



City of Milwaukee

Meeting Agenda

City Hall
200 East Wells Street
Milwaukee, WI 53202

CONVENIENT LENDING TASK FORCE

ALD. JOE DAVIS, Chair

*Ald. Terry Witkowski, Vice-Chair, Chris Callen, Kathryn Crumpton, Dorothy Dean,
Dimitri Jordan, Anna Ruzinski, Bethany Sanchez, Jim Walrath, Bobbie Webber Jr.*

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File Specialist: Charlotte Rodriguez, 286-8797

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Friday, March 3, 2006

9:00 AM

City Hall, Room 301-B

- 1) Approval of the minutes of the February 3, 2006 meeting
- 2) Review of draft outline and recommendations
- 3) Public Comments
- 4) Next meeting date and time



City of Milwaukee Meeting Minutes

City Hall
200 East Wells Street
Milwaukee, WI 53202

CONVENIENT LENDING TASK FORCE

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Friday, February 3, 2006

9:00 AM

Room 301B, City Hall

Meeting Convened: 9:10 A.M.

Members Present: Ald. Davis, Deputy Inspector Rusinski, Ms. Dean, Mr. Callen, Mr. Walrath, Ms. Sanchez, Ms. Crumpton.

Members Excused: Ald. Witkowski, Mr. Webber Jr.

Mr. Jeff Osterman, Legislative Reference Bureau was also present as research staff for the task force.

1) Approval of the minutes of the December 2, 2005 meeting,

*Motion by Ms. Dean to approve the minutes of the December 2, 2005 meeting.
Seconded by Mr. Walrath.*

2) Review of Draft Recommendations

Mr. Osterman provided a draft copy of the table of contents to members for review. He advised members that page 5 should be amended to read Appendix (B), rather than Appendix (A) in the first paragraph.

In addition, Mr. Osterman advised members that he is still waiting for documentation for the following areas:

Neighborhood impact issues - Ms. Dean

Regulations of convenient businesses - Mr. Walrath

Recommendations of the task force, pending completion of research.

Ms. Sanchez informed members that she is still researching the fiscal impact on the city, which will be included in the neighborhood impact issues. She will also provide additional research on the customer base, and why consumers use convenient lending establishments rather than mainstream lenders. She advised members that she would also include alternatives to using convenient lending establishments.

Ald. Davis suggested that the final report be condensed by referencing relative case studies.

In addition, Ald. Davis requested, Mr. Franitza and Mr. Osterman work together to review ordinances that have been amended, as well as any new ordinances that have affected zoning.

Mr. Osterman recommend that the sections being researched by Mr. Walrath be listed in the final report as attachments in the appendices:

- City ordinances*
- State regulations*
- Regulations in other cities*
- City Attorney Opinions*

Mr. Osterman also suggested that summarizing these areas would help to condense relevant information.

In addition, Mr. Osterman referenced new State Legislation, Assembly Bill 914, introduced January 17th, which sets a limit of 2% per month on the interest rate imposed by convenient lending establishments.

Ald. Davis requested that reference to 2005 Assembly Bill 914 be included in the task force's final recommendations, including a through analysis. He also requested that Mr. Osterman also include data indicating median income based upon 2000 census data relative to ethnicity in Aldermanic Districts.

Deputy Inspector Ruzinski referred to the Public Safety section of the task force's recommendations. She advised members that research does not provide supporting evidence to indicate that convenient lending establishments cause crime to increase in neighborhoods; but that research does imply that convenient lending establishments tend to locate in high crime areas where there are social and economic conditions among other factors.

Deputy Inspector Ruzinski advised members that she will work with Mr. Osterman to develop a map of the city with 2005 crime statistics plotted on the map with a plastic overlay of convenient lending establishments.

Mr. Osterman advised members that he would provide City Attorney Opinions.

Ald. Davis advised members that the target deadline date for completion of the task force's final recommendations will be between mid March and early April.

Ms. Dean advised members of an opinion the state attorney general is currently working on relative to what states can do and what municipalities can't do. She suggested that this information be included the final report, if complete prior to that time.

Ald. Davis requested that members start to submit final recommendations to city clerk staff to be included in a spread sheet.

In addition, Mr. Callen and Ms. Dean will research the following:

Whether there is a financial relationship between conventional lending institutions and

convenient lending establishments.

Both Ald. Davis and Ms. Sanchez will speak with Congresswoman Moore relative to federal regulations.

3) Public Comments

There were no public comments.

4) Next meeting date and time

The next meeting is scheduled March 3, 2006, 9:00 A.M, Room 301-B.

Meeting Adjourned:10:20 A.M.

*Diana Morgan
Staff Assistant*

All documents researched by the Convenient Lending Task Force may be reviewed by going to www.milwaukee.gov, under Common Council click on Council Files and enter file number 050489.



News Release

Contact: Sandy Schultz
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For immediate release –

GoodMoney: A new model from Goodwill NCW and Prospera to serve the unbanked and the financially underserved

Appleton, Wisconsin, May 11, 2005 – Have you noticed the growing number of quick-cash and payday lending outlets in the Fox Valley? That means there is an increasing customer demand for ready cash, and that often results in people paying exorbitant loan fees and spiraling deeper and deeper into debt.

Today, Goodwill NCW and Prospera Credit Union are announcing **GoodMoney**SM, a powerful new collaboration that will address this issue head-on. On the surface, **GoodMoney** is a specialized service branch of Prospera that will be located just inside the front entrance of Goodwill's brand new store being built in Darboy. At its core, **GoodMoney** is an innovative collaboration between not-for-profit organizations that will deliver financial services at reasonable prices, and financial education to people who need it.



So, who are the players?

- ◆ **Goodwill Industries of North Central Wisconsin** (Goodwill NCW) is one of 207 not-for-profit Goodwill organizations across the world. Based in Menasha and covering 35 counties with 18 stores, Goodwill NCW helps people with disabilities and other barriers to independence become

more fully contributing members of society.

FISC – the Financial Information & Service Center – is a program of Goodwill NCW that offers “practical financial advice for real people.” FISC offers financial workshops and money/budget counseling to help people manage their money, and develops debt management plans with those who are already in financial trouble. It focuses on financial literacy – helping to put people in control of their money, and their futures. The not-for-profit Consumer Credit Counseling Service serving this part of Wisconsin, FISC is a member of the National Foundation for Credit Counseling, and is accredited by COA, the Council on Accreditation.

FISC will serve **GoodMoney** customers with financial education and counseling through its main location at 921 Midway Road, Menasha.

- ◆ **Prospera Credit Union** is a community credit union with five full-service branch locations and approximately 15,000 members throughout the Fox Cities. The mission of Prospera is to help people prosper financially to enhance the quality of life.

What products and services will GoodMoney offer?

Short-term loans

Loans at a substantially lower fee than with payday lenders

Check cashing

Payroll and government-issued check cashing for a small fee (this is especially important for the growing number of people who have no checking account).

Convenience services

Money orders
Stamps
Bill payment services

Financial education access

At the FISC office, customers will have access to:

- ◆ workshops and counseling to help them sharpen their money management skills and prevent debt.
- ◆ debt management plans for those experiencing financial difficulties.

FISC will help put people in control of their money and their futures.

How can GoodMoney offer loans and other services at lower fees than payday lending facilities?

GoodMoney is a collaboration between two not-for-profit organizations. As a credit union, Prospera typically charges lower service fees and rates as a way of returning some of what would ordinarily be

"profits" to its members. Both Prospera and Goodwill have a commitment to serving people with financial barriers in a way that will be fair and helpful to them.

What typical credit union services will GoodMoney not offer?

GoodMoney is a limited service branch of Prospera Credit Union and therefore will not offer on-site auto loans, mortgage services, investment services, CDs, money markets or checking accounts. These services can be accessed at Prospera's full service Darboy branch located across from the Darboy Club on County Road N.

What's the relationship between FISC and GoodMoney?

As a Consumer Credit Counseling Service, FISC is prohibited by law from conducting its business in the same physical facility where loans or other financial transactions are handled. So, the FISC educational, money management and debt planning services will all be delivered through its main location at 921 Midway Road, Menasha or its satellite facilities in other communities.

GoodMoney staff will offer brochures, workshop flyers and other FISC information to its customers, and will proactively connect the services of FISC to people whose frequent use of **GoodMoney** services would suggest that financial counseling would be helpful.

Are there other models of this kind of collaboration?

Not to our knowledge. We think it is unique in both the credit union industry and in human services — especially the concept of offering both banking services and financial education opportunities. We also feel that this has tremendous potential to really be of help to our customers. The representatives of the Wisconsin Credit Union League who have been involved in the development of the concept are quite excited about its potential. And, Goodwill executives from across the country will get to see it first-hand when they tour the Darboy store as part of the Goodwill International Delegate Assembly conference being held in Appleton June 25-29. We are expecting that some may want to replicate it in their home areas, as well.

What's the timeline?

GoodMoney will open when the Goodwill Retail Store and Training Center of Darboy opens on Thursday, June 16.



REAL Solutions - Initiative Summary

In 2005, The Wisconsin Credit Union League launched **for the first time in the United States** an initiative called REAL Solutions. The aim is to develop less costly alternatives to predatory financial practices – such as high cost payday loans - and, through credit union membership, help low-income people better their financial position over time by offering affordable loans, access to savings, financial counseling and more.

Participating credit unions meet consumers' immediate needs for transaction services while moving consumers through the steps of opening basic deposit accounts, building creditworthiness with small loans, and – over time – building wealth. As a result, consumers will be less susceptible to using predatory services and gain the solid financial footing they need to remain self-supporting, contributing members of our state's economy.

The need in Wisconsin

The initiative is timely and sorely needed in light of the explosive growth of predatory lenders in Wisconsin. For example, over the last decade in Wisconsin, the number of payday loan outlets in the state increased from 17 to 445. In 2004, payday lenders issued \$506 million in loans here.

Currently in Wisconsin there is neither a limit on what these lenders can charge (interest as high as 520% APR or more) nor a limit on the number of times a loan can be extended for an additional fee. Lawmakers and community leaders have expressed concerns that these services target people in low-income areas and can trap people in an unending cycle of debt.

Program highlights to date include:

2004

- **The effort was developed** in partnership with the Filene Research Institute in Madison, Wis. Lois Kitsch with Filene worked closely with The League on program development and implementation.
- **The League held informational meetings** about the effort at several credit unions around the state.
- A **“Memorandum of understanding”** was developed to explain the roles of The League, Filene Research Institute and participating credit unions as part of the effort. The MOU is not a contract; it details what each partner can and should do or take advantage of to maximize their involvement.
- A **12-member advisory task force was formed** by participating credit unions to guide the effort.
- **Toolkits began helping credit unions develop less costly alternatives** to government and payroll check cashing, as well as new options to fight payday lending, and more. The kits are free to participating credit unions.
- **The program was unveiled publicly** in October, 2004 as part of a press conference held at a credit union serving a low-income area in the city of Milwaukee – Brewery Credit Union.

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Member Credit Union National Association

2005

- **Media and lawmakers expressed broad support** and interest in the effort. Pro-credit union editorials appeared in daily newspapers and legislators applauded credit unions at our 2005 Government Affairs Conference.
- **Partnerships emerged** with other organizations that could help us reach low-income people, new Americans and others using predatory financial services. Talks began with the Wisconsin Department of Revenue and Wisconsin Department of Agriculture, Trade and Consumer Protection to determine how best to extend services to Wisconsin residents most in need. Presentations were also provided for members of the Wisconsin JumpStart Coalition, whose members collaborate to improve financial education in the state.
- **State examiners showed support.** The Director of the Office of Credit Unions cited her support for the effort in *The League News* and League staff met with field examiners to brief them on the program so they could work effectively with credit unions implementing REAL Solutions programs and services.
- **Credit unions signed on to the effort.** During the year, 40 credit unions signed on to the effort. Collectively, those credit unions have more than 140 locations across the state, more than 846,000 members (about 41% of all credit union members in the state) and upwards of \$6.2 billion in assets (about 43% of Wisconsin credit union assets).
- **Participant meetings were held to develop the program.** Participating credit unions were invited to three meetings in 2005 at The League that explored needs in Wisconsin, capabilities of Wisconsin credit unions, and opportunities to develop or expand services to various target groups. The meetings focused on:
 - **Serving the Hispanic/Latino community**, which is growing in Wisconsin at three times the national average.
 - **Helping low-income tax filers avoid predatory “refund anticipation loans”** by using credit union accounts for fast, free direct deposit of refunds, and
 - **Developing a business plan** that incorporates REAL Solutions strategies.
- **Communications about the program intensified.** Every issue of The League’s newsletter promoted REAL Solutions and updated readers about the status of the effort. A session at the League’s annual convention focused on the initiative. Periodic updates were shared via email with participating credit unions. A comprehensive REAL Solutions website was developed to equip credit union partners with resources and information 24/7. Finally, information about the program was also shared with lawmakers and media through publications and press releases.
- **Credit unions determined their focus moving forward.** Participating credit unions determined three target groups for the effort moving forward, including:
 - Low-income tax filers
 - Hispanics/Latinos
 - Users of payday loan services

2006

- **A significant effort to help low-income tax filers began in January.** Credit unions began working with the Department of Revenue at Volunteer Income Tax Assistance (VITA) sites to offer fast, free direct deposit of tax refunds as an alternative to costly refund anticipation loans, which are aggressively marketed to

the poor during tax season. Thanks to a series of visits by the League and its partners to several Wisconsin newspapers' editorial boards – the effort again captured significant coverage in the press.

- **Additional partnerships are emerging.** Opportunities are being explored with Centro Hispano – the Madison area's primary community organization serving the Hispanic/Latino community – to offer direct deposit for tax refunds.
- **Assessment of our help for low-income tax filers will set our future course.** The League will meet with the Department of Revenue to review the achievement of our VITA partnership and make plans to expand the effort in 2007. We will also explore ways of further tracking and reporting the program's success.
- **Educational sessions will further highlight the program.** A session is planned for The League's 2006 convention to increase credit union participation in the program. The League's Education & Training Department is also planning several educational sessions for later in the year to help advance the effort.
- **The League is developing a payday lending product** that can be offered by credit unions participating in REAL Solutions. The goal is to develop a lower cost option for a short term loans that can be implemented widely by credit unions across the state, maximizing the number of Wisconsin residents who can be helped.
- **Plans are being explored to further “brand” and expand awareness of REAL Solutions.** Methods for communicating about REAL Solutions are being explored to increase recognition for credit unions among consumers, media and lawmakers.
- **REAL Solutions earned a Governor's Award** in 2006 as an innovative effort that improves the financial literacy and capabilities of Wisconsin citizens.



NEWS RELEASE

For Immediate Release
January 9, 2006

Contact: Chris Olson
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www.theleague.coop

Credit unions' help for low-income tax filers is part of larger effort to offer alternatives to predatory financial practices that hurt Wisconsin

Pewaukee, Wis. – Wisconsin credit unions are hoping that their help for low-income tax filers this year will flow more “unbanked” Wisconsin consumers into the financial mainstream, where they will receive fairer pricing for services and – beyond that – help to gain a stronger financial footing. Credit unions are helping low-income tax filers by opening deposit accounts into which fast, free refunds can be deposited, providing a no-cost alternative to costly “refund anticipation loans” that, according to the state, pick \$28.5 million from taxpayers’ pockets.

Credit unions in Milwaukee, Madison, Dodgeville, Fond du Lac, Eau Claire, Wausau, Hayward and near the Menominee Indian Reservation will open deposit accounts for low-income tax filers, as well as work alongside volunteers from the Wisconsin Department of Revenue who are assisting them, at Volunteer Income Tax Assistance (VITA) sites. The sites offer free tax preparation, tax education and asset-building strategies to people with low incomes, the disabled, individuals with limited English proficiency and the elderly.

Many low-income filers – who often seek a fast refund to pay bills and meet immediate needs – turn to paid tax preparers charging interest as much as 521% APR to obtain what’s called a “refund anticipation loan,” or RAL. These short-term, high-interest loans – secured by the pending refund – can drain hundreds of dollars from a typical refund. RALs are aggressively marketed in low-income communities.

“Credit unions want to see that low-income people don’t get taken advantage of this tax season,” said Brett Thompson, President & CEO of The Wisconsin Credit Union League, the trade association supporting 280 not-for-profit, member-owned financial institutions. “Low-income people who don’t have an account with a financial institution may see a RAL as their only option to get a fast refund. That’s what needs to change.”

It only takes a small deposit – as well as meeting member eligibility requirements (such as living or working in a particular area) – to open a basic deposit account at a credit union. The account can then be used to receive tax refunds at no cost via electronic transfer. Taxpayers receiving help at VITA sites benefit not only by avoiding tax preparation fees and the “rapid refund” charges that are typical of RALs, but get their refunds in as little time as if they had used a RAL: usually within a week.

(MORE)

By providing an alternative to RALs, credit unions are also helping the state curb the broader “drain” RALs have on the economy. For example, RALs siphon away the tax benefit low-income filers should receive by claiming the Earned Income Tax Credit (EITC); as much as \$8 million in this benefit was lost in 2003 in Wisconsin to RALs. Local economies also suffer when tax dollars are diverted due to an economic “multiplier” effect: The estimated \$3 million in RAL fees by federal EITC recipients in Milwaukee in 2003, for example, denied the city of as much as \$6 million in economic activity that could have resulted had consumers been spared those costs.

Thompson emphasizes, however, that credit unions’ help for tax filers is just one way of combating a more pervasive problem in the state: low-income people being targeted by non-traditional financial providers charging excessive costs for services that can be obtained more reasonably through mainstream providers like credit unions.

Through an initiative called REAL Solutions, Wisconsin credit unions statewide are developing lower-cost alternatives to a range of services that are often sought by low-income people, including short term “paycheck advance” services, check cashing, wire transfers and more. While doing so will not drive profits for credit unions, they see their effort as part of their mission as cooperatives. The purpose of not-for-profit credit unions is to serve members, not make profits.

“RALs are just one example of how predatory services hurt Wisconsin,” Thompson adds. “Just look at the payday lenders popping out of just about every strip mall. People who use them for a short term loan often find they can’t afford to pay it back once the high fees and interest are applied, and take out another loan and another until they’re completely mired in debt. This effect depresses a whole segment of our economy.”

Thompson says credit unions’ goal with REAL Solutions is to meet consumers’ immediate needs for transaction services while moving them through the steps of opening basic deposit accounts, building creditworthiness with small loans, and – over time – building wealth.

Credit unions make loans as small as a few hundred dollars and offer free financial counseling to improve their members’ overall financial position.

###

Editors note: Visit www.theleague.coop (Press Room) for the contact names and phone numbers of credit unions helping tax filers in 2006. For further comment by The League, contact [Sandy Malone](#) at (800) 242-0833, Ext. 3166.

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Credit unions are cooperative financial institutions that are owned by their members and do not have stockholders. Because they are not-for-profit, they return earnings to members in the form of more competitive rates of return on accounts, lower interest on loans, lower fees and improved services. Two million Wisconsin residents belong to credit unions, of which nearly half are open to the local community. People can find a credit union to join by looking in the phone book or by visiting www.creditunion.coop.

City Of Milwaukee

**CONVENIENT LENDING
TASK FORCE**

DRAFT

**FINAL REPORT AND
RECOMMENDATIONS**

Issued _____, 2006

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INTRODUCTION

The City of Milwaukee's Convenient Lending Task Force was created by Common Council File Number 041000, which was adopted on February 22, 2005 (Appendix A). This resolution directed the 10-member Task Force to "investigate the impacts of convenient cash businesses on surrounding neighborhoods, including but not limited to effects on public safety and community and economic development". It further directed the Task Force to develop a list of recommended public-policy solutions to problems it identifies and to present its findings and recommendations to the Common Council.

TASK FORCE MEMBERSHIP

The 10 members of the Convenient Lending Task Force are:

Ald. Joe Davis, Sr., chair (appointed by the Common Council President)
Ald. Terry Witkowski, vice-chair (Common Council President)
Chris Callen, Wisconsin Bankers Association (Common Council President)
Kathryn Crumpton, CCCS of Greater Milwaukee (Mayor)
Dorothy Dean, citizen at large (Common Council President)
Dimitri Jordan/Albert Frantza, Department of City Development (Commissioner of City Development's designee)
Deputy Inspector Anna Ruzinski, Milwaukee Police Department (Police Chief's designee)
Bethany Sanchez, Metropolitan Milwaukee Fair Housing Council (Common Council President)
Jim Walrath, Legal Aid Society of Milwaukee (Common Council President)
Bobbie Webber, Jr., Neighborhood Assistance Corporation of America (Common Council President)

MEETING DATES

The Convenient Lending Task Force convened on the following dates:

June 9, 2005
July 8, 2005
September 16, 2005
October 14, 2005
November 10, 2005
December 2, 2005
February 3, 2006
March 3, 2006

The agendas, minutes and exhibits from these meetings are found in Appendices C through I.

DEFINITIONS

The resolution creating the Convenient Lending Task Force directed the Task Force to study the impacts of “convenient cash businesses”. This term refers to three types of businesses in particular: currency exchanges (i.e., check-cashing businesses), payday loan agencies and title loan agencies. In many cases, a particular business establishment functions as two of these types of businesses, most commonly a currency exchange combined with a payday loan agency. These establishments are also referred to as “convenient lending businesses”.

The City’s Zoning Code defines the three types of convenient cash businesses as follows:

CURRENCY EXCHANGE means, in accordance with s. 218.05, Wis. Stats., any person except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States and any credit union operating under ch, 186, Wis. Stats., which obtains a certificate of authority from the Wisconsin commissioner of credit unions, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. This term does not include any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable documents, jewels or other property of great monetary value nor any person engaged in the business of selling tangible personal property at retail nor any person licensed to practice a profession or licensed to engage in any business in this state, who in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money. (s. 295-201-135)

PAYDAY LOAN AGENCY means an establishment providing loans to individuals in exchange for personal checks as collateral. (s. 295-201-445)

TITLE LOAN AGENCY means an establishment providing loans to individuals in exchange for receiving titles to the borrowers’ motor vehicles as collateral. (s. 295-201-661)

All three types of convenient cash businesses are licensed by the Wisconsin Department of Financial Institutions, Division of Banking – currency exchanges under s. 218.05, Wis. Stats. (community currency exchanges) and the other two types under s. 138.09, Wis. Stats. (precomputed loan law).

NUMBER AND DISTRIBUTION OF CONVENIENT LENDING BUSINESSES

Appendix B shows the current geographic distribution of convenient cash businesses in the city of Milwaukee. The following table shows the number of establishments by aldermanic district, as well as the non-white population and median household income of each district.

Aldermanic District	No. of Convenient Cash Businesses, Jan., 2006	Pct. Of Population Non-White, 2000 Census	Median Household Income, 2000 Census*
1	7	82.2%	\$30,265
2	12	68.4%	\$35,038
3	1	21.1%	\$35,019
4	4	56.9%	\$21,586
5	5	29.9%	\$41,751
6	5	93.5%	\$20,452
7	5	89.0%	\$30,704
8	3	55.8%	\$31,394
9	8	56.9%	\$37,025
10	2	35.2%	\$39,437
11	1	13.0%	\$40,737
12	9	79.2%	\$24,833
13	5	19.4%	\$41,990
14	0	21.5%	\$37,960
15	4	94.5%	\$21,198
City Total	71	54.6%	\$32,216

* Median household income is an approximation based on assignment of census "block groups" to aldermanic districts.

Geographic Distribution

Both the map and the table indicate that the distribution of convenient cash businesses in Milwaukee is highly uneven. The 2nd Aldermanic District on the Northwest Side has the largest number of these establishments (over one-sixth of the city total), followed by the 12th District on the Near South Side and the 9th District on the Far Northwest Side. The concentrations along North 76th Street and West Capitol Drive are particularly notable. Central-city aldermanic districts tend to have an average number of convenient cash businesses (see Districts 4, 6, 7 and 15), as does the Far South Side (District 13). (Note: In this analysis, 4 or 5 establishments is considered an average number of convenient cash businesses in an aldermanic district.)

Convenient lending establishments are relatively rare on the East, Far West and Far Southwest Sides (Districts 3, 10 and 11), and there are none at all on the Southeast Side (District 14).

Correlation with Minority Population

The three aldermanic districts with the most convenient cash businesses -- 2, 12 and 9 -- all have minority populations above the citywide average of 54.6%. However, they are not the districts with the largest non-white populations. Those districts -- 15, 6 and 7 -- all have just an average number of convenient cash businesses. On the other hand, the districts that have the fewest convenient cash businesses -- 14, 3 and 11 -- all have lower-than-average concentrations of

minority residents. Among districts with low minority populations, only district 13 has at least an average number of convenient lending businesses.

Correlation with Income

There does not appear to be a strong correlation between the number of convenient cash businesses in an aldermanic district and the median household income in the district. Two of the three districts with the most convenient cash businesses – 2 and 9 – have median household incomes above the citywide average, while incomes in the other district -- 12 -- are well below the city average. The three poorest districts -- 6, 15 and 4 -- all have just an average number of convenient cash businesses. The two highest-income districts – 13 and 5 – both have an average number of convenient lending businesses. However, it should be noted that the three districts with the fewest convenient cash businesses -- 14, 3 and 11 -- all have above-average median household incomes.

Other Wisconsin Communities

Milwaukee is not the only Wisconsin community to experience a proliferation of convenient cash businesses. As the following table shows, Milwaukee actually has fewer such establishments per 10,000 residents than most other large municipalities in the state. Neighboring West Allis actually has twice as many convenient cash businesses “per capita” as Milwaukee, although Milwaukee’s second-largest suburb, Wauwatosa, has none. (Another suburb, Greenfield, has 10 convenient cash businesses, for a rate of 2.77 per 10,000 residents).

CONVENIENT CASH BUSINESSES IN 15 MOST POPULOUS WISCONSIN MUNICIPALITIES		
Municipality	No. of Licenses	No. of Licenses per 10,000 Residents (2004 pop. Est.)
1. Milwaukee	80	1.35
2. Madison	22	1.01
3. Green Bay	32	3.09
4. Kenosha	20	2.15
5. Racine	21	2.60
6. Appleton	19	2.64
7. Waukesha	7	1.05
8. Oshkosh	15	2.30
9. Eau Claire	16	2.50
10. Janesville	14	2.28
11. West Allis	16	2.64
12. La Crosse	12	2.33
13. Sheboygan	8	1.58
14. Wauwatosa	0	0
15. Fond du Lac	8	1.87

Note: This table shows the total number of currency exchange licenses and payday lender/title lender licenses in each municipality. Some establishments have both types of licenses; hence, Milwaukee has 80 licenses, but only 71 establishments (9 establishments hold both types of licenses).

OVERVIEW OF CONVENIENT LENDING INDUSTRY

As noted previously, the convenient lending industry is made up of payday lenders, title loan lenders and currency exchanges. The nature of this type of business is to appeal to a segment of the population that is either distrustful of traditional lending institutions or unable to use them because of credit issues.

Payday lending originated in the early 1990s, and its popularity continues to grow among certain segments of society. This has resulted in rapidly growing problems for some consumers and an increasing source of income for lenders. Payday loans are short-term loans of small amounts, generally less than \$500 with an annualized percentage rate that ranges from 391% to 572%. Typically, a consumer will write a check for \$345 and receive \$300 from the payday lender with the promise to hold the check for two weeks. The check will then be presented for payment. The cost of the loan is \$15 per \$100. If the consumer cannot afford to have the check clear his or her account in two weeks, the consumer returns to the payday lender, renegotiates the loan for another two weeks and pays another \$45. The average payday loan borrower pays \$800 to borrow \$325.

Title loans work much the same way, only with a lower interest rate, as the borrower will turn over the car title as collateral. The interest rate for these loans is about one-third the rate of traditional payday loans.

Currency exchange businesses market to persons who lack banking relationships and need a place to cash checks. The currency exchange business will charge a percentage of the check as a fee for cashing the check. The fee is generally 10% of the check amount.

Payday lending has grown in recent years. In 2004, 22,000 payday loan stores nationwide extended about \$40 billion in short-term loans. Fifty-two percent of the borrowers made between \$25,000 and \$50,000 annually, while 29% earned less than \$25,000 a year. Repeat borrowers account for 99% of payday loans. The average payday loan is "flipped" or "rolled over" 8 times by a single lender.

What is the appeal of a payday loan? It's quick – all you need is a steady source of income and a checking account. Credit is no issue for those who may not qualify for a traditional loan or have a credit card. Payday loan amounts are small and generally intended to cover an emergency. A payday loan might be used for car repairs, to stop a utility disconnection, medical emergency or to cover a gambling debt. As a rule, banks and credit unions do not write loans for under \$1000. The payday loan is the type of loan that wouldn't be needed if there were money in a savings account or a relative the borrower could ask to borrow money from. Borrowers say that payday loans are easy to understand, with a fee that is upfront and no hidden costs.

Those who have no relationship with a financial institution use currency exchange businesses. This may be because they don't trust banks and credit unions or it may be because they have misused an account in the past and been denied access to the banking community. They may also be in this country illegally and not want to open an account because of their illegal status.

For these consumers, it is easier to pay a fee to cash a check with no questions asked than to apply for an account at a traditional financial institution.

Relevant articles on this topic include:

“Banks Should Offer Alternatives to Payday Loans to Better Serve Low and Middle-Income Customers, Says New Report” (see exhibits from October 14 Task Force Meeting in Appendix F)

“The Debt Cycle: Using Payday Loans to Make Ends Meet” (see exhibits from September 16 Task Force meeting in Appendix E)

“Predatory Payday Lending Traps Borrowers” (see exhibits from October 14 Task Force meeting in Appendix F)

PUBLIC SAFETY ISSUES

Maps showing the locations of convenient lending institutions and robberies in the first 11 months of 2005, by police district, are found in the exhibits from the December 2 Task Force meeting (Appendix H). Also relevant to the issue of public safety are data on reported “Part 1” crimes (i.e., violent crimes) within 500-foot and 1,500-foot radii of convenient lending businesses and citywide in 2002, 2003 and 2004. These data are found in a table that is included in the exhibits from the November 10 Task Force meeting (Appendix G).

Based on the number of violent crimes (especially robberies) that have occurred in the vicinity of convenient cash businesses, as indicated by the crime maps and table, it appears that these establishments tend to set up in neighborhoods that have other socioeconomic issues. While the conclusion that these types of businesses increase crime in an area cannot be drawn, such establishments do increase the opportunity for crime to occur. Because convenient lending institutions do not fall under the same security guidelines as mainstream financial institutions, there are no sanctions for them not providing a safe environment in which to do business. For instance, they are not required to have security cameras or any specific types of lighting. This creates an atmosphere for crimes of opportunity, such as robberies and thefts. Criminals have easy access to victims, who are perceived to have large amounts of currency on them. Victims in the normal course of business are not always cognizant of their surroundings, especially since they may have money matters or “troubles” on their minds. Combine these two conditions with the lack of a requirement for any type of surveillance deterrent and it makes for an inviting atmosphere for criminals. We must be careful to not blame convenient lending institutions for a rise in crime in the surrounding area, but these establishments are a contributing factor to the overall perception of lack of security in the area, which drives crime.

NEIGHBORHOOD IMPACT ISSUES

(yet to be completed — may be changed to “ALTERNATIVES TO CONVENIENT LENDING”)

REGULATION OF CONVENIENT LENDING BUSINESSES

The discussion of laws and regulations governing convenient lending businesses in this section of the Task Force report will concentrate mainly on payday loan and auto title loan businesses. There are, of course, other sources of convenient credit and check-cashing services that are targeted to low-income consumers. Convenient credit businesses also include pawnbrokers, rent-to-own stores, income-tax preparers that offer refund anticipation loans, and currency exchanges. But, in the main, it is the payday lenders and auto title lenders that have shown explosive growth in Milwaukee and around the state of Wisconsin. Surprisingly, this exceptional growth has not brought any significant changes to the legal framework within which these convenient lending businesses operate. The laws and regulations, at least at the federal and state levels, are basically the same as they were more than ten years ago when payday lending and other short-term consumer loan enterprises first opened their doors.

This discussion will first describe various federal and state laws that are intended to protect consumers from misleading, abusive, or unconscionable practices that have been observed in convenient lending transactions in Wisconsin, particularly Milwaukee. Second, the discussion will explore the extent to which zoning regulations have been crafted in Milwaukee to counteract the perceived, deleterious effects of convenient lending operations on neighborhoods or the city at a whole.

Federal Controls

The primary federal consumer protection regulation affecting convenient lending in Wisconsin is the federal Truth in Lending Act, or "TILA". As is the case with Wisconsin's own consumer protection laws, TILA is intended primarily to make consumer credit transactions, including consumer loans, uniform, transparent and useful for comparison-shopping purposes. TILA was first enacted in 1968 to cut back on deceptive creditor practices, such as misleading terminology and hidden, unstated charges. It imposes disclosure requirements that should be complied with before any consumer transaction is finalized. Perhaps the most common of these disclosure requirements is the "federal box" section on loan documents. This part of the loan contract is supposed to declare in conspicuous, bold print certain basic information: the amount loaned, the amount of the finance charges, the total amount of the loan and charges owed and payable; and the "APR" or annual percentage rate, or annualized cost of credit. For enforcement purposes, TILA allows consumers to file suit for violations of its disclosure requirements.

The Truth in Lending Act does not, however, place restrictions on how much a lender can charge in loan interest, various fees (e.g., late fees) or other finance charges. Instead, TILA operates on the theory that ample disclosure of charges and terms will let consumers make informed, market-based decisions; that is, fully-informed consumers will be able to distinguish a good loan deal from a bad one, with overpriced loan products and the lenders that market them inevitably losing business. The market, so goes the theory, will regulate itself, and arguably arbitrary legislative or regulatory limits dictating how much lenders should charge, and what loan terms they can impose, will be unnecessary.

Another major source of federal consumer protection, the Fair Debt Collections Practices Act ("FDCPA"), prohibits various forms of abusive debt collection activities. This law was enacted primarily to protect consumers from unwarranted threats and harassment by bill collectors. Like TILA, the law gives consumers the right to claim in court that a creditor has engaged in prohibited, abusive conduct to collect a debt. But, also like TILA, the FDCPA does not impose limits on how much a lender can charge borrowers, either as fees and interest in the underlying loan transaction or as charges imposed as part of the debt collection process.

The Truth in Lending Act and the Fair Debt Collections Practices Act have governed payday and auto title lenders in Wisconsin since these businesses first appeared here. Moreover, these establishments have not protested the applicability of these laws to their operations. By contrast, in many states other than Wisconsin, convenient lending businesses have argued that TILA and state small-loan laws (typically usury statutes that place caps on interest rates) do not apply to their transactions at all. They have contended, for example, that their transactions are deferred check-cashing arrangements (sometimes called "deferred presentments") involving check-cashing service charges, not extensions of credit.

Why have these lenders openly promoted their products in Wisconsin as "loans," and conceded in this state that they are subject to TILA disclosure rules? The answer is tied to the Wisconsin's unique legislative stance on loan rate caps -- caps that are usually found in state small-loan laws or usury statutes. Wisconsin has no such caps; they were eliminated in 1984. Indeed, Wisconsin and New Mexico are the only states in the country that do not have rate ceilings on small loans. Accordingly, these states provide an exceedingly fertile environment for high-cost, high-rate loan deals. Payday lenders can charge over 1000% APR and auto title lenders can impose finance charges starting at 300% APR, just two examples from Milwaukee convenient lender deals, because Wisconsin does not control or limit the amount a consumer can be charged for a small loan (see sample loan agreement in Appendix K).

As a corollary, these lenders have found that cash-desperate consumers in Wisconsin are willing to pay incredibly high finance charges, even if they are fully and openly disclosed in compliance with TILA requirements. Thus far, market competition has not materialized; consumers in search of convenient, small loans clearly are showing a strong inclination to sign up for loans at very high costs.

Clearly, convenient lending businesses are booming despite TILA and the FDCPA. The main source of consumer protection under federal law -- TILA -- has had little influence on loan product pricing by lenders, or on comparison shopping by borrowers. Payday and auto title lenders have generally complied with TILA disclosure rules simply because they have learned that their astronomical, fully-disclosed interest rates are not discouraging potential customers from becoming borrowers. Moreover, there have been few FDCPA lawsuits against these lenders because, in general, they have not needed to send delinquent accounts to debt collectors. Apparently, there are so many high-cost (and profitable) loans in the portfolios of these lenders that they find it unnecessary to pursue borrowers in default. As a result, there have been few occasions for FDCPA violations to occur.

State of Wisconsin Controls

In many respects, Wisconsin's legislative strategy to control abuses by payday and title loan businesses is similar to the federal approach. Loan terms and rates must be adequately disclosed; debt collection abuses are prohibited. But, as noted above, there is no restriction on what a lender can set as an interest rate, or on the amount of interest a lender can charge. Disclosure requirements are imposed by provisions of Wisconsin's Precomputed Loan Law" (s. 138.09, Wis. Stats.; copy can be found in Appendix F), and the Wisconsin Department of Financial Institutions ("DFI") is responsible for taking action against lenders who fail to comply. The precomputed loan law provides in part that no lender shall:

"...advertise, print, display, publish, distribute or broadcast or cause to be printed, displayed, published, distributed or broadcast in any manner, any statement with regard to the rates, terms, or conditions for the lending of money, credit, goods or things in action which is false or calculated to deceive." (s. 138.09(5))

Further, every lender shall:

"(a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the note and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the amount of interest, the proceeds of the loan after deducting such interest, a description of the payment schedule and the default charge. Disclosures made in accordance with the federal consumer credit protection act [TILA] and regulation Z shall also indicate that the borrower may prepay the borrower's loan in whole or in part and that if the loan is repaid in full the borrower will receive a refund of interest as provided by this section. The statement shall also indicate the percentage per year of interest charged in the transaction.

(b) Give to the borrower a plain and complete receipt for all cash payments made on account of any such loan at the time such payments are made.

(c) Permit payments of the loan in whole or in part prior to its maturity.

(d) Upon repayment of the loan in full mark indelibly every obligation, other than a security agreement, signed by the borrowers with the word "Paid" or "Canceled" and cancel and return any note. When there is no outstanding secured obligation such licensee shall restore any pledge, cancel and return any assignment, cancel and return any security agreement given to the licensee by the borrower and file a termination statement terminating any filed financing statement.

(e) Take no note, promise to pay, security nor any instrument in which blanks are left to be filled in after the loan has been made except that a detailed description or inventory of the security may be filled in, with the written consent of the borrower within 10 day thereafter." (s. 138.09(8))

Beyond the controls given to DFI under the Precomputed Loan Law, the Wisconsin Consumer Act protections against unfair loan terms in Chapter 422 and 425, as well as the protections

against collection abuses set out in Chapter 427, are enforceable by consumers in private actions. (Copies of the Wisconsin Consumer Act chapters are found in Appendix F.) For example, the WCA imposes limits on the amount a lender may charge in delinquency charges for overdue payments, as well as limits on when lenders can assess attorney fees for debt collection efforts. It prohibits lenders from leaving out essential provisions in transaction documents -- provisions that might later be used to the borrower's disadvantage. The WCA also prohibits lenders and other creditors from engaging in "unconscionable" dealings such as price gouging and taking advantage of a consumer's lack of education or inability to understand the language of a contract.

Provisions such as these have formed the basis for private litigation against some payday lenders in Wisconsin. Some of these lawsuits have ended in monetary settlements for large numbers of customers. See, for example, news articles describing a settlement involving National Cash Advance in Appendix L. However, even million-dollar settlements benefiting thousands of borrowers have not dissuaded these businesses from continuing to charge loan rates ranging from 500 to 1000% APR.

Lastly, the Precomputed Loan Law and the Wisconsin Consumer Act contain an important mechanism for regulating consumer lending practices not found in the federal legislation, namely, licensing requirements. In order to do business in Wisconsin, a payday lender or auto title lender needs to comply with ss. 138.09 and 426.201 of the Wisconsin Statutes. In particular, s. 138.09 requires the business to be licensed by DFI. Application fees and surety bonds must be submitted. Background information forms must be completed to satisfy DFI that the corporate applicant and its officers meet standards of suitable character, general fitness, and financial responsibility. (However, consumers do not have a remedy against lenders who obtain licenses by misrepresentation or fraud.). After a license is obtained, the lender must file annual reports disclosing, among other things, consumer complaints that have been filed against it, the general volume of its loan activities, the volume of its delinquent and bad debt accounts, and its "rollover" payday loan inventory (a copy of the loan company annual report form is provided in Appendix F). The information provided on these reports could tell Wisconsin consumers a lot about the profitability and volume of payday and title lending in the state, but DFI does not allow public access to the reports.

While the Precomputed Loan Law authorizes DFI to revoke or suspend lender licenses for misinformation in applications and reports, the Task Force is not aware of any occasion in which DFI has in fact revoked or suspended the license of a payday or title loan business for false, misleading, or incomplete reports; nor is the Task Force aware of any DFI action against a licensed lender for violations of the Precomputed Loan Law or the Wisconsin Consumer Act.

In summary, Wisconsin consumer protection laws do provide more enforcement tools to combat abusive practices by payday and title lenders than are available under TILA or the FDCA. Litigation efforts, relying on the private remedies in the WCA, have successfully obtained rebates of finance charges, but litigation has not caused lender practices to change significantly, or, most importantly, brought about a reduction in fees and charges. Similarly, administrative enforcement of licensing rules by DFI has not curtailed the expansion of convenient lending businesses in municipalities around the state. Overall, these tools have done little to curb the overpricing of loan products or the abuses of repeated loan "rollovers."

Local Zoning Regulations

While the federal and state governments regulate convenient lending businesses primarily from a consumer-protection perspective, the focus of local regulations has been on addressing the local impacts of such businesses through zoning. As more convenient cash businesses locate within their boundaries, municipalities are noticing increases in violent and property crimes affecting business employees and customers, such as robberies, thefts and burglaries. (Some Milwaukee homicides have even been committed against payday loan and currency exchange customers – see Appendix M). Other notable problems have included increased traffic, pressures on limited parking, business and customer activities after normal business hours (especially affecting adjacent residential areas), and signage and lighting that are out of character with surrounding businesses. Similar issues have already arisen in these municipalities with the arrival of adult entertainment establishments, the spread of liquor stores, and the increasing presence of corner convenience stores.

City of Milwaukee Regulations

The City of Milwaukee began explicitly regulating convenient cash businesses in May, 1990, when the Common Council passed File Number 891575. This ordinance created a definition of “currency exchange” based on state statutes and designated currency exchanges as special uses in commercial, central business and industrial zoning districts. It did not create regulations applicable to payday loan or title loan businesses.

With the passage of Common Council File Number 990366 in November, 1999, the City of Milwaukee started to regulate title loan businesses. This ordinance made title loan agencies special uses in the same zoning districts in which currency exchanges were already special uses. Common Council File Number 000395, passed in September, 2000, imposed the same requirement on payday loan businesses.

In 2003 and 2004, the Common Council considered File Number 021309, a proposed ordinance that would have made all three types of convenient cash businesses prohibited uses in all zoning districts. The City’s Zoning Code Technical Committee and, in particular, the City Attorney’s Office did not look favorably on this legislation because it would have made it impossible to locate one of these businesses in the city of Milwaukee. They also felt that the legislation did not provide convincing evidence that convenient lending businesses have substantial adverse impacts on the communities in which they locate. In November, 2004, the Common Council voted to place this ordinance on file.

While the Common Council did not find passage of File Number 021309 to be appropriate, it did enact another piece of legislation that further regulated the location of convenient cash businesses. In November, 2004, the Council passed File Number 031614, an ordinance that required any new currency exchange, payday loan agency or title loan agency to be located:

1. At least 1,500 feet from any existing currency exchange, payday loan agency or title loan agency.
2. At least 150 feet from any single-family or two-family residential zoning district.

In conjunction with development of these distance requirements, the City Attorney's Office prepared a legal opinion on this topic. This opinion, which can be found in Appendix N, states that the Common Council has, under proper circumstances, the authority to establish distance requirements in the zoning code for uses such as payday loan businesses. It is noted that courts have generally upheld distance requirements as being reasonably related to promoting the public welfare because they mitigate harmful effects of the restricted use. The City Attorney also indicates that the Common Council must make its decision to establish spacing requirements based on a substantial record of evidence which demonstrates a reasonable relationship between the proposed distance requirement and the reduction of harmful impacts of the regulated use.

Common Council File 031614 was the City's most recently enacted legislation relating to convenient cash businesses. All current Zoning Code provisions for these businesses can be found in Appendix O.

While most City legislation relating to convenient cash businesses has been in the area of zoning, the Common Council has considered a few non-zoning items. In October, 2000, the Common Council adopted File Number 000797, a resolution authorizing and directing the City's Intergovernmental Relations Division to lobby for introduction and passage of state legislation establishing a maximum interest rate that may be charged by payday loan agencies. However, as mentioned earlier, no interest-rate limits have been established to date. More recently, the Common Council adopted File Number 051001, a resolution expressing the City's support for enactment of 2005 Assembly Bill 914, which would establish a maximum finance charge of 2% per month for payday loans. Copies of these two Common Council files, as well as Assembly Bill 914, can be found in Appendix P.

Finally, in May, 2004, Ald. Joe Davis, Sr., introduced an ordinance that would require convenient cash businesses to meet various security-related requirements. For example, each business would be required to maintain a safe on the premises, have customer entrance and exit doors made of glass or other transparent material and maintain a list of all current employees that includes names, home addresses and home telephone numbers. In addition, this ordinance would require all managers and employees of convenient cash businesses to complete a training course in robbery prevention provided by the Milwaukee Police Department. In September, 2004, the City Attorney's Office issued an opinion on the proposed ordinance (copies of both the ordinance and the legal opinion can be found in Appendix P). The opinion indicates that the ordinance is not legal and enforceable and is problematic primarily on two grounds:

1. Certain provisions of the ordinance may exceed the statutory limits of the City's police powers.
2. Certain provisions of the ordinance may violate the Equal Protection Clause of the federal and state constitutions in that they mandate security measures for a certain class of businesses (i.e., convenient cash businesses) but do not require those same measures of other businesses that are similar in nature.

In this opinion, the City Attorney also notes that:

“.. regulatory measures may not be imposed against the quasi-financial industry due to opposition to its presence in the City or to its lending or other credit practices, including interest rates and collection methods. These are matters properly reserved for State regulation and that are in all likelihood pre-empted by State law.”

The City Attorney states that the most serious problem with this proposed legislation is the virtual lack of a legislative record in the ordinance file. The legislative record contains insufficient evidence to demonstrate a rational relationship between the specific provisions of the proposed ordinance and attainment of the police-power objective of enhancing public safety. Nor does it contain sufficient evidence to substantiate a basis and rationale for targeting the convenient lending industry, as opposed to other types of businesses. If additional evidence and appropriate legislative findings were provided, many of the City Attorney's concerns about the proposed ordinance might be sufficiently addressed. However, in its current form, the ordinance is not legal and enforceable and it remains “in committee” (Zoning, Neighborhoods and Development Committee).

Regulations in Other Communities

Nationally, at least 34 municipalities are known to have enacted zoning ordinances or other general welfare regulations to curtail perceived problems generated by convenient cash business locations. A selected listing of such municipalities, the nature of the businesses regulated (e.g., check cashing, title loan, etc.) and the types of local controls is set forth in Appendix Q, “Payday Lending Zoning Laws/Legislation.” Of the 34 municipalities, at least 23 have used zoning ordinances as a means of managing dramatic increases in the number and operation of convenient lending businesses. Some communities have classified such businesses as “special uses.” With this classification, it is presumed that convenient cash businesses are not generally permitted uses and must, therefore, satisfy local zoning authorities that their presence will not adversely affect surrounding areas, particularly residential neighborhoods or nearby businesses. Likewise, as special uses, these businesses must demonstrate that their operations will not be detrimental to the “public health, safety and general welfare.” Currently, the City of Milwaukee uses that approach, as does Superior, Wisconsin.

Some municipalities have carried the regulatory response a step further, enacting ordinances that limit the density of establishments or the number of convenient cash business locations allowed (usually based on a formula of one location per several thousand residents). Examples of these communities are denoted in the “Basis for Limits” column in Appendix Q under the term “Density.” For example, the land use development ordinance of West Valley City, Utah, limits the number of check cashing or “deferred deposit loan” businesses to one per every 10,000 residents (see also the excerpt from the West Valley City code in Appendix Q). Other municipalities, such as Madison, Wisconsin, have focused not on controlling the number of businesses but, rather, on the hours of business operations (see the United States District Court decision for *The Payday Loan Store of Wisconsin, Inc., d/b/a Madison's Cash Express v. City of Madison* dated August 5, 2004, in Appendix Q). In the case of Madison, the court upheld such controls against a challenge based on claims of arbitrary and discriminatory legislating by the Madison Common Council. The Court reasoned that the city did not have to tackle all types of situations where businesses may produce certain adverse effects; it was enough that the Common Council speculated that convenient cash businesses could generate increased crime activity or

more noise, traffic or distracting lighting. "There are rational reasons for legislating," said the court.

Consistent with those concerns, other cities and towns have imposed even greater limits on convenient cash businesses related to security and safety concerns, noise and signage. For example, Oakland, California, requires the presence of uniformed security guards, anti-loitering signs, unobstructed windows, and other strategies to deter criminal activity (Appendix Q).

Overall, more and more communities around the country are looking to municipal regulations to control the growth and adverse effects of convenient cash businesses. Even this February, the City of Tucson moved to enact broad regulatory controls of the types mentioned above. That city's planning commission memorandum and attached city attorney legal memorandum (Appendix Q) demonstrate how local regulations can be developed, consistent with the concerns raised by municipal attorneys, to address the very same issues now under consideration by this Task Force.

RECOMMENDATIONS OF THE TASK FORCE

PAYDAY LENDING ZONING LAWS/LEGISLATION

JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Gardendale, AL	Moratorium		
Marana, AZ	Draft	Zoning ordinance similar to Pima County	
Phoenix, AZ	Zoning	Proposed zoning rule first considered at Planning Commission meeting on 11/9/05: check-cashing stores must be at least 1,000 ft. apart	
Pima County, AZ	Zoning	New payday lenders not allowed to open within 1,320 ft (one quarter mile). of existing operations or 500 ft. of homes of residentially zoned property. Also requires a special use permit.	
Tucson, AZ	Draft		
South Tucson, AZ	Density	Limited to three business zones. Cannot open within 1,000 ft. of existing operations or within 500 ft. of houses.	City Council Ordinance NO:05-03 amending Chapter 24, Article I SEC. 24-1, Article IV
National City, CA	Draft	One year moratorium (date?)	Ordinance No. 2003, Chapter 10.58
Oakland, CA	Permit	Special Use Permit, must not be closer than 1,000 ft. from another check casher/payday lender; must be at least 500 ft. away from: -Community education civic activities (schools) -State or federally chartered banks, savings associations, credit unions, or industrial loan companies -Community assembly civic activities (churches) or -Liquor stores (excluding full service restaurants or liquor stores with 25 or more full time employees).	Oakland Planning Code 17.102.430
Sacramento, CA	Prohibition	Not allowed in an area zoned for commercial mixed use development.	
San Diego, CA	Unknown		
LA, CA			
San Francisco, CA	Moratorium	90 days, beginning 1/9/06	
Ft. Lauderdale, FL Pembroke Pines, FL	Permit	City Zoning Code does not prohibit or permit check cashing services – decision on a case-by-case basis. Requires public hearing.	
Jacksonville, FL	Density	600 ft. between lenders; no closer than 5 miles to an active military installation.	City Ordinance 2005-1012

Bellwood, IL	Licensing	Requires special licensing process.	City Ordinance 117.999
Chicago, IL	Zoning Change	Change zone classification from a service district to special use, which would require public hearing.	
Glendale Heights, IL	Permit	Special Use Permits	
Superior, MN	Permit	Special Use Permits 2,500 ft. required between payday lenders.	
JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Arnold, MO	Permit	Conditional Use Permit for small business. Limits business to certain commercial areas.	
Berkeley, MO	Pending	Create classification for payday institutions different from financial institutions.	
North Kansas City, MO	Zoning	Restricts payday lenders and check cashers from doing business in certain zones.	
St. John, MO	Licensing	Create a separate license category for payday lending - \$400 for business license vs. \$750 for a regular bank.	
St. Louis County, MO	Permit	Conditional Use Permit for each location. Requires public hearing for each request.	
Jackson, MS	Draft	Moratorium	
Clark County, NV	Density	Distance requirements similar to Las Vegas.	
Henderson, NV	Permit	Essentially banned in Downtown Redevelopment Area. In 2004, began requiring a Conditional Use Permit for all new payday loan centers and declared several zoning categories off limits to them. New rules considered: separation requirements from schools, residential areas, and other check-cashing businesses.	
Las Vegas, NV	Permit/ Density	Special Use Permit Requirement. May not be within 200 ft. from residences. Must be 1,000 ft. from other financial institutions, auto title loan businesses, and pawn shops.	
North Las Vegas, NV	Moratorium	A 6 mo. moratorium on new payday lenders started in July 05. Considering restrictions similar to Las Vegas.	
Pittsburgh, PA (north side)	Density	Must be 500 ft. from residence, 1,000 ft. from a similar business.	
Columbia, SC	Permit	Special Use Permits	
South Salt Lake City, UT	Density	Restricts vicinity to 600 ft. from the nearest residential zone (some exceptions). Restricts the number of facilities to 1 for every 5,000 people. Prevents all check cashing establishments from certain districts of city. Density (?)	

Taylorsville, UT	Density	One per 10,000 residents. They presently exceed that limit and there is a moratorium on new payday loan outlets until that level is reached.	
West Valley City, UT	Density	600 ft. between payday lending outlets. One outlet per 10,000 residents.	City Code Section 7-1-103, Subsection 30
Chesterfield, VA	Conditional Use	Conditional use process that allows a site-specific review by the Board of Supervisors.	
Chesterfield County, VA	Zoning	Limited to certain commercial zones.	
Colonial Heights, VA	Unknown		
JURISDICTION	BASIS FOR LIMITS	DETAILS	CITATION
Henrico Co (Richmond, VA)	Moratorium	Establish "sunset" period to phase out locations	
Langley, VA	Zoning	Only in an enclosed mall with C3 commercial zoning.	
Burlington, VT	Prohibition	Zoning does not include check cashing.	
Superior, WI	Zoning	2,500 ft. separation; commercial highway locations only.	
Milwaukee, WI	Permit	Special Use Permits: 1,500 ft. from similar business; 150 ft. from single or two-family zoned property.	Milwaukee Code of Ordinances, Section 295-311-2-h (Ch 295 is the Zoning Code)

(8) "Alley" means a public way which generally affords a secondary means of vehicular access to abutting properties and not intended for general traffic circulation.

(9) "Alteration" means a physical change or addition to a site, building, or structure.

(10) "Amenity" means an aesthetic, recreation, or service component integrated into a development in order to increase its desirability within a community or its marketability to the public.

(11) "Animal" means any of a kingdom of living being typically differing from plants in capacity for spontaneous movement and rapid motor response to stimulation.

(12) "Animal Training" means the training of two or more animals for remuneration. Animals may be boarded on the premises or transported to the premises for each scheduled training period.

(13) "Applicant" means a person, firm, association, partnership, private corporation, public corporation, or any combination thereof, requesting a modification or approval as required by this Title. An applicant shall be listed as the owner of the property for which the modification or approval is being requested or may be the legally designated agent of the owner.

(14) "Arterial Street, Major" means a street for which the principal function is movement of large volumes of traffic from collector streets. Providing access to abutting land is a secondary function.

(15) "Arterial Street, Minor" means a street for which the principal function is movement of traffic. Providing access to abutting land is a secondary function.

(16) "Attached" means a physical connection between buildings, or parts of buildings, and may consist of either a common wall or an overhead roof structure or canopy which may be either enclosed or unenclosed.

(17) "Automobile Sales and Service" means the sales, repair and maintenance of automobiles and trucks. Such uses may include, but are not limited to, sales lots, body shops, transmission shops, lube centers, tire stores, car washes as a primary use, and auto glass shops, among other things. This definition does not include retail sales of auto parts and supplies where no service or repair is performed on the premises.

(18) "Basement" means a story partly underground. A basement shall be counted as a story for purposes of height measurement if over one-half of its total height is above grade.

(19) "Billboard" means a freestanding, outdoor sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located. "Billboard" includes, where applicable,

any sign structure, including any necessary devices, supports, appurtenances, and lighting that is part of or supports an outdoor sign.

(20) "Brew Restaurant" means a business licensed to sell beer for on-premises consumption in connection with a bonafide restaurant where the revenue from the sale of beer is less than 30 percent of the gross dollar volume. A Brew Restaurant is also licensed to brew beer in batch sizes that provide enough beer for the sale and consumption on site in connection with the restaurant, or for retail carry-out sale in containers holding less than 2 liters.

(21) "Brew Restaurant and Liquor Retailer" means a Brew Restaurant that also has a liquor license subject to the applicable provisions of the Alcoholic Beverage Control Act.

(22) "Buildable Area" means that portion of a lot that may be developed after required setbacks are deducted.

(23) "Building" means any structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals or chattels.

(24) "Building Coverage" means the percentage of a lot that is, or may be, covered by buildings.

(25) "Building Height" means the vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to a point midway between the lowest part of the eaves or cornice and ridge of a hip roof.

(26) "Building, Primary" means the principal building or one of the principal buildings upon a lot, or the building or one of the principal buildings housing a principal use upon a lot.

(27) "Canopy" means a roofed structure not completely enclosed by walls supported by structural supports extending to the ground directly underneath and providing a protective shield for pedestrian walkways and/or automobiles. This definition does not include carports.

(28) "Car Title Loan" means taking possession of an automobile title in exchange for consideration or extending a loan. This definition does not include a federal- or state-chartered bank or credit union.

(29) "Carport" means a private garage not completely enclosed by walls or doors supported by structural supports extending to the ground directly underneath the carport.

* (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.

(31) "Church" means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which buildings, together with its accessory buildings and uses, is maintained and controlled by a non-profit religious body organized to sustain public worship.

(32) "City" means West Valley City.

(33) "City Attorney's Office" means the Law Department of West Valley City.

(34) "City Council" means the City Council of West Valley City.

(35) "City/County Health Department" means the Salt Lake City/County Health Department which is authorized to act as the Health Department for West Valley City.

(36) "City Manager" means the chief executive officer of West Valley City.

(37) "City Recorder" means the West Valley City Recorder.

(38) "Collector Street" means a street which carries traffic from minor streets to the arterial street system, including the principal entrance streets of residential developments and the primary circulating streets within such developments.

(39) "Commercial" means any use involving the exchange, buying, or selling of goods or services for gain or economic profit.

(40) "Commercial Complex" means two or more commercial uses, whether on one lot under one ownership or on several adjacent lots under separate ownership, which are dependent on one another to meet minimum standards for parking, vehicular circulation, or landscaping; or which are approved as elements in an overall site plan under a conditional use or subdivision application.

(41) "Community and Economic Development Department" means the Community and Economic Development Department of West Valley City.

(42) "Community Use" means uses which have the primary purpose of serving the educational, recreational, religious, or governmental needs of the community in general. Such uses may include churches, public and private educational institutions, private non-profit recreation grounds, public parks, public buildings, public facilities, cemeteries, and other similar uses. This definition shall not include detention facilities, half-way houses, alcohol rehabilitation centers, and other similar uses, or buildings that provide lodging or serve as a residence in addition to the community use.

(43) "Conditional Use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(44) "Conditional Use Permit" means a permit issued by the City outlining the requirements of approval for a conditional use and including written conditions, as well as final, approved development plans, if applicable.

(45) "Condominium" means the ownership of a single unit in a multi-unit project, together with an undivided interest in common in the common areas and facilities of the property. "Condominium" also means "planned unit development" as defined in this Section, except where the context clearly indicates otherwise.

(46) "Consolidated Fee Schedule" means the schedule of fees adopted as Chapter 1-2 of the City Code.

(47) "Convalescent Center" means any commercial establishment where three or more persons suffering from, afflicted with, or convalescing from any infirmity, disease, or ailment are customarily kept, boarded, or housed for remuneration. The term "Convalescent Center" shall include "nursing home," but shall not include hospitals.

(48) "Convenience Store" means any building which contains less than 5,000 square feet of net floor area and which is generally used for the retail sale of prepackaged food, produce and/or other non-food commodities.

(49) "Cul-de-sac" means a minor street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic.

(50) "Dairy" means a commercial establishment for the manufacture or processing of dairy products.

(51) "Day Care/Preschool Center" means any facility, at a nonresidential location, operated by a person qualified by the State of Utah, which provides children with day care and/or preschool instruction as a commercial business.

(52) "Dedication of Land" refers to land set aside by the subdivider to be used by the public, such land being conveyed to the City.

(53) "Deferred Deposit Loan" means a transaction where:

- (a) a person presents to a check cashing business a check written on that person's account; and
- (b) the check cashing business:
 - (i) provides the maker an amount of money that is equal to the face value of the check less any fee or interest charged for the transaction; and

- (ii) agrees not to cash the check until a specific date.

(54) "Density" means the number of dwelling units per gross acre of land.

(55) "Development" means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

(56) "Development Agreement" means an agreement negotiated and entered into by the City and a property owner or developer, pursuant to a proposed development within the City, that shall run with the land and be binding on all successors and assigns of the property owner or developer.

(57) "Development Plan" means all plans, studies, plats, statements, reports and information required by applicable provisions of this Title.

(58) "Director of Health" means the legally designated Director of the Salt Lake City/County Health Department or any representative authorized by such official to act in his or her behalf.

(59) "Dwelling" means any building, or portion thereof, which is designed for residential occupancy, except hotels or motels.

(60) "Dwelling, Single-family" means a building arranged or designed to have one dwelling unit for occupancy by one family on one lot.

(61) "Dwelling, Two-family" means a building arranged or designed to be occupied by two families, the structure having only two dwelling units under one ownership, i.e., duplex, on one lot.

(62) "Dwelling, Three-family" means a building arranged or designed to be occupied by three families, the structure having only three dwelling units under one ownership, i.e., triplex, on one lot.

(63) "Dwelling, Four-family" means a building arranged or designed to be occupied by four families, the structure having only four dwelling units under one ownership, i.e., four-plex, on one lot.

(64) "Dwelling, Multiple-family" means a building arranged or designed to be occupied by more than four families on one or more lots.

(65) "Dwelling Group" means a group of two or more dwellings located on a parcel of land in one ownership and having any yard or court in common.

(66) "Dwelling Unit" means one or more rooms connected together in a structure in which doors and hallways provide shared access to common living facilities, which include provisions for sleeping, eating, cooking and sanitation, for not more than one family.

(67) "Easement" means a non-profitable interest in property owned by another that entitles its holder to a specific use on, under, or above said property.

(68) "Elderly Housing" means residential development designed specifically for the accommodation of senior citizens, such developments

being located in residential zones, and which may exceed the maximum density allowed in such zones.

(69) "Elderly Person" means a person who is 60 years of age or older, who desires or needs to live with other, elderly persons in a group setting, but who is capable of living independently.

(70) "Entrance" means the location of ingress to a room, building or lot.

(71) "Exit" means the location of egress from a room, building or lot.

(72) "Extended Stay Hotel" means a hotel in which provisions for cooking are made in individual rooms or suites, and in which guests stay for more than 30, but less than 180, days.

(73) "Family" means:

(a) Any number of persons living together in a dwelling unit, sharing common living facilities, who are related by blood, marriage, or adoption and including up to three additional unrelated adults for which each unrelated person owning or operating a motor vehicle shall have an off-street parking space, meeting all requirements of this Title, in addition to required parking for the dwelling; or

(b) One to four unrelated adults living together in a dwelling unit, sharing common living facilities, and sharing possession, use, and responsibility of the entire unit and property associated with that unit, whose relationship is of a continuing nontransient domestic character, living as a single, self-governing housekeeping unit, without extensive supervision or control by a non-resident landlord, innkeeper, or property owner, for which each person owning or operating a motor vehicle shall have an off-street parking space meeting all requirements of this Title.

(74) "Fast Food Establishment" means any establishment whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state and whose principal method of operation includes the following characteristics:

(a) Foods, frozen desserts or beverages are usually served in edible containers or in paper, plastic or other disposable containers;

(b) The consumption of foods, frozen desserts or beverages is not restricted to tables and counters inside the establishment or on a dining patio immediately adjacent thereto; and

(c) The establishment provides drive-in, drive-through and/or walk-up service.

339 F. Supp. 2d 1058, *; 2004 U.S. Dist. LEXIS 15830, **

THE **PAYDAY LOAN** STORE OF WISCONSIN, INC. D/B/A MADISON'S CASH EXPRESS,
Plaintiff, v. CITY OF MADISON, Defendant.

04-0365-C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

339 F. Supp. 2d 1058; 2004 U.S. Dist. LEXIS 15830

August 5, 2004, Decided

SUBSEQUENT HISTORY: Summary judgment granted by **Payday Loan** Store of Wis., Inc. v. City of Madison, 333 F. Supp. 2d 800, 2004 U.S. Dist. LEXIS 17577 (W.D. Wis., Aug. 31, 2004)

DISPOSITION: [**1] Plaintiff's motion for preliminary injunction DENIED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff business sued defendant, the City of Madison, Wisconsin, alleging that a city ordinance that regulated **payday loan** operations denied the business equal protection of the law and due process. The business moved for a preliminary injunction enjoining enforcement of the ordinance.

OVERVIEW: The business sought to enjoin the enforcement of Madison, Wis., Gen. Ordinance § 23.08, which limited the hours of operation of **payday loan** businesses. The business argued that the ordinance violated the Equal Protection and Due Process Clauses, was unconstitutionally vague, and was preempted by state law. The business failed to show that it was likely to prevail on the merits of its claims, that it would suffer irreparable harm if no injunction issued, that issuance of an injunction would serve the public interest, or that the harm the business would suffer absent an injunction outweighed the harm the City would suffer if an injunction issued. The City could speculate rationally that people emerging from **payday loan** stores at night with large amounts of money would be involved in crime, either as victims or participants. It made no difference whether users of ATM machines, which were not subject to the ordinance, were also targets of robbers. The City might also speculate rationally that a **payday loan** store increased traffic and noise in a particular area. The business did not claim to have been denied any procedural right. The ordinance was not vague or preempted by state law.

OUTCOME: The court denied the motion.

CORE TERMS: payday, ordinance, neighborhood, equal protection, bright lights, state law, injunction, preempted, traffic, night, equal protection claim, classifications, quiet, users, unconstitutionally vague, preliminary injunction, government interest, rational basis, legislating, regulating, rationally, speculate, nighttime, monetary, currency, machines, robbery, enjoin, noise, sited

LexisNexis(R) Headnotes

Constitutional Law > Equal Protection > Scope of Protection
Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation
HNI ⚡ Legislatures are presumed to have acted constitutionally even if source materials

normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them.

Constitutional Law > Equal Protection > Level of Review

HN2 Under the United States Constitution, the political branches of the Government get to decide what steps to take to advance governmental goals. Their decisions are not subject to review, except in unusual situations, generally involving fundamental rights or suspect classifications. The power to decide, to be wrong as well as to be right on contestable issues, is both privilege and curse of democracy.

Constitutional Law > Equal Protection > Scope of Protection

HN3 Legislation does not violate the Equal Protection Clause just because it does not address every aspect of a particular governmental goal. A legislature may legislate in small increments, taking one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.

Banking Law > Bank Activities > Securities Activities > Nonbank Banks

HN4 See Madison, Wis., Gen. Ordinance § 23.08(2).

Constitutional Law > Supremacy Clause

Banking Law > Bank Activities

Banking Law > Regulatory Agencies

HN5 Even when it comes to banks, which are governed closely by federal and state law, cities retain the authority to determine such matters as where they may be sited, what access they must provide for drivers and walk-in patrons, how tall the buildings may be, etc.

COUNSEL: For City of Madison, DEFENDANT: Michael P May, City Attorney, Madison, WI USA.

JUDGES: BARBARA B. CRABB, District Judge.

OPINIONBY: BARBARA B. CRABB

OPINION: [*1060] ORDER

A hearing was held on plaintiff's motion for a preliminary injunction on August 5, 2004, before United States District Judge Barbara B. Crabb. Plaintiff The **Payday Loan** Store of Wisconsin appeared by Joseph Goode. Defendant City of Madison was represented by Catherine Rottier and Catherine Centrangolo.

Plaintiff is seeking to enjoin the enforcement of Madison General Ordinance § 23.08, entitled "Hours of Operation for **Payday Loan** Businesses" on the grounds that it violates plaintiff's rights to equal protection and due process, that it is unconstitutionally vague and that it is preempted by state law.

Under the Madison ordinance, **payday loan** operations such as plaintiff's must close between the hours of 9 pm and 6 am. Plaintiff contends that the ordinance violates its equal protection rights because it has no rational relation to a legitimate government interest. **[**2]** Plaintiff argues that the city council had no rational basis to distinguish between plaintiff's operation and ATM machines and other business operations that supply cash back as part of a business purchase; if the city's purpose is to reduce the amount of cash so as to reduce the number of robberies, it cannot single out **payday loan** operations from all the businesses that make

cash available at nighttime. Also, plaintiff argues, in saying that it wants to reduce noise and bright lights in residential neighborhoods, the city is discriminating against **payday loan** stores by making them close at night when it has no evidence that these stores generate more light or traffic than other similarly situated businesses.

In order to succeed on its equal protection claim, plaintiff must show that the city council had *no* rational basis on which to conclude that closing **payday loan** stores at night would reduce the opportunity for crime and reduce noise and bright lights in city neighborhoods. ^{HN1}

¶ "Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications **[**3]** will be set aside only if no grounds can be conceived to justify them." *Johnson v. Daley*, 339 F.3d 582, 586 (7th Cir. 2003) (citing *McGowan v. Maryland*, 366 U.S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961); *Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552, 91 L. Ed. 1093, 67 S. Ct. 910 (1947); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 55 L. Ed. 369, 31 S. Ct. 337 (1911)).

The standard for evaluating the ordinance is not whether the city's action was the best one it could have taken to reduce crime and keep neighborhoods quiet and free of bright lights; it is whether **[*1061]** the court can imagine any rational explanation for the council's action. If it can, the game is over. ^{HN2} ¶ Under our Constitution, the political branches of government get to decide what steps to take to advance governmental goals. Their decisions are not subject to review, except in unusual situations, generally involving fundamental rights or suspect classifications. "The power to decide, to be wrong as well as to be right on contestable issues, is both privilege and curse of democracy." *National Paint & Coatings v. City of Chicago*, 45 F.3d 1124 (7th Cir. 1995). **[**4]**

The city council could speculate rationally that people emerging from a **payday loan** store with large amounts of money in their pockets would be involved in crime, either as victims of robbery or as customers for illegal drugs or prostitution. Increased crime results in higher demands for police services and a deterioration of the surrounding neighborhood. The city might also speculate rationally that a **payday loan** store increases traffic to a particular area, making it noisier and disturbing the quiet of nearby residences. These are rational reasons for legislating.

^{HN3} ¶ Legislation does not violate the equal protection clause just because it does not address every aspect of a particular governmental goal. A legislature may legislate in small increments, taking "one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Johnson*, 339 F.3d at 586-587 (citing *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489, 99 L. Ed. 563, 75 S. Ct. 461 (1955)). Thus, it makes no difference whether plaintiff believes that users of ATM machines are as much targets for robbers as are users of **payday loan** stores or whether **[**5]** other commercial establishments in plaintiff's neighborhood are noisier, have brighter lighting or attract more nighttime traffic.

Plaintiff has advanced a claim of violation of due process, arguing that "due process requires that a statute or ordinance bear a rational connection to a legitimate government interest." *Plt's Br.*, dkt. # 4, at 28. So characterized, plaintiff's claim is no different from its claim of equal protection. Plaintiff does not claim to have been denied any procedural rights to which it was entitled. Because plaintiff is unable to show that it has an equal protection claim, it has no substantive due process claim. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470 n.12, 66 L. Ed. 2d 659, 101 S. Ct. 715 (1981).

Plaintiff's third challenge to the ordinance is that it is unconstitutionally vague. This challenge fails on a reading of the ordinance. Subsection (2) of § 23.08 ^{HN4} ¶ reads, "No **payday loan** business may be open between the hours of 9:00 p.m. and 6 a.m." Plaintiff argues that this

leaves some question whether it may continue to offer its non-**payday loan** services, such as its currency exchange, its notary service, etc. The answer is obvious. It may not **[**6]** offer those services at night within its **payday loan** store without violating the ordinance's requirement that it close its **payday loan** business between 9 and 6.

Finally, plaintiff argues that the ordinance is preempted by state laws regulating **payday loan** operations first, because it requires that no **payday loan** business can be sited within 5000 feet of an existing **payday loan** business and second, because the entire state scheme demonstrates an intent to preempt the field. Plaintiff has not shown that it has standing to challenge the ordinance on the first ground after it has received all of its zoning approvals for its current operation. Moreover, despite what plaintiff would argue, the ordinance does not operate to prohibit plaintiff or anyone else from operating **[*1062]** both a currency exchange and a **payday loan** operation in the same building. It merely prohibits the operation of two separate stores within 5000 feet of one another.

As for the argument that state law preempts the field of **payday loan** operations, plaintiff has not shown that the state has occupied the field of **payday loan** operations so completely that the city is preempted from legislating any aspect of the business. ^{HNS}Even **[**7]** when it comes to banks, which are governed closely by federal and state law, cities retain the authority to determine such matters as where they may be sited, what access they must provide for drivers and walk-in patrons, how tall the buildings may be, etc. Plaintiff has not shown any express conflict between the state laws regulating such matters as rates of interest, permissible charges, and disclosures and the city's regulation of the operating hours of **payday loan** transactions.

I conclude that plaintiff has shown no likelihood that it could prevail on the merits of its claim, I conclude also that it cannot show that it will suffer irreparable harm if an injunction does not issue (because the only harm it has suggested it would suffer is monetary and monetary harm is compensable), that the public interest would be served by the issuance of an injunction or that the harm plaintiff would suffer if the injunction is denied outweighs the harm defendant would suffer if the injunction issued.

ORDER

IT IS ORDERED that the motion for a preliminary injunction filed by plaintiff The **Payday Loan** Store of Wisconsin, Inc., seeking to enjoin the enforcement of Madison General Ordinance § **[**8]** 23.08 is DENIED.

Entered this 5th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB

District Judge




Source: [Command Searching](#) > [Federal & State Cases, Combined](#)

Terms: **payday loans** ([Edit Search](#) | [Suggest Terms for My Search](#))

View: Full

Date/Time: Wednesday, September 21, 2005 - 9:53 AM EDT

* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment

17.102.430 Regulations applying to check cashier and/or check cashing activity.

A. Additional Use Permit Criteria. A conditional use permit for any conditionally permitted check cashier and or check cashing activity as defined in Section 17.10.365 of the Oakland Planning Code may only be granted upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following performance standards:

1. That each check cashier and or check cashing activity be located not less than one thousand (1,000) feet from the nearest check cashier and check cashing activity within the city of Oakland.
2. That each check cashier and or check cashing activity be a minimum of five hundred (500) feet from the following activities, which on the date of an application for check cashier and/or check cashing activity had a vested right under California law to operate:
 - a. Community education civic activities,
 - b. State or federally chartered bank, savings association, credit union, or industrial loan company,
 - c. Community assembly civic activities, or
 - d. Alcoholic beverage sales commercial activities, excluding full service restaurants and alcoholic beverage sales commercial activities with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more. (Note that this precludes combining check cashing with alcoholic beverage sales commercial activities because alcoholic beverage sales commercial activities are always considered a primary activity and therefore subject to this distance standard).
3. That each check cashier and or check cashing activity meets the following performance standards and that these performance standards are included as standard conditions of approval. These performance standards may be amended or expanded by Staff and/or the Planning Commission as they are applied to individual locations and projects:
 - a. A lighting plan shall be reviewed and approved by the Zoning Administrator prior to issuing building permits and installed prior to establishing the activity. Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such that they can be identified fifty (50) feet away. Exterior lighting shall be designed so as not to cast glare offsite.
 - b. Storefronts shall have glass or transparent glazing in the windows and doors. No more than ten (10) percent of any window or door area shall be covered by signs, banners, or opaque coverings of any kind so that law enforcement personnel will have clear view of the entire public area in the premises from the public sidewalk.
 - c. Days and hours of operation shall be, no earlier than 7:00 AM nor later than 7:00 PM Monday through Saturday. Patrons shall be discouraged from loitering prior to, during and/or after hours. At least one no loitering sign with letters at least two inches tall shall be installed and maintained where it will be most visible

to pedestrians on each side of the building in which the activity is located including, but not limited to, street frontages and parking lots.

d. Graffiti shall be removed within seventy-two (72) hours of application.

e. No exterior pay telephones shall be permitted.

f. Litter shall be removed at least two times daily or as needed from in front of and for twenty (20) feet beyond the building along adjacent street(s). All "street furniture" such as crates or mattresses shall be removed daily or as needed.

g. The applicant shall post at least one certified uniformed security guard on duty at all times the business is open. The security guard shall patrol the interior and all exterior portions of the property under control of the owner or lessee including, but not limited to, parking lots and any open public spaces such as lobbies. (Ord. 12626 § 5, 2004)



PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: February 1, 2006

TO: Planning Commission
Albert Elias

FROM: Albert Elias AICP, Executive Secretary

SUBJECT: Land Use Code Amendment – Pay Day Lending Facilities

Issue – This is a public hearing before the Planning Commission for a *Land Use Code (LUC)* amendment intended to control the number of payday lending facilities operating within the City limits and to be consistent with similar ordinances adopted by Tucson area jurisdictions. Currently the *LUC* does not regulate payday lending facilities.

Recommendation – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation for adoption.

Background – The proposed *LUC* amendment, addressing payday lending facilities, was presented to the Planning Commission on October 5, 2005 and January 17, 2006. During January 17th study session, staff provided a brief overview of the *LUC* amendment proposed and informed the Commission of the ordinances recently adopted by Pima County and South Tucson. Staff also provided information about similar efforts currently underway by the cities of Phoenix and Glendale. In addition, the Commission requested specific information to be provided for their review.

Surrounding Jurisdictions

The Pima County Board of Supervisors adopted an ordinance on December 6, 2005 that requires a conditional use process for payday facilities. The businesses must be located in the CB-2 (General Business) zone with a separation of 1,320 feet between like businesses and 500 feet from residential zones. A hearing notification area of three hundred feet from the proposed property is also required. On October 24, 2005, the City of South Tucson also adopted an ordinance that limits the concentration of payday facilities by restricting the location to commercial zones and requiring a separation between facilities, as well as a separation between the payday facilities and residential zones.

In addition, the City of Glendale and Phoenix are currently considering ordinances modeled after the Pima County ordinance. The cities of Peoria and Tempe Arizona have had ordinances in place since 2002 and 2005 respectively.

Staff believes that without a similar ordinance, the City of Tucson would likely experience an increasing concentration of these facilities within the city limits due to the restrictive zoning

in surrounding jurisdictions. In addition, the Mayor and Council have directed staff to proceed with an amendment that is consistent with those adopted by Pima County and South Tucson.

Discussion of the Amendment - Staff is proposing an amendment to the *LUC* that is consistent with Pima County and South Tucson and similar to ordinances adopted by Tempe and Peoria to ensure a regional zoning approach.

The proposed *LUC* amendment is provided as Attachment A and includes the following:

- Definition of the use that includes check-cashing services, loans for payment of a percentage fee, deferred presentment and auto title lenders.
- Limits the use to the C-2 and C-3 (Commercial) zones subject to criteria.
- Approval through a special exception process.
- Subject to a separation between facilities of 1320 feet and 500 feet of separation between the facility and residential zones.

Requiring 1,320 feet of separation between facilities and 500 feet between facilities and residential zones reduces the amount of commercial property available for payday lending locations. Staff analyzed the remaining amount of commercial property in the C-1, C-2 and C-3 zones once the separation criteria were applied. The results were: approximately 300 acres or 3% remaining in C-3, 577 acres or 6% remaining in C-2 and 207 acres or 2% remaining in C-1. By restricting payday lending store locations to the C-2 and C-3 zones and requiring approval by a special exception process, the use will be limited but opportunity for locating within the City will be provided. In addition, the City's zoning will more closely match the ordinances adopted by Pima County and South Tucson. Staff believes that the special exception process would be effective particularly to provide an opportunity for public input and with the separation criteria is an effective measure in limiting the concentration of these facilities.

Additional Information – The information that was requested by the Commission at the January 17, 2006, study session is provided below. The Southwest Center for Economic Integrity and the City of Tucson's Intergovernmental Relations Department will make presentations during the public hearing.

- 1) *Data on criminal activity associated with payday lending facilities* – According to the Tucson Police Department a total of four crimes were committed at payday lending facilities in 2005; two burglaries and two robberies. No information is available regarding the affects of payday lending facilities on adjacent properties.
- 2) *Informed response from the legal department regarding this type of ordinance, particularly if this type of ordinance is discriminatory* – This is addressed by the City Attorney's Office. See Attachment B.

- 3) *The reasons for a separation from residential zones* – Requiring a separation between payday establishments and residential zones provides consistency with the ordinances adopted by Pima County and South Tucson as well as other jurisdictions in the Phoenix metropolitan area. The separation further limits the facility locations while allowing ample opportunities for new facilities.
- 4) *The results of inaction* - Staff believes that without a similar ordinance, the City of Tucson would likely experience an increasing concentration of these facilities within the city limits due to the restrictive zoning processes required in surrounding jurisdictions.
- 5) *Is the definition too broad? Does it apply to credit unions?* – This is addressed by the City Attorney’s Office. See Attachment B.
- 6) *What is being evaluated in a Special Exception process* – The LUC amendment proposed requires approval through a Special Exception process. This is an administrative procedure requiring a public hearing and approval by the Zoning Examiner in accordance with a Zoning Examiner Full Notice Procedure. The Zoning Examiner evaluates the request according to the following:
 - A. Meets the standards expressly applied by all adopted codes and regulations for that type of land use or for the Land Use Class applicable to the proposed use.
 - B. Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions.
 - C. Provides for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking.
 - D. Can be adequately and efficiently served by public facilities and services, such as water, stormwater drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the City or the Pima County Health Department.
 - E. Complies with the *General Plan* and any applicable subregional, area, or neighborhood plan.

In approving an application, the Development Services Department Director or Zoning Examiner may impose such reasonable and appropriate conditions and safeguards as may be necessary to ensure compliance with the criteria for approval. Such conditions and safeguards may also be imposed to reduce or minimize any potentially injurious effects on adjacent properties; the character of the neighborhood; or the health, safety, or general welfare of the community. Such conditions may include, but not be limited to:

- A. Setbacks for structures or activities greater than the minimum required by the applicable zoning district.

- B. Structural or vegetative screening greater than that required by the landscaping and screening regulations of this Chapter to buffer the surrounding land uses from the proposed use.
 - C. Limitations on the height, size, or illumination of signs more restrictive than the applicable requirements of the Tucson Sign Code.
 - D. Limitations on the conduct of the proposed use, such as, but not limited to, hours of operation, or use of loudspeakers or external lighting, as necessary to protect adjacent land uses.
 - E. Dedication of necessary right-of-way for streets, alleys, drainageways, and utilities.
- 7) *Contact any association of Payday lenders* – Staff contacted the Community Financial Services Association of America (CFSA), the national membership trade association that provides services exclusively to the Deferred Presentment industry. CFSA represent approximately two-thirds of this market segment with over 8,000 stores nationwide. According to CFSA representatives, local chapters of the association do not exist and they are unaware of any other similar organizations representing the industry. Information about payday lenders is available at the CFSA website at <http://www.cfsa.net/>
- 8) *Information about what the City will be asking the Legislature.* Staff will present this information from the City's Intergovernmental Relations Office during the public hearing.
- 9) *Information about the bill on Payday Lending before the Legislature* – As of January 13, 2006, four bills are proposed: SB1006, HB2498, HB2330, and HB2546. The last three have not been first read and assigned to committees. Each bill is summarized below.

SB1006 – Establishes requirements for deferred presentment loans to members of the U.S. military or their spouses. The provisions include: prohibiting deferred presentment licensees from garnishing wages, prohibits collection activity during a military member's deployment to combat or during active duty, prohibits a licensee from contacting the member's employer about a deferred presentment debt, prohibits deferred presentment transactions from occurring in locations that the member's commanding officer disallows, binds a licensee to terms of repayment agreement negotiated through a military counsel or third party, requires licensee to provide written statement to a member of the military or the member's spouse stating the prohibited practices, before engaging in the transaction.

HB2546 – Establishes a provision to verbally provide information on fees charged to all telephone inquiries. Establishes that prior agreements be closed for at least 24 hours before the written agreement is executed. Prohibits "roll over" of transactions. Requires the licensee to access a database to verify whether the customer has

outstanding agreements, etc., before entering into another deferred presentment agreement.

HB2498 – Includes the following provisions: 1) a copy of the agreement translated into Spanish shall be provided on request of the customer, 2) that State law allows only one deferred presentment transaction at a time, 3) the customer shall have no other outstanding deferred presentment agreement, 4) customers who are prevented by law from extending an unpaid deferred presentment agreement may enter into a repayment plan.

HB2330 – The bill restricts the accrual of late fees for at least two weeks following the final extension of the presentment or deposit of a check.

10) *Information about where such corporations are based* – Staff contacted the Arizona Department of Financial Institutions (formerly named the Arizona Department of Banking) responsible for regulating such establishments. Department representatives reported that many of the payday stores are branches of a larger corporation under the same name (i.e., Ace America’s Cash Express – a branch of Ace Cash Express, Inc.) or are established as Limited Liability Companies (i.e., 1 Stop Check Cashing \$ Payday & Title Loans, LLC, a branch of 1 Stop Check Cashing \$ Payday & Title Loans, LLC).

11) *Information about how such facilities affect property values, the quality of life in neighborhoods, and the extent to which this ordinance serves as mitigation* – As indicated by staff, the state legislation exempted short term loans from usury cap have been in place since 2000. Staff is unaware of any local land use studies associated with this particular business. To the extent the new facilities will be regulated and include notice to adjacent property owners as part of the special exception process, there will be greater opportunity to discuss and mitigate any negative impacts associated with this use. The process in and of itself encourages dialogue and assessment of the advantages and disadvantages of these facilities and an opportunity to understand the unique characteristics of each site.

Conclusion – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation to adopt the attached *Land Use Code* amendment.

AE: AS: GM:JI/s:/CodeRev/Payday/PCPH020106

Attachments:

A – Draft Amendment

B – Legal Memorandum



MEMORANDUM

Date: January 20, 2006

To: Planning Commission Board Members

From: Viola Romero-Wright
Senior Asst. City Atty.
X4221

Subject: Payday Lending

The Planning Commission asked that the following questions be addressed regarding the proposed Payday Lending Ordinance.

Issue No. 1: What types of businesses are included in the proposed "Non Chartered Financial Institution" definition?

Answer:

The proposed definition is as follows:

Non-Chartered Financial Institution. A use, other than state or federally chartered bank, credit union, mortgage lender or savings and loan association, that offers deferred presentment services as defined in A.R.S. Sec. 6-1251(3) or check cashing services and loans for payment of a percentage fee. Specifically included are check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, payday loan businesses that make loans upon assignment of wages received and auto title lenders who offer a short-term loan with a car title as a means to secure the loan.

The term "Non-chartered Financial Institution" covers payday lending services, cash checking services, and auto title lenders. The definition would have no impact on banks, credit unions or savings and loans that are under the charter of federal or state law. See Exhibit A.

Non-Chartered Financial Institutions
Deferred Presentment Services (Payday Lenders)
Check Cashing Services
Auto Title Lenders

Chartered Financial Institutions
Banks
Credit Unions
Mortgage Lenders
Saving and Loan Association

The definition used in Tucson's payday lending ordinance is modeled after ordinances adopted in Peoria, South Tucson and Pima County. However, other Arizona cities have adopted a more simplified version. For example, Tempe defines payday and auto lenders as follows:

Deferred Presentment Company means a business that engages in a transaction pursuant to a written agreement in which the licensee accepts a check and agrees to hold the check for at least five calendar days before presentment for payment of deposit. These services are commonly known as Pay Day Loans. Tempe ZDC § 7-105.

Auto title loan means a business that operates as a short-term loan company which provides a loan by holding title of an automobile. Tempe ZDC § 7-102.

Tempe prohibits that placement of a deferred presentment company 1,320 feet from the lot line of another deferred presentment company. Likewise, auto title loan businesses are prohibited from being 1,320 feet from the lot line of another auto title loan business.

Issue No. 2: Is this ordinance discriminatory? Can the treatment of payday lending services be legally justified?

Answer:

The decision to focus on one type of use, as opposed to other uses that may have adverse impacts, is a policy decision that is determined by Mayor and Council. Even though other uses may have adverse impacts, the local governing body may choose which use should be given regulating priority. The Planning Commission does not have policy-making authority. The Planning Commission's role is to hold public hearings and makes a recommendation to the legislative body on LUC text amendments.

To succeed on a claim that an ordinance is discriminatory or violates a plaintiff's equal protection rights, a plaintiff must show that the ordinance is not rationally related to any legitimate government goal. In Arizona, local governing bodies have wide latitude in establishing zoning classifications. A zoning classification will be declared unconstitutional if it appears to be arbitrary and unreasonable and without any substantial relation to the public health, safety and general welfare. Arizona courts defer to local judgment in determining the reasonableness of the regulation. *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P.2d 923 (1928). Furthermore, there is no requirement that the legislative decision be based upon evidence or empirical data; it may be based on rational speculation. In short, if the zoning regulation is reasonably related to the public health, safety and general welfare it should withstand legal challenge.

Issue No. 3: What are some of the criteria that neighbors could use to address the impacts of this use?

Answer:

Special Exception Land Uses are uses that are not allowed by right within a zone but are permitted if approved through a special exception land use procedure. LUC § 5.3.9. When a use is designated as a special exception land use, there is a recognition that the land use is acceptable but because of its nature and impact is not suitable for every location within a zone. The special exception process protects neighborhoods and prevents negative impacts on the community as a whole.

Therefore, the approval procedures provide objective criteria that insure that the special exception land use does not adversely affect adjacent land uses or surrounding neighborhoods. The Zoning Examiner's findings are identified in LUC § 5.3.9.3 A-E. The Zoning Examiner must find that "[t]he use does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions." LUC § 5.3.9.3 (B).

There are no Arizona cases that address payday lending services; however some identifiable adverse impacts were discussed in *Missouri Title Loans, Inc, v. City of St. Louis Board of Adjustment*, 62 S.W.3d 408 (App. 2002). In the Missouri case, the Board of Adjustment denied a conditional use permit for a title loan company. The Board found that the proposed use would be detrimental to public safety and general welfare and would reduce and impair property values because of additional noise, pollution, traffic (vehicle and pedestrian) and security problems (due to cash on the premises) which the business would generate. The Board's decision was based upon the testimony of nearby neighbors who complained that the title loan use would be similar to a payday loan business in that it would lower property values, create safety issues with the amount of cash on the premises, and it would invite undesirable business invites. The appeals court upheld the Board of Adjustment's decision finding it based upon competent and substantial evidence.

	Supervision		Insurance
Banks	Federal	Office of Comptroller of Currency (OCC)	Federal Deposit Insurance Corporation (FDIC)
	State	Department of Financial Institutions (DFI)	FDIC
Credit Unions	Federal	National Credit Union Administration (NCUA)	NCUSIF
	State	DFI	NCUSIF
Savings & Loans	Federal	Office of Thrift Supervision (OTS)	FDIC
	State	DFI	FDIC

Convenient Lending Task Force March 3, 2006

Zoning requirements for currency exchanges, payday loan agencies and title loan agencies.

Under the current City of Milwaukee Zoning Code, which became effective on October 1, 2002, currency exchanges, payday loan agencies and title loan agencies are permitted as **special uses** in certain zoning districts such as Commercial, Downtown, Institutional and Industrial Mixed Zoning Districts. They are **not permitted uses** in Residential Zoning Districts and certain Industrial Zoning Districts.

In order to deal with the proliferation of these types of facilities in certain areas of the City, the Common Council passed Ordinance 031614 on November 3, 2004. This Ordinance became effective on November 20, 2004, creating additional **special use** standards which apply to currency exchanges, payday loan agencies and title loan agencies as follows:

Additional special use standards: *No special use permit for a currency exchange, payday loan agency or title loan agency shall be granted by the board unless the board finds, in addition to the findings required by s. 295-311-2-d, that:*

- a. *No other currency exchange, payday loan agency or title loan agency is located within 1,500 feet of the proposed use.*
- b. *The proposed use will not be located within 150 feet of a single-family or 2-family residential zoning district.*

The reference to s.295-311-2-d relates to the four criteria the Board of Zoning Appeals needs to consider in its findings in order to grant any **special use**.

- d. *Findings. No special use permit shall be granted unless the board, after due notice to the parties of interest, finds that the following facts and conditions exist, and so indicates in the minutes of its proceedings or its decision:*
 - d-1. *Protection of Public Health, Safety and Welfare. The use will be designed, located and operated in a manner so that the public health, safety and welfare is protected.*
 - d-2. *Protection of Property. The use, value and enjoyment of other property in the neighborhood will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use.*
 - d-3. *Traffic and Pedestrian Safety. Adequate measures have been or will be taken to provide safe pedestrian and vehicular access.*

d-4. Consistency With Comprehensive Plan. The special use will be designed, located and operated in a manner consistent with all applicable elements of the city's comprehensive plan.

Under the current zoning code requirements, if the proposed currency exchange, payday loan agency or title loan agency is within 1,500 feet of another such facility or is within 150 feet of a single or two-family residence zoning district, the proposed facility is not permitted and a **use variance** is required from the Board of Zoning Appeals. This requirement applies to all new proposals as well as to those existing facilities seeking to renew a previous Board of Zoning Appeals special use approval.

Before granting a **use variance**, the Board of Zoning Appeals needs to consider the following criteria:

Findings. No variance shall be granted unless the board, after due notice to the parties of interest, finds that the following facts and conditions exist, and so indicates in the minutes of its proceedings or its decision:

- d-1. Preservation of Intent. A variance would not be inconsistent with the spirit, purpose and intent of the regulations for the district in which it is requested.*
- d-2. Exceptional Circumstances. Exceptional, extraordinary or unusual circumstances or conditions apply to the lot or intended use that do not apply generally to other properties or uses in the same district, and the variance is not of so general or recurrent nature to suggest amendment of the regulation.*
- d-3. Preservation of Property Rights. The variance is necessary for the preservation and enjoyment of the same substantial property rights which are possessed by other properties in the same district and same vicinity.*
- d-4. Absence of Detriment. The variance will not create substantial detriment to adjacent property, and will not materially impair or be contrary to the spirit, purpose and intent of this chapter, or the public interest.*
- d-6. Hardship; Use Variance. The alleged difficulty or hardship is not self-imposed, nor is it based solely on economic grounds.*

Summary of cases considered by BOZA under the provisions of Ordinance 031614 (November 20, 2004 to March 2, 2006).

1. Currently there are two (2) currency exchange facilities pending before the Board of Zoning Appeals. Both of these cases are existing special use facilities seeking to continue operation, but now require **use variances** under the current zoning code.
2. Since November 20, 2004, the board granted a change of operator for five (5) existing **special use** facilities.
3. The board renewed two (2) existing **special use** facilities.
4. Six (6) new proposals for facilities requiring **special uses** were denied or dismissed by the board.
5. One (1) existing facility (formerly a special use facility) was granted a **use variance** under the new ordinance by the board.
6. Eight (8) existing or proposed facilities requiring **use variances** were denied or dismissed by the board.
7. **No new facilities** (use variance of special use) have been approved by the board since the effective date of Ordinance 031614. In addition, it appears that no new facilities have been approved by the board since the ordinance was introduced to the Common Council on March 2, 2004.

July 19, 2005

Supervision and Regulation
Applications Division
Federal Reserve Bank of Chicago
230 South LaSalle St.
Chicago, IL 60604-1413

To Whom It May Concern:

I am writing on behalf of the Metropolitan Milwaukee Fair Housing Council (MMFHC) and several of our housing and community development partner groups in Milwaukee County to comment on the proposed acquisition of State Financial Bank, N.A. by Associated Bank, N.A. headquartered in Green Bay, Wisconsin.

MMFHC's Community and Economic Development Program partners with community organizations, developers, lenders, and policy makers to increase fair lending and fair growth, and to promote racial and economic integration and housing choice. MMFHC has gathered input for this comment letter from our undersigned community partners, and other community members who serve a wide spectrum of low- and moderate-income Milwaukee area communities. The commenters are familiar with Associated Bank's and State Financial Bank's work in the community, having worked directly with one or both banks, or having knowledge of their products and policies via interaction with the banks' customers. We have also partnered with the National Community Reinvestment Coalition (NCRC), which helped us analyze the lending and branching patterns of both banks within the Milwaukee/Waukesha MSA.

While there is room for improvement by both banks, our main concern is that the acquisition threatens State Financial's record of mortgage lending to traditionally underserved communities. Lending issues, as well as concerns about service/branching, and investments are discussed below.

SERVICE / BRANCHING The current branching patterns of both banks are a concern. Only one of State Financial's twelve branches is in a census tract with a minority population over 80%, and only two of Associated Bank's 43 branches in the Milwaukee/Waukesha MSA are located in census tracts with minority populations of over 80%. Of the current 55 combined Milwaukee/Waukesha branches of the two banks, 67% are located in census tracts with minority populations of less than 10%, and 93% are located in census tracts with minority populations of less than 49%.

Looking at the income levels of the residents of census tracts where these banks have branches, of the banks' combined 55 branches, only two are located in low-income tracts and

eight are in moderate-income tracts. The OCC's own 2003 CRA evaluation of Associated Bank states that, "The percentage of branches in low-income geographies was significantly below the percentage of the population within these geographies."

These branching patterns are troubling because the absence of bank branches and consumer-friendly products and services in these communities increases the likelihood that residents will turn to fringe financial institutions that charge exorbitant rates and strip low-income, low-wealth communities of their already-stretched resources. The cost to access "services" offered by the fringe financial institutions is routinely excessive, the fact that no savings products are offered undermines incentive and the ability to build assets, and many of the "services" are worse than no products at all, building a cycle of debt.

INVESTMENTS We are also concerned about both banks' investments in low- and moderate-income communities – investments that play a crucial role in the work of individuals and organizations undertaking community and economic development activities. Investments in affordable housing and economic development are important to our goals of increasing housing choice and building wealth for families and communities, goals which also serve the banks well by opening up new markets for bank lending and services. At the time of their most recent CRA evaluations, both banks obviously had room for improvement in the arena of community development investments.

Despite a "high satisfactory" investment test score on its 2003 CRA exam, Associated demonstrated little understanding of innovative ways to partner with nonprofit organizations or for-profit businesses serving and developing low- and moderate-income communities. The CRA exam shows that the only qualified investments in the Milwaukee Assessment Area were "\$6 million in qualified mortgage-backed securities where the underlying mortgages were made to low- and moderate-income individuals in its Assessment Area. Additionally, donations and grants were provided to organizations with a community development focus. Associated contributed to 3 different community development organizations totaling \$32 thousand during the evaluation period."

State Financial received a "low satisfactory" investment test score on its 2002 CRA exam, but at least demonstrated a greater knowledge of the for-profit and nonprofit entities working to serve and improve low- and moderate-income communities. The OCC exam states, "The bank provided qualified investments within its AA through cash contributions, grants, and purchases of securities. Qualifying investments totaled almost \$558 thousand. Specific noteworthy investments included:

- \$100,000 in common stock at Legacy Bancorporation, a minority-owned bank holding company and certified Community Development Financial Institution (CDFI) of the US Treasury Department. Through its subsidiary, Legacy Bank, this CDFI provides development banking services through traditional and non-traditional bank products and services. It services the central city of Milwaukee.
- \$180,000 grant to Local Initiatives Support Corporation (LISC). LISC is a non-profit national organization that acts as an intermediary between non-profit community development corporations involved in restoring the physical and social foundations at various levels of government that have a vested interest in community re-development.

- \$250,000 grant to the Community Bankers of Wisconsin CapVest Fund, LP. CapVest is licensed by the Small Business Administration (SBA) to operate as a small business investment company (SBIC). The primary objective is to increase financing to "small businesses."

Additional donations and grants were provided to organizations with a community development focus. SFB contributed to 15 different community development organizations totaling \$28 thousand during the evaluation period." Investments like these demonstrate State Financial's direct relationships with, and understanding of institutions that have the ability, contacts and systems to achieve positive results for the community. State Financial's staff took the time to review the projects that they funded with their grants, gaining a better understanding of a wide swath of community development organizations, the needs of the community the organizations serve, and their capacity to foster community-based revitalization.

LENDING While we have concerns about their lack of branches and products serving low- and moderate-income communities and communities of color, and their past performance on the investment test, as a relatively small independent institution, NCRC's analysis of the banks' 2003 lending patterns shows that State Financial Bank has provided strong leadership within the mortgage arena. However, Associated Bank's 2003 record in the Milwaukee/Waukesha MSA tends to be on par with all lenders (or a bit worse on some indicators), in terms of the percentage of loans offered to traditionally underserved borrowers and communities. Associated makes many more loans than State Financial, but State Financial is definitely targeting their lending to underserved populations to a greater extent than Associated.

NCRC's analysis of Milwaukee/Waukesha MSA home purchase, refinance, and home improvement lending considered together shows that all lenders, as a group, made about 10% of their home loans in substantially minority census tracts (more than 50% minority). State Financial made 48.5% of its 171 loans in substantially minority tracts during 2003. Associated Bank and its mortgage company issued 7.6% of their 5,421 loans in substantially minority tracts. State Financial issued 21% of its loans to African American borrowers; all lenders issued 4.8%; and Associated made 3.95% of its loans to African Americans during 2003.

All lenders, as a group, made 12% of their loans in low- and moderate-income (LMI) tracts (LMI tracts as defined by CRA – up to 80% of the area's median income) during 2003. State Financial Bank issued 59 % of their loans in LMI tracts while Associated made 9.8 % of their loans in LMI tracts.

All lenders, as a group, made about 25% of their loans to LMI borrowers. Associated issued 27.8% of its loans to this group, while State Financial made 29%.

The other noteworthy aspect of State Financial's performance is the relatively high level of multi-family lending and home purchase lending. Multi-family lending responds to the needs for affordable rental housing while home purchase lending is typically a bit more difficult as borrowers purchasing homes tend to have less wealth than existing homeowners that are refinancing.

The pattern repeats when considering home purchase lending only. State Financial tends to exceed its peers while Associated is on par with them or lagging a bit. State Financial issued 38% of its 44 home purchase loans in substantially minority census tracts during 2003. All lenders, as a group, made 15% and Associated issued 9% in minority tracts.

State Financial made 59% of its loans in LMI tracts; all lenders made 18%, while Associated issued about 1 % of its 543 home purchase loans in LMI tracts. State Financial made 24% of its loans to LMI borrowers; Associated issued 22%; all lenders, as a group, made 30%.

All lenders, as a group, made 5% of their small business loans in low--income tracts, and 11% in moderate-income tracts. State Financial Bank made 9% in low--income tracts, and 19% in moderate-income tracts. State Financial issued 602 small business loans overall. Associated made 4.7% of its small business loans in low--income tracts, and 9% in moderate-income tracts.

The prospect of State Financial's acquisition by Associated Bank is troubling. State Financial's 2003 lending record shows that despite its lack of branches in underserved areas, bank personnel have figured out how to effectively reach out to those communities and offer loan products that fit their needs. MMFHC and its partners are very concerned that Associated Bank, which has not been very visible in Milwaukee's community development efforts and has a relatively poor record of lending to underserved populations, will impose its own policies and practices, disregarding the unique relationships, practices and products that State Financial has developed.

Associated Bank should not be allowed to acquire State Financial Bank unless it commits to the combined institution undertaking the following activities in the Milwaukee assessment area:

- Continue to offer innovative loan products, and employ community-savvy, bi-lingual or multi-lingual loan officers who will work with borrowers to achieve the best fit for each one's specific needs;
- Offer loans that work in conjunction with state and federal 1st time homebuyer and rehab grants;
- Offer portfolio loans and in-house underwriting for "community lending"
- Ensure automatic senior management credit review, which is triggered if it looks like a denial will happen;
- Increase the percentage of home purchase and refinance loans to minority populations, LMI borrowers and borrowers in LMI census tracts to at least State Financial's 2003 level – or, in cases where all lenders as a group have a better record, meet or exceed the "all lenders" percentage;
- Increase the percentage of small business loans to borrowers in low- and moderate-income tracts to at least to at least State Financial's 2003 level;
- Continue to offer free checking with no minimum balances, and participate in the Get Checking program;
- Establish at least one new branch within primarily a African American or Latino census tract for every new branch in a non-minority tract;
- Identify 10 new organizational relationships intended to promote increased lending, services and investment in low- and moderate-income communities and communities of color;

- Meet with MMFHC's CRA Caucus within the first three months after the acquisition, to introduce key partners, and at least 1-2 times per year thereafter, to collaborate on product development and refinement, working to better serve underserved communities;
- Provide support for nonprofits providing homebuyer education and counseling, not only for pre-purchase, but for post-purchase and default counseling;
- Increase grants to nonprofit groups and investments in their housing and community economic development projects;
- With input from community partners, develop a strategic plan for how to best serve the needs of low- and moderate-income communities in the Milwaukee assessment area. This strategic plan should include: a marketing campaign for the institution's loans and low- cost checking and saving accounts; outreach to community-based organizations to identify lending, service, and investment needs; and lending goals by product, including home purchase, refinance, and home improvement/home equity loans, and installment loans including auto and debt consolidation.

Our group's expectation is that overall, the combined number of loans, services, and investments should significantly increase, given the increased asset size and resources of the new company that Associated Bank would become if the acquisition were approved. The CRA Caucus will be monitoring the bank's activities and HMDA data to test for achievement of these proposed commitments.

Thank you for your attention to this important matter. Please contact me if you have any questions or require further information.

Sincerely,

Bethany Sanchez
Metro Milwaukee Fair Housing Council

Kein Burton
West End Development Corporation

Ray Schmidt
Select Milwaukee

ReDonna Rodgers
Center for Teaching Entrepreneurship

Leigh Kunde and Todd Clausen
Nonprofit Center of Milwaukee

David Boucher
ACTS Community Development
Corporation

Brian Peters
IndependenceFirst

Emmett Gross
ACORN Housing

January 27, 2006

Supervision and Regulation
Applications Division,
Federal Reserve Bank of Chicago
230 South LaSalle St.
Chicago, IL 60604-1413

To Whom It May Concern:

I am writing on behalf of the Metropolitan Milwaukee Fair Housing Council (MMFHC) and our housing and community development partner groups in Milwaukee County to comment on the proposed merger M&I Marshall and Ilsley Bank, Milwaukee, with Gold Bank of Kansas City.

A nonprofit, membership-based organization, MMFHC's mission is to promote fair housing throughout Wisconsin by guaranteeing all people equal access to housing opportunities by creating and maintaining racially and economically integrated housing patterns. MMFHC's Community and Economic Development Program partners with community organizations, developers, lenders, and policy makers to increase fair lending and fair growth, promoting racial and economic integration.

MMFHC has gathered input for this comment letter from our community partners, who serve a wide spectrum of low- and moderate-income Milwaukee area communities. These partners are familiar with M&I's work in the community, many having worked directly with bank personnel on lending or community development policy issues, and/or have knowledge of their products and policies via interaction with the banks' customers. We have also partnered with the National Community Reinvestment Coalition (NCRC), which helped us analyze the lending patterns of both banks within the Milwaukee/Waukesha MSA and in Kansas City; and attempted to analyze the branching patterns of the two institutions. Overall, M&I is one of the most visible and community-friendly banking partners we have in Milwaukee.

SERVICE / BRANCHING NCRC's analysts found a discrepancy between the number of branches reported in the recent M&I CRA exam, CRA Wiz and FDIC web-site. The FDIC website shows that in 2002 M&I had 53 branches in Milwaukee MSA, 203 branches in 2003 and 2004, and 60 branches in 2005. CRA Wiz, using 2003 data, reports 51 branches, while the CRA exam shows 61 branches. We would like to do a branching analysis, but hesitate because of the wide variations in the number of branches.

We do, however, have personal knowledge of M&I's active presence in some of Milwaukee's lowest income communities, where their existence is very welcome. These branching patterns are important because the absence of Bank branches and consumer-friendly products and services in these communities increases the likelihood that residents will turn to fringe financial

institutions that charge exorbitant rates and strip low-income, low-wealth communities of their already-stretched resources.

In the process of gathering information from our community partners, we were troubled to hear that an African American woman we work with went to M&I to open a savings account, and was turned down because her credit was not good enough.

On the plus side, it should be noted that staff from the M&I CDC and from bank branches have in the past, and continue to play important leadership roles in housing, community, and economic development organizations and issues. Some of their activities have been participation in two of the Metro Milwaukee Fair Housing Council's Strategies to Overcome Predator Practices workgroups, serving on the LISC Local Advisory Committee, chairing a committee for the Federal Reserve's HOPS initiative, and working with the UW-Extension's Home Ownership Counseling and Education consortium.

Efforts like these are important venues for M&I to maintain and increase its visibility and credibility in the community. Given its market share in Milwaukee, we ask that M&I's presence and participation in the work of nonprofit housing, community and economic development organizations be increased dramatically as they grow even larger.

INVESTMENTS While M&I received an "outstanding" rating on its 2004 evaluation, we would like to see them expand their investments, and use their experience and knowledge of the community to create innovative ways to partner with nonprofit organizations or for-profit businesses serving and developing low- and moderate-income communities. The M&I CDC's investments in low- and moderate-income communities have primarily been in equity investments in affordable housing and historic preservation.

In 2004, at its Milwaukee Awards for Neighborhood Development Innovation ("MANDI Awards"), the Local Initiatives Support Corporation (LISC) named M&I Community Development Corporation the winner of the "Vision Award." The CDC was cited by the MANDI selection committee as taking "the additional time needed to provide specialized underwriting to complex projects that involve federal tax credits and numerous layers of funding."

The MANDI script continued, "Since its creation, the CDC has closed on more than 22 million dollars in investments. A typical project is Hawley Ridge Apartments, a 58-unit apartment building designed for people with visual impairments, built by the Badger Association for the Blind and Visually Impaired. In 2002, the CDC took the bank's 70-year relationship with the Badger Association to a whole new level, by investing over three million dollars of equity in this affordable housing project. M&I CDC is also a lender for the Housing Authority's Townhomes at Carver Park, which has transformed the former Lapham Park housing development into a mixed income neighborhood. ... Recently M&I CDC took an active role in the development of Garfield Place, a new 16-home single-family development in the Midtown neighborhood, on 27th and Garfield. M&I CDC stepped up to help secure very favorable financing for Garfield Place's model unit. As a result, the Midtown Neighborhood Association was able to structure a financing package that will complete this neighborhood-transforming development."

Milwaukee's affordable housing developers are hungry for out-of-the-box partnerships with banks like M&I. Tax credits are important, but there are other safe, creative investments that

can play a crucial role in the work of individuals and organizations undertaking community and economic development activities. Investments in affordable housing and economic development are important to our goals of increasing housing choice and building wealth for families and communities, goals which also serve the banks well by opening up new markets for bank lending and services.

LENDING As members of the National Community Reinvestment Coalition (NCRC), we utilized NCRC's staff to provide an analysis of the home and small business lending of M&I Bank and Gold Bank in Milwaukee and Kansas City.

When looking at **all Single-Family Lending (ASF)** - home purchase, home improvement and refinance, as a group, NCRC's analysis found that in the Milwaukee MSA, M&I's prime ASF lending lags their peers by one or two percentage points in four of the five categories of borrowers in Milwaukee. M&I prime ASF lending is particularly weak in lending to African-Americans—3.3% of M&I loans versus 6.2% for all lenders, as a group. M&I subprime ASF lending does not appear to target underserved populations because they tend to be behind their subprime peers in terms of the percent of loans to various borrower groups. Gold Bank did not make any prime or subprime loans in Milwaukee.

In Kansas City, both M&I and Gold perform quite poorly in prime ASF lending to low- and moderate-income (LMI) borrowers. All lenders, as a group, made 37% of their prime loans to LMI borrowers, while M&I and Gold Banks made only 25.9% and 29.9% of their prime loans to LMI borrowers. M&I and Gold Banks' subprime ASF lending does not appear to target underserved populations for similar reasons, as in Milwaukee.

When looking at **Home Purchase Lending** - home purchase loans only, the analysis showed that M&I prime home purchase lending lags their peers in Milwaukee by three percentage points in percent of loans to African-Americans. No conclusions could be drawn about M&I's subprime home purchase lending due to the small number of overall subprime loans they made in Milwaukee. No conclusions could be drawn about M&I's prime or subprime home purchase lending due to the small number of home purchase loans issued in Kansas City.

On the plus side, a few indicators illustrate how M&I Bank exceeds the **Small Business Lending** performance of its peers in the Milwaukee-Waukesha-West Allis WI MSA in 2004.

- M&I Bank made 18.57% of all its small business loans in low- and moderate-income (LMI) tracts. In contrast, all lenders as a group made 16.28% of their small business loans in LMI tracts, a difference of 2.29 percentage points.
- M&I Bank made 16.32% of its small business loans to businesses that are both less than \$1 million in revenue and also in LMI tracts. In contrast, all lenders as a group made 14.74% of small business loans to this type of business, a difference of 1.58%.

Forty eight percent of M&I Bank's small business loans were to businesses less than \$1 million in revenue. In contrast, 34.24% of all lenders' small business loans were to businesses less than \$1 million in revenue, a difference of 13.77 percentage points.

Anecdotally, the ACTS CDC considers M&I to be its strongest prime rate lending partner. We have also heard from other homeowner counselors that while "M&I's staff is very professional and helpful, they are extremely limited in what they will offer to delinquent borrowers. The only options they presented were a full reinstatement or a repayment plan with half of the arrearage due up front and the remainder added to the regular mortgage payment for a period of six months. They claim they can also do a skip pay, where they will allow the borrower to miss a payment in a situation where they are starting a new job and haven't received a paycheck yet or have some other temporary hardship, but I have never seen them actually use it."

FAIR HOUSING/FAIR LENDING While we have certainly not uncovered all instances of predatory lending in the Milwaukee area, we have received hundreds of complaints about predatory home lending, and none of them have involved M&I loans.

M&I should not be allowed to merge with or acquire Gold Bank unless it commits to the combined institution undertaking the following activities in the Milwaukee assessment area:

- Continue to offer innovative loan products, and employ community-savvy, bi-lingual or multi-lingual loan officers who will work with borrowers to achieve the best fit for each one's specific needs;
- Offer loans that work in conjunction with state and federal 1st time homebuyer and rehab grants;
- Offer portfolio loans and in-house underwriting for "community lending"
- Ensure automatic senior management credit review, which is triggered if it looks like a denial will happen;
- Increase the percentage of home purchase and refinance loans to minority populations, LMI borrowers and borrowers in LMI census tracts, to a point where they meet or exceed the "all lenders" percentage;
- Offer free checking with no minimum balances, and participate in the Get Checking program;
- Establish at least one new branch within primarily a African American or Latino census tract for every new branch in a non-minority tract;
- Meet with MMFHC's CRA Caucus within the first three months after the merger, to introduce key partners, and at least 1-2 times per year thereafter, to collaborate on product development and refinement, working to better serve underserved communities;
- Provide support for nonprofits providing homebuyer education and counseling, not only for pre-purchase, but for post-purchase and default counseling;
- Increase grants to nonprofit groups and investments in their housing and community economic development projects;
- With input from community partners, develop a strategic plan for how to best serve the needs of low- and moderate-income communities in the Milwaukee assessment area. This strategic plan should include: a marketing campaign for the institution's loans and low- cost checking and saving accounts; outreach to community-based organizations to identify lending, service, and investment needs; and lending goals by product, including home purchase, refinance, and home improvement/home equity loans, and installment loans including auto and debt consolidation.

January 27, 2006
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Our group's expectation is that overall, the combined number of loans, services, and investments should increase, given the increased asset size and resources of the new company that M&I Marshall and Ilsley Bank will become if the merger is approved. The CRA Caucus will be monitoring the bank's activities and HMDA data to test for achievement of these proposed commitments.

We look forward to helping M&I become a stronger leader among its peers, even more sensitive to the credit and lending needs of the LMI communities we serve, and to forge even stronger partnerships with them going forward.

Thank you for your attention to this important matter. Please contact me if you have any questions or require further information.

Sincerely,

Bethany Sanchez
Community and Economic Development Director

By way of an update to the Task Force members, I can report the following which I obtained for the DFI

1. Regulation of payday lenders is limited to the state - the only practical way a local municipality can control a payday lender is through zoning. The only other municipality that the DFI is aware of doing the same thing as we are in Milwaukee is Superior - many of the payday lenders in Minnesota are coming across the border as the laws in Wisconsin are less restrictive than in Minnesota.
2. DFI is not proposing any legislation at this time to "toughen" up the Wisconsin laws. In all probability, changes in the law will need to come from "grass roots efforts" demonstrating a need for a change. Any bill introduced into the legislature would need to be introduced by a mover and shaker in the assembly and the senate. The legislation would need an effective lobbyist.
3. Probably the items of biggest concerns and the areas needing the most emphasis for legislation would be a limitation on the number of roll overs and some form of education.
4. The payday loan trade association is well organized and supported by its members. However, 80% of the payday lenders in Wisconsin are from out of state.
5. No information is available from the DFI as the information contained in the annual filings of the payday lenders is considered confidential.

Doesn't look like much is going to happen at the state level.

Chris

Date: 2/20/06

To: Convenient Lending Task Force

From: Dorothy K Dean

In discussing effects of payday lending on individuals, families and neighborhoods, I found a functioning program in Appleton. It appears to be the only one of its kind in the country and it is certainly replicable. There are two attachments to this memo which explain more about the program. I will summarize here:

I spoke with Ken Eiden who is the director of Prospera Credit Union in Appleton which serves the 4 county area and has branch offices in Appleton, Neenah, Menasha, and Rhinelander. For the past year and a half credit some credit unions in the state have been participating in a program called REAL Solutions (see two attachments). The goal of the program is to develop less expensive alternatives to predatory lenders. This program designates payday lenders as one of the targeted predatory lenders.

The Filene Research Institute in Madison was involved from the first in the process of developing this program. This new, unique program worked to get services to under served populations in the state. The Hispanic population, in particular, was identified for outreach and services. One service that credit unions can offer at less expense to their members is wire transfers to Mexico.

People learn about the program when they visit a VITA site (Volunteer Income Tax Assistance - in Milwaukee this is coordinated by the Social Development Commission). In Milwaukee there are 2 credit unions which have VITA sites. Credit union involvement in this program helps the consumer several ways, including not paying They are First Service Credit Union and Christ the King Credit Union. Landmark Credit Union, with headquarters in New Berlin, but with offices in Milwaukee County is also part of the REAL Solutions program. This program was rolled out in October 2004, at Brewery Credit Union on King Drive in Milwaukee.

It is the second program that targets payday lenders more seriously. That program is run by Prospera in the 4-county Appleton area. Ken Eiden, the director of Prospera, serves on the Boards of Directors of Goodwill and FISC, a non-profit credit counseling agency. When Goodwill opened a new facility, a branch of Prospera was included in the facility. Beginning last June, Prospera started making small loans in the \$200 to \$750 range at that location. A person can become a member by opening a \$5 account with the credit union on the day they apply for the loan.

These loans are characterized by:

- No credit check
- Borrower must have an account with the credit union for as little as \$5
- Borrower must live or work in the 4 county area served by Prospera
- Borrower pays \$9.90 for each small loan

- ♦ When/If the borrower comes in for a 3rd loan they receive a certificate for a free credit counseling session with FISC
- ♦ If the borrower uses the certificate their next small loan has no charge

\$6 of the \$9.90 charge is used for "charge offs". The credit union expects the program to break even. It will not likely ever make a profit. However, the credit union believes it is a very good way to build their customer base and provide a real service to benefit consumers.

Since June, 2004, over 1,000 of these small loans have been made with no advertising. The advertising campaign will begin this March.

There is no complete data on the population served but preliminary data shows that 50% to 55% of the borrowers are women and a high percentage of those borrowers are single parents. About 15% of the loans are made to SSI recipients.

A huge benefit of partnering with Goodwill is that Goodwill has connections with 22 agencies in the community that can provide other kinds of help for borrowers. For example, if an SSI recipient comes in for a loan to pay for medication or medical treatment, they are directed to a free clinic for service. Most often they do not need the loan. Credit Union staff have been receiving training to educate them about what community organizations have to offer.

This program is definitely replicable in Milwaukee. Certainly the credit unions that are also VITA sites here are a good place to start. The Wisconsin Credit Union League will also provide some assistance. According to Ken Eiden, the director of Prospera, the local payday lenders are reducing some of their rates. Not enough to really compete with the credit union program but it is an interesting development.

Diana Morgan - One More Reason to Pursue Alternate Models in Payday Lending

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Subject: One More Reason to Pursue Alternate Models in Payday Lending
CC: <mmcgee@milwaukee.gov>

I don't remember whether I had forwarded this to everyone or not. Sorry if it's a duplicate.

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From: nrcnewscenter-bounces@ncrc.org on behalf of NCRC News [nrcnews@ncrc.org]
Sent: Tuesday, February 28, 2006 8:39 AM
To: nrcnewscenter@ncrc.org
Subject: [Nrcnewscenter] AB: One More Reason to Pursue Alternative Models in Payday

One More Reason to Pursue Alternate Models in Payday Lending

American Banker □ Tuesday, February 28, 2006
 By [Erick Bergquist](#)

The recent regulatory crackdown of bank involvement in payday lending has increased the impetus for their nonbank partners to pursue alternative models.

Two payday specialists that originate loans for First Bank of Delaware said the revenue they will lose when it stops funding such loans will be offset by their "credit services organization" businesses in Texas. These companies are also pinning their hopes on "enabling" legislation being considered in places like Pennsylvania (one of the states where the lenders worked with First Bank) that would let them fund payday loans themselves.

Last week First Bank said it was quitting the business under pressure from the Federal Deposit Insurance Corp. Nearly a year ago the agency had issued guidelines that made payday lending less profitable for banks and their partners by limiting the number of loans a borrower could take out each year.

Henry J. Coffey, an analyst with Ferris, Baker Watts Inc. in Baltimore, said that when compared with the "draconian and shocking" guidelines, the FDIC's pressure on First Bank "is not life-threatening by any means" for payday firms.

However, the pressure "reinforced the message that regulators on the federal level don't want their banks involved in subprime."

Last month Ace Cash Express Inc. of Irving, Tex., announced plans to broker payday loans from nonbanks as a credit services organization in its home state. Ace's president and chief executive, Jay Shipowitz, said in a conference call last week, "We fully expect the CSO fees ... to offset the loss of all fees" it gets in Texas, Arkansas, and Pennsylvania as an agent for First Bank and for Republic Bank and Trust of Louisville.

As a credit services organization, Ace will charge fees of \$20 for every \$100 borrowed, rather than the roughly \$17 it gets as a bank agent.

"We're exploring our alternatives in Arkansas, but worst-case there, we would not have a loan product there," Mr. Shipowitz said. Ace has 18 stores in Arkansas, 43 in Pennsylvania, and 382 in Texas.

Don Gayhardt, the president of Dollar Financial Corp. of Berwyn, Pa., said its six stores in Texas will switch to the credit services organization model. Doing so will offset "a decent amount" of the revenue his company will lose when it has to stop payday lending in the state.

Also Dollar's 16 Pennsylvania stores offer a number of products and services, including money transfers and debit cards, and do not generate as many payday loans as its other stores, Mr. Gayhardt said.

The industry-backed enabling legislation has passed Pennsylvania's House and is now being discussed in the state's Senate, he said.

Only one payday lender's stock was downgraded last week, for reasons unrelated to the loss of First Bank as a partner.

Robert J. Dodd, an analyst at Regions Financial Corp.'s Morgan Keegan & Co., downgraded Ace's stock Feb. 22 to "market perform," from "outperform," because of the company's disclosure that its check-cashing business was softer than expected for the tax check season.

Mr. Dodd agreed with Ace that the "risk to revenue and earnings from loan product changes in Pennsylvania and Arkansas is more than offset by ... CSO pricing."

In addition, no lender has to leave the Pennsylvania and Arkansas payday markets immediately. First Bank said it would meet with the FDIC in the next 30 days to hash out plans for an alternative installment loan product, which Dollar sells in Pennsylvania.

Mr. Coffey said that last week, the FDIC effectively "killed the installment loan product" that bank-funded payday lenders hoped to offer in some states, particularly California.

However, Mr. Gayhardt said Dollar could fund its installment loans if it lost its agency relationships. The company offers such loans in half of its 190 stores nationwide and plans to start offering them in the rest, he said.

In a SEC filing Wednesday, CompuCredit Corp. said that the lender for whom it has marketed and serviced payday loans in four states - Arkansas, Florida, North Carolina, and West Virginia - has been asked by the FDIC "not to issue" certain payday loans.

CompuCredit said it "either will adapt its business model ... or withdraw from those markets."

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Diana Morgan - Experts Online: Asset-Building for Underbanked Markets, March 9

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Date: 3/1/2006 5:12 PM
Subject: Experts Online: Asset-Building for Underbanked Markets, March 9

Here is an opportunity to learn. Note that MKE's own Margaret Henningson is one of the experts who will be offering advice during the online training session.

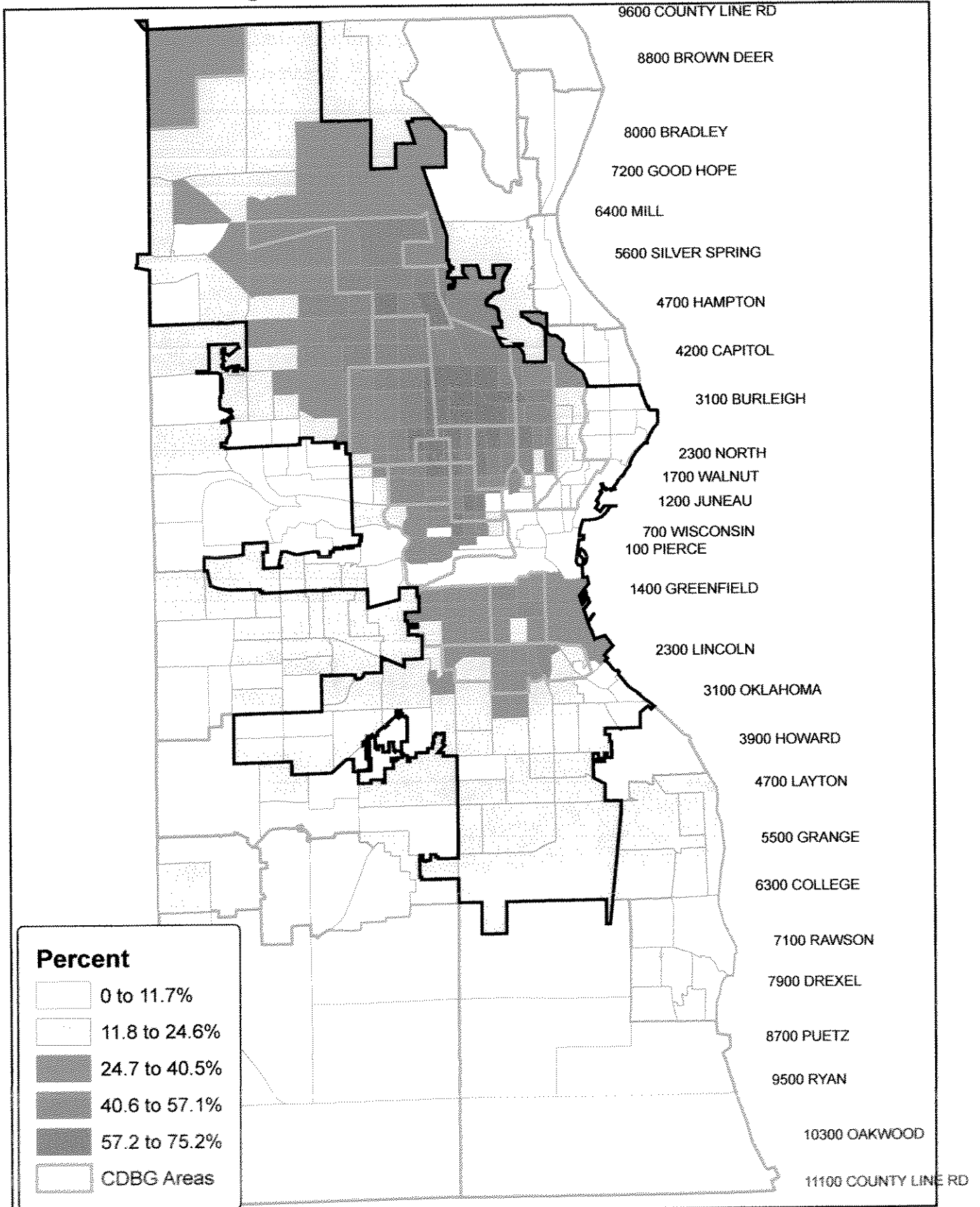
Bethany

Experts Online: Asset-Building for Underbanked Markets, March 9

On Thursday, March 9 at 2 p.m. ET, KnowledgePlex® and The Center for Financial Services Innovation will present the first of four online chats on strategies for reaching underbanked markets. The series, which will run from March through June, focuses on *From the Margins to the Mainstream: A Guide to Building Products and Strategies for Underbanked Markets*, a strategy guide for banks and credit unions by the National Community Investment Fund's Retail Financial Services Initiative. An estimated 20 million U.S. households underutilize financial services opportunities and thus lack the means to attain financial stability and prosperity. In the series' first chat, **Joy Cousminer** of Bethex Federal Credit Union, **Margaret Henningson** of Legacy Bank, and **Tom Lilley** of Central Bank of Kansas City will discuss the value of check-cashing partnerships, prepaid cards, and second-chance accounts as viable acquisition and asset-building strategies. ShoreBank's Ellen Seidman will moderate the session. For more details about the discussion and how to participate, [click here](#).

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High Cost Mortgage Loans - 2004



Source: HMDA LAR 2004

Nonprofit Center of Milwaukee - 2005