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ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C2O-2011-037 Alternative Financial Services

Description:

Amend the City Land Development Code to regulate the location and use of buildings and land for alternative financial services businesses.

Staff Recommendation:

Staff recommends approval of this amendment. The draft ordinance is attached. The ordinance is modeled on regulations used successfully in other Texas cities.

Board and Commission Actions

Planning Commission Committee on Codes and Ordinances – January 17, 2012: The Committee forwarded this to the Planning Commission for public hearing and consideration with a recommendation for approval (Vote 5-0).

Planning Commission

January 24, 2012: Planning Commission postponed the public hearing and action until February 14, at the request of an industry representative.

February 14, 2012: Planning Commission began the public hearing and held it open, postponing action to February 28, 2012

Planning Commission Committee on Codes and Ordinances – February 21, 2012: The Committee discussed this item for a second time and forwarded this to the Planning Commission for public hearing and consideration with a recommendation for approval (Vote 4-0).

Planning Commission

February 28, 2012: Planning Commission is scheduled for a public hearing and possible action on this item

City Council Action

December 15, 2011: City Council adopts resolution 20110818-079 (attached) directing staff to prepare and ordinance amending the City Land Development Code to regulate the location and use of buildings and land for alternative financial services businesses.

Ordinance Number:

City Staff: Robert Heil

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STAFF RECOMMENDATIONS
NOT REVIEWED BY PLANNING COMMISSION

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 25-2-4 AND 25-2-491 AND ADDING SECTION 25-2-816 TO THE CITY CODE TO CREATE A NEW COMMERCIAL USE, ALTERNATIVE FINANCIAL SERVICES BUSINESSES, AND TO SET ADDITIONAL REQUIREMENTS FOR THIS USE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Subsection 25-2-4(29) (*Commercial Uses Described*) of the City Code is amended to read:

- (29) **FINANCIAL SERVICES** use is the use of a site for the provision of financial and banking services. This use includes banks, savings and loan institutions, stock and bond brokers, loan and lending activities, and similar services. This use excludes alternative financial services businesses uses as defined in this section.

PART 2. Section 25-2-4 (*Commercial Uses Described*) of the City Code is amended to add a new commercial use, Alternative Financial Services Businesses, to read as follows and added as Subsection 25-2-4(3) with all subsequent commercial uses renumbered accordingly:

- (3) **ALTERNATIVE FINANCIAL SERVICES BUSINESSES** use is the use of a site for a check cashing business, payday advance or loan business, money transfer business, motor vehicle title loan business, or a credit access business as defined in this section.
- (1) This use excludes:
- (a) a state or federally chartered bank, savings and loan association or credit union, or a pawnshop, and
 - (b) a convenience store, supermarket, or other retail establishment where consumer retail sales constitute at least 75% of the total gross revenue generated on site.
- (2) A check cashing business is an establishment that provides one or more of the following:
- (a) an amount of money that is equal to the face of a check or the amount specified in a written authorization for an electronic transfer of money, less any fee charged for the transaction;

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- (b) an agreement not to cash a check or execute an electronic transfer of money for a specified period of time; or
 - (c) the cashing of checks, warrants, drafts, money orders, or other commercial paper for compensation by any other person or entity for a fee.
- (3) A payday advance or loan business is an establishment that makes small consumer loans, usually backed by postdated check or authorization to make an electronic debit against an existing financial account, where the check or debit is held for an agreed-upon term or until a customer's next payday and then cashed unless the customer repays the loan to reclaim the check or debit. Such establishments may charge a flat fee or other service charge and/or a fee or interest rate based on the size of the loan amount.
 - (4) A motor title loan business is an establishment that makes small consumer loans that leverage the equity value of a car or other vehicle as collateral where the title to such vehicle is owned free and clear by the loan applicant and any existing liens on the vehicle cancel the application. Failure to repay the loan or make interest payments to extend the loan allows the lender to take possession of the vehicle.
 - (5) A credit access business has the same meaning as defined in Section 393.601 of the Texas Finance Code.

PART 3. Chapter 25-2 (*Zoning*) of the City Code is amended to add a new Section 25-2-816 to read:

§ 25-2-816 ALTERNATIVE FINANCIAL SERVICES BUSINESSES.

- (A) This section applies to an alternative financial services business use.
- (B) A use may not be located on a site that is:
 - (1) within 1,000 feet of a site that contains another alternative financial services business use;
 - (2) within 200 feet of a property in a residential zoning district or on which a residential use is located;
 - (3) within 500 feet of the rights-of-way of Interstate Highway 35, U.S. Highway 183, U.S. Highway 290, Texas State Highway Loop 360, Texas State Highway Loop 1 Texas State Highway 130, or Texas State Highway 45; or

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PART 4. The table in Subsection (C) of Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) of the City Code is amended to add the alternative financial services businesses use and to indicate that the alternative financial services businesses use is permitted in the general commercial services (CS) zoning district, subject to Section 25-2-816 (*Alternative Financial Services Businesses*) of the City Code, and conditional in the neighborhood commercial (LR) and downtown mixed use (DMU) zoning districts, subject to Section 25-2-816 (*Alternative Financial Services Businesses*) of the City Code.

PASSED AND APPROVED

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

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RESOLUTION NO. 20110818-079

WHEREAS, the City Council of the City of Austin, and the citizens it represents, are deeply concerned about the harmful effects of alternative financial service business practices, including payday lenders and auto title lenders, in the City of Austin and elsewhere in the state of Texas; and

WHEREAS, in the state of Texas there are over 2,800 of these unlicensed and unregulated lending storefronts draining over \$600 million in loan fees and lost assets from our communities every year; and

WHEREAS, these businesses in our local community promise "easy credit" that in fact hurt consumers with annual interest rates often between 300% and 500%, and loan terms that pull people deeper into debt; and

WHEREAS, 15 states have adopted a 36% or lower annual percentage rate cap for these small loans, and the federal government has adopted a similar rate cap for payday and auto title loans to military personnel based on a Department of Defense finding that these loans, "undermine military readiness, harm the morale of troops and their families, and add to the cost of fielding an all-volunteer fighting force"; and

WHEREAS, the City of Austin does not have the authority to regulate interest rates, but does have land use authority; and

WHEREAS, the City Council believes there is a public benefit to restricting locations of payday and auto title lenders to reduce the negative impact on consumers in our community; **NOW, THEREFORE**,

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council initiates code amendments to City Code Title 25 (*Land Development Code*) and directs the City Manager to process code amendments to regulate the location and use of buildings and land for alternative financial services businesses in a manner substantially consistent with the purpose and objectives of the attached Exhibit A.

ADOPTED: August 18, 2011

ATTEST:

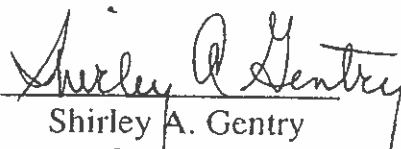

Shirley A. Gentry
City Clerk

EXHIBIT A

Add the following new definition to Commercial Uses Described:

Alternative Financial Services Businesses use is the use of a site for the provision of check cashing, payday advance or loan, money-transfer, or motor vehicle title loan services, or a credit access business as defined in this section.

1. This definition excludes:
 - a. A state or federally chartered bank, savings and loan association or credit union, or a pawnshop, and;
 - b. A convenience store, supermarket, or other retail establishment where consumer retail sales constitute at least 75% of the total gross revenue generated on site.
2. *Check cashing business.* An establishment that provides one or more of the following:
 - a. An amount of money that is equal to the face of the check or the amount specified in the written authorization for an electronic transfer of money, less any fee charged for the transaction;
 - b. An agreement not to cash a check or execute an electronic transfer of money for a specified period of time; or
 - c. The cashing of checks, warrants, drafts, money orders, or other commercial paper for compensation by any person or entity for a fee.
3. *Payday advance/loan business.* An establishment that makes small consumer loans, usually backed by a postdated check or authorization to make an electronic debit against an existing financial account, where the check or debit is held for an agreed-upon term, or until a customer's next payday, and then cashed unless the customer repays the loan to reclaim such person's check. Such establishments may charge a flat fee or other service charge and/or a fee or interest rate based on the size of the loan amount.
4. *Car title loan business.* An establishment that makes small consumer loans that leverage the equity value of a car or other vehicle as collateral where the title to such vehicle is owned free and clear by the loan applicant and any existing liens on the car or vehicle cancel the application. Failure to repay the loan or make interest payments to extend the loan allows the lender to take possession of the car or vehicle.
5. *Credit Access Business* as defined in Section 393.601 of the Texas Finance Code.

Amend the Financial Services Commercial Uses Described definition:

Financial Services use is the use of a site for the provision of financial and banking services. This use includes banks, savings and loan institutions, stock and bond brokers, loan and lending activities, and similar services. This excludes uses described in ALTERNATIVE FINANCIAL SERVICES BUSINESSES.

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Add a new section to regulate Alternative Financial Services Businesses uses:

Alternative Financial Services Businesses

1. Except as provided in Subsection 2, an alternative financial services business is a permitted use in a CS zoning district and is a conditional use in an LR or DMU zoning district.
2. An alternative financial service business may not be located on a lot:
 - a. That is within one thousand (1,000) feet of a lot containing another credit access business.
 - b. That is within two hundred (200) feet from a lot zoned or used for residential purposes.
 - c. That is within five hundred (500) feet of the rights-of-way of Interstate Highway 35, U.S. Highway 183, U.S. Highway 290, Texas State Highway Loop 360, Texas State Highway Loop 1, and Texas State Highway 45.
 - d. That is within the East Austin Overlay District, Waterfront Overlay District, or the University Neighborhood Overlay District.
3. An alternative financial service business shall be situated only within a freestanding building and shall not be co-located in the same structure as other uses.