council’s intent in prohibiting check cashing establishments. In August, 2006 the Wauwatosa Plan Commission held a public meeting to clarify the intent of the ordinance which prohibited check cashing business. After this meeting the City Buildings and Safety Division issued a Revised Notice of Noncompliance which revoked EZMONEY’s sign permit stating that the City had determined that this business use was not permitted under zoning law and therefore the signs were not in compliance with

the sign code. EZMONEY's construction company was also informed that EZMONEY was not a permitted use in the trade district and their building permit application had been denied.

In October, 2006 EZMONEY applied for an occupancy permit. In November, 2006, before the occupancy permit application was acknowledged, the Common Council adopted the clarification on check cashing establishments. After the adoption of the clarification, EZMONEY's occupancy permit was denied in December, 2006. The clarification removed the language of "check cashing establishments" and replaced it with "convenient cash businesses" which were then defined as:

Convenient cash business, also referred to as payday loan business, title for cash business, check cashing business, deferred presentment service provider, or similar enterprise licensed pursuant to Wis. Stat. Sec. 218.05, or a person licensed pursuant to Wis. Stat. sec. 138.09 who accepts a check or title, holds the check or title for a period of time before negotiating or presenting the check or title for payment and pays to the issuer on agreed-upon cash, or who refinances or consolidates such a transaction. Wauwatosa code §24.22.040 (revised November 7, 2006).

EZMONEY appealed the denial of both the building permit and the occupancy permit, asserting that the City's initial decision, that EZMONEY was not a prohibited business, in March, 2006 was correct and should be upheld. The Board held a hearing on the appeal in January, 2007 which decided that the original decision of the Community Development Director was in error and the denial of EZMONEY's permits upheld the original intent of the ordinance. EZMONEY then filed an action in circuit court seeking certiorari review the Board's decision. The circuit court affirmed that decision and then the case was taken to the Court of Appeals.

The Court of Appeals the decision of the Board (not the circuit court) was under review. The Court decided that:

- 1) the Board did act properly within its jurisdiction,
- 2) the Board reasonably concluded that EZMONEY's business was not compatible with the surrounding neighborhood, which was the purpose of the ordinance, and therefore was not a permitted use in the trade district,
- 3) the Board's action was not arbitrary, oppressive, or unreasonable and its conclusion was an expression of its judgment about application of the stated intent of the ordinance to the facts before it
- 4) and the Board had sufficient evidence before it to permit it to reasonably make the determination that it made.

The Court noted that "parties may not avoid the stated purpose of a city's zoning ordinance by proposing a business which, though not specifically prohibited, is so similar to a prohibited use that the Board may reasonably conclude the proposed business is prohibited." The circuit court's decision to affirm the Board's decision was upheld.

**Austin v. Ala. Check Cashers Ass'n, 936 So. 2d 1014 (Ala. 2005)**

In July, 1988 cease and desist orders were issued against business that offered loans in the amount of \$749 or less without a license pursuant to the Alabama Small Loans Act. At the same time the Alabama Check Cashers Association (ACCA) along with individual check cashers, instituted a declaratory-judgment action against the Banking Department and individually named employee so the Banking Department claiming that the ASLA did not apply to the operations of check cashers. They also sought a temporary injunction to prevent the Banking Department from enforcing the cease and desist orders. The ACCA described two types of check-cashing transactions, the first involved simply cashing a check for a fee, the second is referred to as "deferred presentment" or a "delayed deposit" transaction in which

a customer's check is cashed for a fee and the plaintiff's business agrees to hold the check for a limited period of time before depositing it. It is in respect to the second type of transaction that the Plaintiff's seek declaratory judgment.

On October 9, 1998, the trial court entered a consent order which encompassed an agreement between the ACCA/check cashers and the Banking Department. On November 23, 1998, customers who had obtained payday loans sought to withdraw the consent order, counterclaim for damages under the ASLA and the Alabama Consumer Credit "Mini-Code", § 5-19-1 et seq., Ala. Code 1975, and to certify a plaintiff class of customers and a defendant class of check cashers. This motion to intervene was partially granted on March 2, 1999. On April 19, 1999, the customers filed a motion for a judgment on the pleadings or a motion for summary judgment; on June 4, 1999 the Banking Department moved for a summary judgment.

After years of complicated litigation between the three parties, it was finally established that the Banking Department and the customers were asking the court to address the issue of "whether advancing money on a customer's personal check, which the check casher does not deposit to a bank until the customer's next payday, is a loan subject to, and in violation of, the Alabama Small Loans Act and, if so, whether such illegal payday loan transactions conducted pursuant to the consent order are legitimized."

One argument was that delayed check cashing transactions were simply payday loans which were disguised in order to evade the ASLA. There was significant controversy over this issue in part because the term "loan" was not defined in ASLA, however just because this term is not defined in the act that does not make the act unconstitutionally vague. The Court looked to the definition of 'loan' in Black's Law Dictionary and decided that the fees involved in the transactions where a customer receives cash in return for a personal check that is purposefully not deposited for a period of time should be considered interest. Therefore, the Court concluded that the deferred-presentment transactions are loans that are subject to the ASLA.

While it was established that the Banking Department could enforce the ASLA against deferred-presentment transactions they were estopped from enforcing it against the check cashers whose deferred-presentment transactions were conducted pursuant to the terms of the consent order.

**Am. Fin. Servs. Ass'n v. City of Toledo, 161 Ohio App. 3d 477**

The American Financial Services Association (AFSA) filed a complaint seeking injunctive relief and declaratory judgment in connection with a series of ordinances that the city enacted in an effort to regulate predatory lending practices. In February 2003, AFSA filed its initial complaint claiming that one of the ordinances was a violation of the Ohio Home Rule Law; in April 2003, the state of Ohio filed a motion to intervene claiming that the city was challenging the constitutionality of the state's predatory lending statute. The trial court granted summary judgment claiming that the state predatory lending law preempted the city predatory lending ordinances.

The city appealed claiming that the trial court erred when it granted summary judgment on behalf of the appellee by determining that the state predatory lending law preempted the city's ordinances and that it erred in finding that the predatory lending ordinances were not severable if only certain provisions were invalid.

The Court explained the "Home Rule" in the following paragraph:

Under Article XVIII, Section 3 of the Ohio Constitution, the so-called "Home Rule" provision, "[municipalities shall have authority to exercise all powers of local self-

government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." In order for a court to determine whether a state statute has preempted a municipal ordinance, it must employ a three-part test: "A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." City of Canton v. State, 95 Ohio St.3d 149, 2002 Ohio 2005, at P9, 766 N.E.2d 963.

The Court then notes that the purpose in home rules laws is that decisions should be made by those who have intimate knowledge of local issues, the people who know the community the best. This principle must be kept in mind when the Court looks at a potential home-rule conflict analysis and if possible, the Court ought to attempt to harmonize the general law with municipal ordinances.

The Court acknowledged not all parts of the city ordinances conflicted with state law AFSA also claimed that the private right of action that was set forth at TMC 795.2 3 was not within the city's authority to create and therefore was invalid. The private right of action and the attempt to legislate the types of damages to be awarded pursuant to that right of action were outside the scope of the city's authority to legislate. Therefore TMC 795.2 3 was found to be invalid and unenforceable. TMC 795.2 3 was subjected to a three-part test to determine if it could simply be severed from the rest of the municipal predatory lending legislation. The Court found that it was severable from the rest of the municipal predatory lending legislation, was not inextricably intertwined with the general scope of the whole, and did not require the insertion of words or terms in order to separate the constitutional part from the unconstitutional it was simply severed. Therefore TMC 795.23 was simply severed from the rest of the law.

AFSA's next claim was that portions of the municipal law were void for vagueness. The Court cited to Grayned v. Rockford (1972), 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 for an explanation of the standard for this charge; "laws must 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly,; and laws must also 'provide explicit standards' for the police officers, judges, and jurors who enforce and apply them." Laws are generally entitled to a presumption of constitutionality and the burden of proof is on the challenger to prove unconstitutionality beyond a reasonable doubt.

AFSA claims that TMC 795.21(a)(3), is unconstitutionally vague because it fails to define the terms "inaccurate" and "incomplete" when it prohibits a lender from signing an "inaccurate or incomplete home loan document." TMC 795.21(a)(7) was also being challenged, this provision prohibited lenders from "steer[ing] a borrower to a loan product materially detrimental to the interests of the borrower." Because the provision offers no guidance as to the meaning of the terms "steering" and "materially detrimental", and also because it fails to "provide explicit standards" for law enforcement this provision was considered to be unconstitutionally vague. However because this provision was severable under the three part test it was simply removed from the law.

AFSA finally challenged the disclosure in TMC 795.22(a)(9) which stated "if you do not understand any part of this disclosure or any of the terms of your home loan, please seek mortgage counseling prior to the date of your closing. Your lender can supply a current list of mortgage counseling agencies approved by the City of Toledo to be developed by the Department of Economic and Community Development." Because there was no requirement for lenders to keep or maintain a list of mortgage counseling, nor is there any way to have such a list approved by the city. Therefore it would be possible for there to be "arbitrary and discriminatory enforcement of the law". Grayned v. Rockford (1972), 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222. This could lead to a situation

where the city could force lenders to risk noncompliance with the law by the city's own failure to keep an approved list of mortgage counseling services. This section was also found to be severable.

The City was correct in stating that, if only certain provisions were invalid, the city's predatory lending ordinances were severable. The judgment of the trial court was reversed. In its opinion the appellate court found conflict with the judgment of the Second District Court of Appeals in *Dayton v. State*, 157 Ohio App. 3d 736, 813 N.E. 2d 707 with respect to the question of whether a municipal predatory lending law conflicts with the state predatory lending law when the municipal law would prohibit conduct that the state law would allow.

The Ohio Supreme Court in *Am. Financial Servs. Assn. v. Toledo*, 859 N.E.2d 923 (Ohio 2006) answered the certified question relating to the conflict in the Appellate Courts in the Affirmative and reversed the judgment on the authority of [Am. Financial Servs. Assn. v. Cleveland](#), 858 N.E.2d 776 (Ohio 2006) and reinstated the trial court's judgment.

### **Clay v. Oxendine, 285 Ga. App. 50**

The appellees commenced this civil action claiming that the appellants' use of consumer "sale/leaseback" transactions was violating the anti-payday lending statute OCGA § 16-17-1 et seq., and the Georgia Industrial Loan Act, OCGA § 7-3-1 et seq. ("GILA"). The trial court granted partial summary judgment granted the motion to strike the appellant's jury demand. On appeal, the appellants claim that the trial court erred by ruling that their "sale/leaseback" transactions constituted illegal payday loans as a matter of law, by denying their right to a jury trial, and by holding the appellant corporate officers individually liable.

The appellants operated numerous consumer cash advance and finance businesses serving citizens throughout Georgia; in 2002 the state investigated these businesses due to complaints about excessive interest and abusive collection tactics. Appellants claim that their business of making cash advances did not qualify as loaning funds. The Industrial Loan Commissioner found that the appellants were engaging in illegal payday lending and ordered them to cease and desist in those business practices. After this finding the appellants changed their business practices to operating a "rent-a-bank" arrangement, meaning that they served as the agent for an out-of-state bank that made payday loans. Thereafter, the provisions of OCGA §§ 16-17-1 (c), 16-17-2 (b) (4), and 16-17-2 (d) were enacted, and were effective starting in May 2004. Those provisions declared that the "rent-a-bank" arrangements would constitute violations of GILA and the Georgia usury statutes.

Appellants then began to engage in the "sale/leaseback" transactions that are currently being litigated. In these transactions customers would sell personal property to the appellants and then subsequently lease it back from them. After conducting an investigation the state determined that these transactions were simply payday loans by another name; these transactions were therefore illegal and the state commenced the current action.

The trial court determined that these "sale/leaseback" transactions were payday loans and were therefore in violation of the anti-payday lending statute and the Commissioner's previously issued cease and desist order. This decision was not found to be in error. OCGA § 16-17-1 et seq had been enacted to declare that payday loans were illegal and to impose penalties, above and beyond those that existed under state law, in order to prohibit this activity.

Payday loans are characterized by their short duration and extraordinarily high interest rates. According to Georgia statute OCGA § 16-17-2 (b) (2) a payday loan is considered to be illegal whether or not the transaction also involves “the selling or providing of an item, service, or commodity incidental to the advance of funds.” Appellants claimed that the transactions they were conducting should not be construed as loans. These transactions were reflected by a written bill of sale and the customer was offered three options in the lease at the end of each lease period: 1) renew the lease for another period, 2) repurchase the property for the sales price, without credit for any rental payments made, or 3) return the property without owing anything more. Appellants claim that the third option prevents these transactions from being considered loans because the customers have an option to not repay the money received for the sale of the goods.

Despite this argument, the Court turned to Pope v. Marshall, 78 Ga. 635, 640 (2) (4 SE 116) (1887) for an understanding of how these transactions should be analyzed. Pope stated that the test for whether a transaction is a purchase or a loan depends “not upon the form of words used in contracting, but upon the real intent and understanding of the parties. No disguise of language can avail for covering up usury, or glossing over an usurious contract. The theory that a contract will be usurious or not, according to the kind of paper bag it is put up in, or according to the more or less ingenious phrases made use of in negotiating it, is altogether erroneous. The law intends that a search for usury shall penetrate to the substance.” Therefore the Court analyzed the transactions as a whole, and found the State’s evidence that these transactions were in fact loans, compelling.

Despite the title of these “sale/leaseback” transactions, customers were still required to provide the names of their employers, the length of their employment, their salaries, pay dates, checking account information, recent pay stubs, and bank statements prior to “selling” their goods. Customers were also required to provide a check or electronic debit authorization for the amount of the principal plus interest. The payment schedule of these transactions also looked similar to a loan transaction. Following the receipt of funds the customers would have to provide their first payment within two weeks after which they could pay the principal amount advanced plus a 25 – 27% fee, if they were unable to do so then they were required to renew the transaction term for another two week period and pay another fee. If a payment was not made their checks would be cashed immediately. The state also provided evidence to show that the sale and lease part of these transactions was being falsified. It was found that the same cell phone and power back were bought and leased back to several different customers at different amounts. According to the records of the store the value assigned to a piece of personal property was not based on its actual market value at all but had a direct correlation to the loan amount that the customer was approved for (an example would be a transaction in which a can opening and a coffee maker were given a \$450 value). Several customers also came forth and claimed that the bill of sale documents that the appellants showed were not the documents that they signed and agreed to; they claimed to have only signed the “sale/leaseback” documents.

The state met its burden of proving that appellants were engaged in illegal payday lending. The “sale/leaseback” transactions were found to be payday loans in disguise. The judgment of the trial court was therefore affirmed.

**PAYDAY TODAY, INCORPORATED v. INDIANA DEPARTMENT OF FINANCIAL INSTITUTIONS,**

Payday Today is an Indiana corporation and began doing business around 1994. The Department of Financial Institutions (DFI) was the leader in regulation of the payday loan industry. They licensed payday lenders under Indiana consumer loan licensing statutes and required DFI approval on all payday loan forms. At this time there were no laws aimed specifically at this type of loan and they were regulated only by the Indiana Uniform Consumer Credit Code (IUCCC). In 1994, the Indiana

legislature amended the IUCCC provisions that dealt with minimum loan finance charges leading to an issue as to whether or not these minimum loan finance charges needed to be included in the maximum allowable interest rate calculation. At the time, the DFI took the position that the minimum loan finance charges of payday lenders were except from the maximum allowable interest rate calculation.

In 2000, the Indiana General Attorney issued an opinion stating the opposite. While this opinion was sent to payday lenders it was not implemented as DFI policy. After litigating the issue the DFI changed its position and endorsed the Attorney General's position. The Indiana Supreme Court held that minimum loan finance chargers were to be limited by the interest rate cap set forth in the IUCCC even though they were not originally contemplated by the IUCCC.

In March, 2002, the Indiana legislature passed the Small Loans Act (SLA) which set caps on the amount of payday loans and on the amount of interest that could be charged. IND.CODE § 24-4.5-7-201 In 2004 this act was amended to increase the maximum small loan amount and increase allowable finance charges. The amendments also allowed payday lenders to contract for a fee if the check presented by the customers is dishonored. IND.CODE § 24-4.5-7-202. Additionally, lenders were prohibited from threatening to use criminal processes to collect on the small loans and also from contract for and collecting attorneys' fees on small loans. IND.CODE § 24-4.5-7-410(a), (d) A lender can only recover treble damages and attorneys' fees if a check or authorization to debit a borrower's account is used to defraud another. IND.CODE § 24-4.5-7-409(2)(d), (f).

There was little to no explanation given for when a lender may sue a customer for fraud, the issue was left to be interpreted by the courts during litigation. Following these amendments there were many cases in small claims courts where payday lenders sued customers for fraudulent checks. Plaintiffs found that all courts found that the lenders were entitled to sue under bad check laws and were awarding them attorneys' fees and treble damages. The DFI knew about these judgments and released a policy statement to all payday lender licensees in 2005 stating that payday lenders may not sue borrowers for treble damages and attorneys' fees unless they first demonstrated to the DFI that the borrower engaged in actual fraud (meaning there was intent to defraud). The DFI warned that failure to comply with this policy could result in revocation of the lender's license. Some lenders were told to ignore court orders and refund monies that had been awarded that were in violation of this policy. The DFI also sent letters to Indiana judges advising them that a payday lender's license would be revoked if they sued for damages inconsistent with the DFI policy.

Plaintiff claimed that the SLA violates the Equal Protection Clause of the Fourteenth Amendment by prohibiting them from using or threatening to use the criminal process to collect on a loan, prohibiting them from contracting for or collecting attorneys' fees, and imposing maximum non-sufficient fund fees. They also claim that the SLA violates the Contract Clause by limited the amount of finance charges they can collect, prohibiting them from contract for or collecting attorneys' fees, and by capping the amount that a payday loan can be. They claim that the DFI violated the Due Process Clause by prohibiting them from using or threatening to use the criminal process to collect on loans and threatening to revoke the license of any lender who sought treble damages and attorneys' fees against a borrower. The plaintiff also made Indiana constitutional claims and claims of mismanagement and civil conspiracy under Indiana Law.

The plaintiff's federal claims were all brought under 42 U.S.C. §1983, however this statute is not brought enough to cover all of the claims. §1983 establishes liability for a person who deprive others of constitutional rights. The state is not a 'person' for the purposes of this statute, and because the DFI is a state agency, it cannot be used under this statute. This statute does, however, allow for protective relief against state officials. The only claims that were allowed to continue while depending on §1983 were

any claims for prospective injunctive relief against individuals in their official or representative capacity, and any claims for damages against individuals in their individual capacity.

The Equal Protection claims were analyzed with rational basis scrutiny. Under this level of scrutiny the legislation, the SLA, would be upheld so long as it was rationally related to some legitimate governmental purpose. Economic legislation is generally treated with a strong presumption of validity. The SLA was conceived for the purpose of protecting consumers from payday lenders who may prey upon the consumer's circumstances. This was a rational reason for the legislation and therefore the SLA was upheld.

Plaintiff makes the argument that the DFI's actions violated both their procedural and substantive due process rights. Plaintiff's substantive due process claims failed because economic regulation must be evaluated under equal protection principles. The Court also noted that the right to contract for or collect attorneys' fees is not a fundamental right that has been recognized by any court. The plaintiff's procedural due process claims were also dismissed. A procedural due process claim must survive a two part test; a plaintiff must show that they have been deprived of a protected interest and, if the first part is satisfied, they must show what process they are due. Because the plaintiff did not even allege that they had been deprived of a constitutionally protected interest without procedural due process these claims were dismissed as well.

The plaintiff also failed to prove their Contract Clause claims. A state violates the Contracts Clause if a change in state law substantially impairs a contractual relationship. Khan v. Gallitano, 180 F.3d 829, 832 (7th Cir.1999). This leads to a three part test: 1) whether or not there is a contractual relationship, 2) whether a change in law impairs that contractual relationship, and 3) whether the impairment is substantial. *Id.* The plaintiff failed the first part of this test because they do not allege that the SLA impaired or interfered with an existing contractual relationship. Plaintiff only alleged that the amendments to the SLA unconstitutionally limited their ability to contract with customers in the future. A statute cannot impair a contract that did not exist prior to the creation of the statute, so therefore these claims were seen to be invalid.

After all of the federal claims were dismissed the Court declined to exercise supplemental jurisdiction over the state law claims. The federal claims were dismissed with prejudice and the state law claims were dismissed without prejudice.



## **APPENDIX 3 – Resolution and Ordinance Examples**

### **Density – West Valley City, UT**

West Valley City Code  
Section 7-1-103  
Subsection 30

30) “Check Cashing” means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses licensed by the State pursuant to the Check Cashing Registration Act. No check cashing or deferred deposit loan business shall be located within 600 feet of any other check cashing business. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. One check cashing or deferred deposit loan business shall be allowed for every 10,000 citizens living in West Valley City. The term Check Cashing shall not include fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

### **Land Use - Jacksonville, FL**

#### ORDINANCE 2005-1012-E

AN ORDINANCE CONCERNING CONSUMER PAYDAY LOANS AND LENDING PRACTICES; MAKING FINDINGS; ESTABLISHING A NEW PART 3 (PAYDAY LOAN PRACTICES) OF CHAPTER 200 (SMALL LOAN AND CONSUMER FINANCING AND PAWNBROKERS), ORDINANCE CODE, TO ESTABLISH OBLIGATIONS, RESPONSIBILITIES, LIABILITIES AND CIVIL AND CRIMINAL REMEDIES IN THE PAYDAY CONSUMER LOAN BUSINESS; AMENDING CHAPTER 656 (ZONING CODE), ORDINANCE CODE, SECTION 656.401, (PERFORMANCE STANDARDS AND DEVELOPMENT CRITERIA), CREATING A NEW SUBSECTION 656.401(ii) TO PROVIDE DISTANCE REGULATIONS AND TO DEEM LEGALLY NONCONFORMING USES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, there exist business lending practices, commonly referred to as “payday” lending practices, whereby lending businesses advance money on paychecks of low and financially challenged persons, subject to very high interest rates; and

WHEREAS, payday lending practices in general have proven to be detrimental to numerous individuals including military service members who use these loans as a way of overcoming immediate needs for cash; and

WHEREAS, payday lending practices often have an unreasonable adverse effect upon the elderly, the economically disadvantaged, and other citizens of Jacksonville; and payday lending involves relatively small loans and certain payday lenders have attempted to use forum selection clauses contained in payday loan documents in order to avoid the courts of the State of Florida, and such practices are unconscionable and should be prohibited; and

WHEREAS, the regulation and monitoring of the practices of payday lenders would serve an important public interest; and requiring payday lenders to provide both the Division of Consumer Affairs and the Council with demographic information on the individuals taking out payday loans to ensure better tracking and public education in the future would be in the public interest; now, therefore,

BE IT ORDAINED by the Council of the City of Jacksonville:

Section 1. Legislative Findings

The City Council finds as follows:

- (a) There exist business lending practices involving deferred presentment of checks, commonly referred to as “payday” lending practices, whereby lending businesses advance money on paychecks of low and financially challenged persons, subject to very high interest rates; and
- (b) Payday lending practices in general are recognized and have proven to be detrimental to the elderly, the economically disadvantaged, and to military service members and other citizens who have chosen these loans as a way of overcoming immediate needs for cash; and
- (c) Payday lending practices often have an unreasonable adverse effect upon the elderly, the economically disadvantaged, military service members, and other citizens of Jacksonville; and
- (d) Payday lending involves relatively small loans and does not encompass loans that involve interstate commerce; and certain payday lenders have attempted to use forum selection clauses contained in payday loan documents to avoid the courts of the State of Florida, and such practices are unconscionable and should be prohibited; and
- (e) That the monitoring of the practices of payday lenders would serve an important public interest; and requiring payday lenders to provide both the Department of Consumer Affairs and the Council with demographic information on the individuals taking out payday loans to ensure better tracking and public education in the future would be in the public interest; and
- (f) That companies both subject and not subject to state and federal regulatory policies are engaging in the practice of payday lending without following the Florida Deferred Presentment Act, Chapter 560, Part Four, Fla. Stat. (“FDPA”); that various payday lenders have created certain schemes and methods in order to attempt to disguise these transactions or to cause these transactions to appear to be products other than loans and/or loans made by a national or state bank, chartered in another state in which this type of lending is unregulated, even though the majority of the revenues in this lending method are paid to the payday lender; and
- (g) The Council intends to take action where permissible and require lenders to follow the Florida Deferred Presentment Act and to take action to prevent abusive payday lending practices that harm military and civilian families; and
- (h) Payday lenders shall not use forum selection clauses and/or mandatory, unilateral arbitration clauses in order to avoid the courts of the State of Florida. Such clauses are unconscionable and shall be deemed unenforceable.
- (i) Payday lenders shall not require electronic access to a borrower’s account in a financial institution as a condition of entering into a deferred presentment transaction.

Section 2. Chapter 200 amended to create a new Part 3, Payday loans. Chapter 200 (Small Loan and Consumer Financing and Pawnbrokers), Ordinance Code, is amended to create a new Part 3 (Payday Loan Practices) to read as follows:

**CHAPTER 200. SMALL LOAN AND CONSUMER FINANCING AND PAWNBROKERS.**

\* \* \*

**PART 3. PAYDAY LOAN PRACTICES.**

Sec. 200.301. Application.

This Part shall apply throughout Duval County with respect to:

- (a) all transactions in which any person who, for a fee, service charge, administrative charge, or other consideration, accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check.
- (b) any person who facilitates, enables, or acts as a conduit for another person, who is or may be exempt from licensing, who makes deferred deposit loans.

This Part is supplemental to all other laws or ordinances, and in no way impairs or restricts the authority granted to the Florida Department of Financial Services, or any other regulatory authority with

concurrent jurisdiction over the matters stated in this chapter. This Part shall apply to the above transactions, notwithstanding the fact that any transaction contains one or more other elements, but shall not apply to the transactions of federally-chartered depository banks.

Sec. 200.302 Definitions. In addition to the definitions otherwise provided in this Part and unless otherwise clearly indicated by the context, for purposes of this Part:

(a) Affiliate means a person who directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, a deferred presentment provider.

(b) Business day means the hours during a particular day during which a deferred presentment provider customarily conducts business, not to exceed 15 consecutive hours during that day.

(c) Days means calendar days.

(d) Deferment period means the number of days a deferred presentment provider agrees to defer depositing or presenting a payment instrument.

(e) Deferred presentment provider means a person who engages in a deferred presentment transaction.

(f) Deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check or agreement to provide access to a drawer's account in a financial institution and agreeing to hold that person's check or maintain rights to access a drawer's account for a period of time prior to presentment, deposit, or redemption.

(g) Drawer means any person who writes a personal check and upon whose account the check is drawn or any person who enters into a deferred presentment transaction.

(h) Rollover means the termination or extension of an existing deferred presentment agreement by the payment of any additional fee and the continued holding of the check, or the substitution of a new check drawn by the drawer pursuant to a new deferred presentment agreement.

(i) Fee means the fee authorized for the deferral of the presentation of a check pursuant to this part.

(j) Termination of an existing deferred presentment agreement means that the check that is the basis for an agreement is redeemed by the drawer by payment in full in cash, or is deposited and the deferred presentment provider has evidence that such check has cleared. A verification of sufficient funds in the drawer's account by the deferred presentment provider shall not be sufficient evidence to deem the existing deferred deposit transaction to be terminated.

(k) Extension of an existing deferred presentment agreement means that a deferred presentment transaction is continued by the drawer paying any additional fees and the deferred presentment provider continues to hold the check for another period of time prior to deposit, presentment, or redemption.

(l) Payday lender is a person or company who makes or facilitates a deferred presentment transaction, such that the person or company provides currency or a payment instrument in exchange for a person's check or agreement to provide access to a drawer's account in a financial institution and agrees to hold that person's check for a period of time prior to presentment, deposit, or redemption or facilitates this process.

Sec. 200.303 Prohibitions - Generally.

(a) Contractual provisions – venue. A payday lender shall not include in any loan contract made with a resident of this county, any provision by which the laws of a state other than Florida shall govern the terms and enforcement of the contract, nor shall the loan contract designate a court for the resolution of disputes concerning the contract other than a court of competent jurisdiction in and for the county in which the borrower resides or the loan office is located.

(b) Contractual provisions – dispute resolution. An arbitration clause in a payday loan contract shall not be enforceable if the contract is unconscionable. In determining whether the contract is unconscionable, the court shall consider the circumstances of the transaction as a whole, including but not limited to:

- (i) The relative bargaining power of the parties;
- (ii) Whether arbitration would be prohibitively expensive to the borrower in view of the amounts in controversy;
- (iii) Whether the contract restricts or excludes damages or remedies that would be available to the borrower in court, including the right to participate in a class action;
- (iv) Whether the arbitration would take place outside the county in which the loan office is located or any other place that would be unduly inconvenient or expensive in view of the amounts in controversy; and
- (v) Any other circumstances that might render the contract oppressive.

(c) **Loan Disguises.** A payday lender shall not use loan disguises or agency or partnership agreements between in-state entities and out-of-state banks, whereby the in-state agent holds a predominant economic interest in the revenues generated by payday loans made to Duval County residents to avoid compliance with this Chapter. Any such disguise, agency or partnership agreement by a payday lender shall be deemed a scheme or contrivance by which the agent seeks to circumvent state law and the usury statutes of this state and, therefore, are illegal.

(d) **Threats.** A payday lender shall not threaten to use or use the criminal process in this or any other state to collect on a deferred payment loan or use any civil process to collect the payment of a deferred payment loan not generally available to creditors to collect on loans in default.

(e) A payday lender shall not require electronic access to a drawer's account in a financial institution as a condition of entering into a deferred presentment transaction.

**Sec. 200.304 Prohibitions.** In addition to the other obligations and duties required under this chapter, the following prohibitions apply to any payday lender:

(a) **Lending rate.** A payday lender shall not charge interest and administrative or service charges or costs (cumulatively, "the rate") that, when added together, are in excess of 36% per annum (defined as a 365 day year) on the amount of cash delivered to the consumer. The rate charged on the outstanding balance after maturity shall not be greater than the rate charged during the loan term. Charges on loans shall be computed and paid only as a percentage of the unpaid principal balance. Principal balance means the balance due and owing exclusive of any interest, service or other loan-related charges.

(b) **Garnishment.** A payday lender is prohibited from garnishment of any military wages or salaries.

(c) **Collections – Combat duty.** A payday lender is prohibited from conducting any collection activity against a military customer or his or her spouse when the military member has been deployed to a combat or combat support posting for the duration of the deployment.

(d) **Contact with Commanding Officer.** A payday lender is prohibited from contacting the commanding officer of a military customer in an effort to collect on a loan to a military member or his or her spouse or dependent;

**Sec. 200.305 Limitations.**

(a) **Insufficient Fund fees.** If there are insufficient funds to pay a check on the date of presentment, a payday lender may charge a fee, not to exceed the lesser of \$15 or the fee imposed upon the licensee by the financial institution. Only one such fee may be collected with respect to a particular check even if it has been re-deposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(b) **Unearned Interest.** When a loan is repaid before its due date, unearned interest charges must be rebated to the consumer based on a method at least as favorable to the consumer as the actuarial method.

(c) **Special Repayment Agreements.** Payday lenders shall comply with and be bound by the terms of any repayment agreement that it negotiates through military counselors or third-party credit counselors.

(d) **Military Statements and Proclamations.** Payday lenders shall honor any statement or

proclamation by a military base commander that a specific payday lender branch location has been declared off limits to military personnel and their spouses.

Sec. 200.306 Disclosures. The following disclosures shall be made in writing by a payday lender:

- (a) A notice that the lender is prohibited from garnishment of any military wages or salaries;
- (b) A notice that the lender is prohibited from conducting any collection activity against a military customer or his or her spouse when the military member has been deployed to a combat or combat support posting for the duration of the deployment;
- (c) A notice that the lender is prohibited from contacting the commanding officer of a military customer in an effort to collect on a loan to the military member or his or her spouse;
- (d) A notice that the lender agrees to be bound by the terms of any repayment agreement that it negotiates through military counselors or third-party credit counselors;
- (e) A notice that the lender agrees to honor any statement or proclamation by a military base commander that a specific payday lending branch location has been declared off limits to military personnel and their spouses.

Sec. 200.308 Advertising Disclosure Requirements for Lenders Promoting Payday Loan Services.

(a) Definition. For purposes of this section “unit of advertising space” shall mean any real property, space, facility or instrumentality, or any portion thereof, owned or operated by the City of Jacksonville, or which is located or operates on real property owned or operated by the City of Jacksonville, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the City of Jacksonville which allows the placement or display of advertisements, but not including any real property, space or facility leased from the City of Jacksonville for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency.

(b) Requirements. Any lender, bank or other financial institution that provides payday loan or grant services and which promotes its payday loan or grant services, however described or designated, via a unit or units of advertising space, and which, because of the application of other state or federal law, is exempt from the fee limitations of Jacksonville, and charge interest, fees and other charges greater than those authorized in Jacksonville, shall comply with the following disclosure requirements with respect to a unit or units of advertising space:

(1) Advertisements shall disclose, in clear and prominent letter type, in a print color that contrasts with the background against which it appears, of at least a 20-point type size:

- i. The maximum annual percentage rates (APR) of the institution’s payday loans, computed in accordance with regulations adopted pursuant to the federal Truth-in-Lending Act; and
- ii. Any membership fees, finance charges, annual fees, transaction fees, lender’s fees or any other possible charges that may be incurred by a consumer in relation to the institution’s payday loans, including any interest, fees and other charges due at the time of any loan renewal;
- iii. The state in which the lender/financial institution is chartered;
- iv. The fact that the consumer will be required to supply personal information to receive the institution’s payday loan, including information regarding his or her personal financial history;
- v. The fact that a fee schedule for all charges related to the institution’s payday loans will be provided to all consumers before execution of a binding agreement;
- vi. Contact numbers, including the Florida Department of Financial Services Consumer Hotline, and the City of Jacksonville’s Consumer Affairs Division, identifying the local, state and federal agencies, where a consumer/applicant can direct complaints against the lender/financial institution;
- vii. The name of the lender/financial institution offering the payday loan.

Sec. 200.310. Distance requirements. Consistent with Section 656.401(ii), Ordinance Code, no

payday, check cashing or deferred deposit loan business or their agents or facilitators shall be located within 600 feet of any other check cashing business or within five (5) miles of any active military installation. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. Payday, check cashing or deferred deposit loan businesses lawfully operating within their current zoning district on August 23, 2005 shall be deemed legally nonconforming uses until the business is transferred or sold to another owner, or otherwise loses legally nonconforming status in accordance with Chapter 656.

Sec. 200.311 Enforcement

(a) Provisions Supplemental. The remedies provided herein are cumulative and supplementary and apply to licensees and unlicensed persons to whom this Act applies and who failed to obtain a license.

(b) Rights to relief forfeited. The violation of any provision of this Act, or regulation there under, except as the result of accidental or bona fide error of computation, shall render the applicable loan void, and the lender shall have no right to collect, receive or retain any principal, interest, or other charges whatsoever with respect to the loan.

(c) Civil remedies. Any person or entity found to have violated this ordinance shall be liable to the consumer for actual, consequential, and punitive damages, plus statutory damages of \$500 for each violation, plus costs, and attorneys fees. Each day of violation shall be a separate violation.

A consumer may sue for injunctive and other appropriate equitable relief to stop any person or entity from violating any provisions of this Act.

The consumer may bring a class action suit to enforce this Act.

The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

(d) Criminal violations. Any person, including members, officers, and directors of the person or entity who knowingly violates this act is guilty of a Class D offense.

Sec. 200.312. Severability. If any portion of this ordinance is determined to be invalid for any reason by a final non-appealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.

Sec. 200.313. Reporting. Not later than the first day of July, 2006, and on a quarterly basis thereafter, (no later than October 1<sup>st</sup>, January 1<sup>st</sup>, April 1<sup>st</sup>, and July 1<sup>st</sup> of each year), any person offering, providing, or facilitating a payday loan in Duval County shall submit to the City's Division of Consumer Affairs and the Chief of Legislative Affairs, the residential zip code of each consumer who lives within the city boundaries and has entered into a payday loan during the immediately preceding quarter. The Consumer Affairs Division shall track and evaluate all information and provide education to consumers as needed.

Section 3. Chapter 656 (Zoning Code), Ordinance Code, Section 656.401, (Performance standards and development criteria), is amended to add a new subsection (ii) to read as follows:

CHAPTER 656. ZONING CODE.

\* \* \*

PART 4. SUPPLEMENTARY REGULATIONS.

Sec. 656.401. Performance standards and development criteria. It is the intent of the City of Jacksonville that these supplementary regulation standards and criteria be read in addition to, rather than in lieu of, any other requirement in this Chapter. The following uses, whether permitted or permissible by exception, must meet the criteria listed under each use as a prerequisite for further consideration under this Zoning Code.

\* \* \*

(ii) Payday, check cashing or deferred deposit loan businesses

(1) General requirements.

(a) No payday, check cashing or deferred deposit loan business, as defined in

Chapter 200, Ordinance Code, no payday, check cashing or deferred deposit loan business or their agents or facilitators shall be located within 600 feet of any other check cashing business or within five (5) miles of any active military installation. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. Payday, check cashing or deferred deposit loan businesses lawfully operating within their current zoning district on August 23, 2005 shall be deemed legally nonconforming uses until the business is transferred or sold to another owner, or otherwise loses legally nonconforming status in accordance with Chapter 656.

Section 4. Effective Date. This Ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

Form Approved:

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Office of General Counsel  
Prepared by: Steven E. Rohan

**Resolution – Staunton, VA**

RESOLUTION  
OF  
THE COUNCIL OF THE CITY OF STAUNTON, VIRGINIA  
TO REQUEST THAT THE  
GENERAL ASSEMBLY  
AND  
GOVERNOR OF VIRGINIA  
TAKE ACTION TO PREVENT EXPLOITATIVE PAYDAY LENDING PRACTICES  
IN THE COMMONWEALTH

WHEREAS, the Council of the City of Staunton, Virginia, represents the citizens of the City of Staunton, Virginia;

WHEREAS, the Council of the City of Staunton, Virginia, senses from the citizens of the City of Staunton significant concern over what are perceived to be some exploitative payday lending practices in the City of Staunton and elsewhere in the Commonwealth, including practices which may exploit dedicated, brave women and men who are called for deployment as part of the armed forces of our Nation both in the United States and various parts of the world in the cause of freedom and security of our Nation;

WHEREAS, the Council of the City of Staunton, Virginia, shares these same significant concerns and wishes to express the collective sentiments of the People of the City of Staunton, Virginia, that the General Assembly and Governor of Virginia, ought to take action to prevent further exploitative payday lending practices; and

WHEREAS, it is vital that the General Assembly and the Governor of Virginia give their earnest attention to these matters at the next regular session of the General Assembly and enact laws that will prevent further exploitative payday lending practices.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that the General Assembly and the Governor of the Commonwealth of Virginia are requested to take action in connection with the next regular session of the General Assembly of Virginia to enact laws that will prevent further exploitative payday lending practices, including but not limited to:

1. Enactment of an annual interest rate cap of 36% for any consumer loans made in the Commonwealth of Virginia;
2. Prohibition of the use of a personal check or other method by a creditor to gain access to a consumer's bank account or method to gain title to a consumer's motor vehicle as collateral for a payday loan; and
3. Enactment of supplementary and complementary provisions which mirror the provisions of what is commonly referred to as the Talent-Nelson Amendment (Senate Amendment 4331), entitled "Terms of Consumer Credit Extended To Service Member's Dependent" and referenced on page S6352 of the June 22, 2006 Congressional Record–Senate, a copy of which is annexed to and incorporated by reference in this Resolution.

Adopted this 13th day of September 2007

Lacy B. King, Jr., Mayor

Attest: Deborah A. Lane, Clerk of Council