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|  <p style="text-align: center;"><b>Council<br/>Communication</b><br/>Office of the City Manager</p> | <b>Date:</b> November 8, 2010  |
|  | <b>Agenda Item No.</b> <b>59</b><br><b>Roll Call No.</b> <b><u>10-1889</u></b><br><b>Communication No.</b> <b><u>10-681</u></b><br><b>Submitted by:</b> <b>Phil Delafield</b><br><b>Community Development Director</b> |

**AGENDA HEADING:**

Hearing on Zoning Text and Municipal Code Amendments regulating pawnbrokers and delayed deposit service businesses.

**SYNOPSIS:**

The proposed ordinance would: 1) prohibit pawnbroker and delayed deposit service businesses in the (C-1) Neighborhood Retail Commercial District and (NPC) Neighborhood Pedestrian Commercial District (but allow in the C-3R Central Business Mixed Residential District); 2) require ½ mile separation between pawnbroker and/or delayed deposit service businesses; 3) require 250’ of separation between pawnbrokers and delayed deposit service businesses from any residentially zoned district or portion of a PUD District devoted to residential use. Staff recommends that the City Council receive and file the recommendation of the Plan and Zoning Commission regarding the proposed ordinance. Staff also recommends approval of the proposed zoning text and municipal code amendments in their original form. Finally, Staff recommends that the moratorium be extended until December 17, 2010 unless the City Council elects to waive second and third readings of the proposed ordinance.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

There are currently 12 pawnbroker and 31 delayed deposit service businesses in the City of Des Moines. There are currently two pending applications for additional pawnbroker and/or delayed deposit service businesses.

On May 13, 2010 the Mayor and City Council held a Special Meeting to discuss delayed deposit services and pawnbroker businesses. On May 17, 2010 the Mayor and City Council held a public hearing and approved a 6-month moratorium on the establishment of new or relocation of existing delayed deposit service businesses and pawnbroker businesses, pending a comprehensive review of the applicable regulations pursuant to Roll Call Number 10-773. The resolution specifically adopted the following statements as findings of fact:

- The proliferation of delayed deposit services businesses (commonly known as "payday lenders") and pawnbroker businesses suggests a commercial corridor and the adjoining neighborhoods are in economic and social decline, negatively impacting reinvestment, economic development efforts and property values along the corridor and the adjoining neighborhoods.

- These businesses do not create much foot traffic for adjacent businesses, and a proliferation of them at particular locations can overwhelm a neighborhood and can be a disincentive for the location of other neighborhood businesses in close proximity to them.
- It is reasonable and appropriate to regulate the placement and location of delayed deposit services businesses and pawnbroker businesses so as to avoid the clustering of such businesses and to protect the surrounding neighborhoods from distress and the appearance of commercial districts in decline, and to avoid the adverse effects upon the overall business atmosphere of the City, which are likely to result from an over-concentration of such businesses within the commercial corridors.
- A temporary moratorium on the establishment of new or relocation of existing delayed deposit services businesses and pawnbroker businesses is necessary and appropriate to prevent such businesses from locating at sites that are detrimental to the immediate area and the City as a whole, until appropriate regulations can be developed and implemented.

The moratorium expires November 9, 2010 unless it is extended by the City Council.

The Des Moines City Manager was directed to schedule meetings for input on both sides of the issue to include Neighborhood Associations, Citizens for Community Improvement (CCI) and business stakeholders. Notices were mailed to all Des Moines Neighborhood Associations, CCI, the owners of existing pawnbroker and delayed deposit service businesses in the City of Des Moines and any known applicants for pending businesses inviting them to public forums that were held by the Des Moines Plan and Zoning Commission on July 15 and August 5, 2010. The public forums allowed the opportunity to receive public comment regarding the issue and review preliminary research that was conducted by staff and the Regulation and Ordinance Subcommittee of the Plan and Zoning Commission. Staff also made a presentation and discussed the matter with Des Moines Neighbors at their meeting on July 22, 2010.

In summary, the proposed text amendments to Chapter 134 implement the following:

- Provide definitions of “delayed deposit services” and “pawnbroker” that are consistent with State Code.
- Define “establishment” of a pawnbroker or delayed deposit service business as opening of a new, relocation of an existing or conversion of an existing pawnbroker or delayed deposit service business.
- Prohibit pawnbroker and delayed deposit service businesses in the “C-1” Neighborhood Retail Commercial and “NPC” Neighborhood Pedestrian Commercial zoning districts;
- Prohibit the establishment of any delayed deposit service or pawnbroker business within 0.5 miles from any other such business.
- Prohibit the establishment of any delayed deposit service or pawnbroker business within 250 feet of any R-District or portion of a PUD District devoted to residential use.

The above amendments to Chapter 134 will cause twelve (12) existing pawnbroker businesses and thirty-one (31) existing delayed deposit service businesses to become “legal non-conforming uses”. Pursuant to Section 134-1353 of the City Code, legal non-conforming uses can have no expansion of existing land

area and no expansion of the existing structure. If the non-conforming use ceases for period of 6 months, the use cannot be resumed. Appeals of determinations of the Zoning Enforcement Officer (ZEO) are heard by the Board of Adjustment (BOA).

The two pending applications for additional pawnbroker and or payday lender businesses will also be prohibited by the proposed regulations as their proposed locations are within 0.5 mile of other such businesses and/or within 250 feet of residentially zoned properties. In addition, the amendments to Chapter 82 of the City Code require all applicants for a pawnbroker or delayed deposit service business to attend a pre-application meeting and to submit a site plan in conformance with the City's Site Plan standards and Landscape standards. Finally, the amendments to Chapter 30 of the City Code state that Zoning Enforcement Officer and Police Chief must review all pawnbroker license applications.

On October 21, 2010 the Plan and Zoning Commission voted 11-1 to recommend approval of the proposed ordinance subject to the following conditions:

- 1) The ordinance excludes pawnbrokers;
- 2) Delayed deposit service businesses be prohibited in the C-3R zoning district; and
- 3) Notice shall be mailed to all neighborhood associations at least 30 days prior issuance of an administrative decision by the Zoning Enforcement Officer to authorize the establishment of any new delayed deposit service business that otherwise complies with the proposed regulations.

Please refer to the attached communication that provides the staff report and recommendation to the Plan and Zoning Commission, public hearing minutes, motions and votes by the Plan and Zoning Commission on October 21, 2010.

Staff recommends that the original draft ordinance be approved without the amendments proposed by the Plan and Zoning Commission. Staff believes the proposed ordinance is consistent with the purpose of the moratorium that Council adopted on May 17, 2010. In addition, staff believes the proposed ordinance is the most stringent and legally defensible ordinance that can be drafted and the proposed ordinance is consistent with the review and comments that City Council provided at workshops held on August 23, 2010 and September 27, 2010.

#### **PREVIOUS COUNCIL ACTION(S):**

Date: October 25, 2010

Roll Call Number: [10-1730](#)

Action: [On](#) Zoning Text and Municipal Code amendments regulating pawnbrokers and delayed deposit service businesses, (11-8-10). Moved by Mahaffey to adopt. Motion Carried 7-0.

Date: May 17, 2010

Roll Call Number: [10-773](#)

Action: Establishing a 6-month temporary moratorium on the establishment of new or relocation of existing delayed deposit services businesses and pawn businesses, pending a comprehensive review of the applicable regulations. Moved by Meyer to adopt; to approve the findings identified in the resolution; to direct the City Manager and City Attorney to review and report on possible City regulation of the interest rates and fees imposed by pawn brokers and on ways to implement such restrictions for consideration by the City Council at its meeting on May 24th; to schedule a public hearing by the City Council to be held at its meeting on June 14, 2010, to consider applications by Pawn America Iowa LLC, and by American Pawn Stars for relief from this moratorium, provided such applications are timely received; and, to receive and file the documents submitted to the City Council during the public comment on this item. Motion Carried 6-1.

### **BOARD/COMMISSION ACTION(S):**

Date: October 21, 2010

Roll Call Number: 10-2010-5.04

Action: The Plan and Zoning Commission voted 11-1 to recommend approval of the proposed ordinance subject to the following conditions:

- 1) The ordinance excludes pawnbrokers;
- 2) Delayed deposit service businesses be prohibited in the C-3R zoning district; and
- 3) Notice shall be mailed to all neighborhood associations at least 30 days prior issuance of an administrative decision by the Zoning Enforcement Officer to authorize the establishment of any new delayed deposit service business that otherwise complies with the proposed regulations.

### **ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Second and third consideration of the rezoning unless waived by the City Council.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org).