

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: November 22, 2010
	Agenda Item No. 35 Roll Call No. <u>10-1953</u> Communication No. 10-709 Submitted by: Phil Delafield, Community Development Director

AGENDA HEADING:

Second reading 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 Neighborhood Retail Commercial District (C-1) and Neighborhood Pedestrian Commercial (NPC) District [but allow in the Central Business Mixed Residential District (C-3R)]; 2) require one-half mile separation between pawnbroker and/or delayed deposit service businesses; 3) require 250 feet 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 approval of the ordinance on the second reading and waiver of third reading (requires 6/7th vote).

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

On November 8, 2010, the City Council held a public hearing and approved first reading of the proposed ordinance by a vote of 7-0. The City Council also referred the ordinance to the City Manager, City Attorney and Community Development Department for review and recommendation on the following:

1. Meet with representatives of Solar Pawn, David Kouri, 3311 Ingersoll Avenue, and A Quality Pawn and Jewelry, Tom Friend, 1135 Army Post Road, to discuss impacts of the ordinance on their properties.

Staff held discussions with Steve Kouri and Tom Friend via telephone and in person, as directed by City Council. Mr. Friend would like the ability to relocate his existing business to a site that would not conform to the proposed ordinance. Staff recommends that if Mr. Friend acquires interest in another non-conforming property for business relocation, he pursue variances to the proposed ordinance from the Zoning Board of Adjustment. Mr. Kouri would like the ability to expand the gross floor area of his existing business within the boundaries of property he already owns. Staff has determined that the existing provisions of Municipal Code Section 134-1353(b)(2) will allow the expansion that Mr. Kouri described, by-right.

2. Options for limited expansion of existing pawnbrokers who would become legal non-conforming based upon the proposed ordinance.

Municipal Code Section 134-1353(b)(2) regulates non-conforming uses in a conforming building in non-residential districts and states in part: "...a use made nonconforming by this chapter may be structurally altered or enlarged in conformity with the lot area, lot coverage, frontage, yard, height and parking requirements of the district in which located, provided such construction shall be limited to buildings on land owned of record by the owner of the land devoted to the nonconforming use prior to the effective date of the ordinance from which this section derives.." In addition, Municipal Code Section 134-1353 (b)(3) regulates non-conforming uses in non-conforming buildings in non-residential districts and states in part: "...Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use on the effective date of the ordinance adopting or amending this chapter. No such use shall be extended to occupy any land outside such building." Therefore, significant flexibility exists for expansion of legal non-conforming uses. Revisions to the non-conforming use regulations may be necessary in the future. However, no changes are proposed at this time.

3. Options for neighborhood notification.

Staff recommends no change to the ordinance to provide neighborhood notification of administrative decisions regarding pawnbrokers and delayed deposit service businesses. The only administrative decisions that will be made are a determination of full compliance with the proposed ordinance. Staff has no authority under the proposed ordinance to waive a separation standard. Providing notice of the intent to issue an administrative decision for a request that fully complies with the code can create unnecessary angst regarding an entirely objective decision and will cause unnecessary delay to business interests. All requests for relief from separation requirements are subject to a variance from the Board of Adjustment and are subject to the notification of property owners within 250 feet of the property and a public hearing.

4. Options to split the proposed ordinance into separate ordinances for Pawnbrokers and Delayed Deposit Service Businesses.

Staff recommends that the ordinance not be divided into separate ordinances. Once the City Council has taken action, if the ordinance has been approved, the changes resulting from adopted ordinances are placed into the appropriate code sections of the Des Moines Municipal Code. Therefore, if the proposed ordinance were divided into separate ordinances, the resulting action would in the end appear no differently than if a single ordinance were approved.

PREVIOUS COUNCIL ACTION(S):

Date: November 8, 2010

Roll Call Number: 10-1889

Action: On Zoning Text and Municipal Code amendments regulating pawnbrokers and delayed deposit service businesses. (Council Communication No. 10-681) Moved by Meyer to adopt and approve the text amendments to the Municipal Code, subject to final passage of the ordinance. Motion Carried 7-0.

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):

Board: Plan and Zoning Commission

Date: October 21, 2010

Resolution 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 to 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:

Third reading of the proposed ordinance, unless waived by a 6/7th vote of the City Council.

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