



Date: April 24, 2013
To: City of Tuscaloosa and City of Northport
From: Connie B Cooper, FAICP & Eric Damian Kelly, PhD, FAICP
Re: Revised Draft – Study of Regulated Uses in Northport and Tuscaloosa

Attached is the Revised Draft – Study of Regulate Uses in Northport and Tuscaloosa. This is a joint study being funded by the Cities of Tuscaloosa and Northport. The study is being completed by Cooper Consulting Company, Inc., in association with Eric Damian Kelly, PhD, FAICP, with Duncan Associates. This is the same team that completed the “The Strip Study: Impacts of Alcohol Establishments and Neighborhood Conditions” for the City of Tuscaloosa in 2007.

For the purpose of this study, “Regulated Uses” include Pawnshops, Payday and Title Loan Businesses; Tattoo/Body Piercing Shops; Tobacco Outlets; Hand Car Wash Businesses; Retail Stores with Adult Merchandise/Media; and Convenience Stores with Check Cashing. Although title loan businesses are licensed as “Pawnshops,” we have categorized “Pawnshop” businesses as only those that accept “pawned” goods and have an array of merchandise on the premises. Also, we have added some research related to businesses that buy/sell gold on the retail level.

We do not include traditional financial institutions such as banks or credit loan companies, although we do discuss the fact that some traditional banking institutions offer “payday loan” type of services.

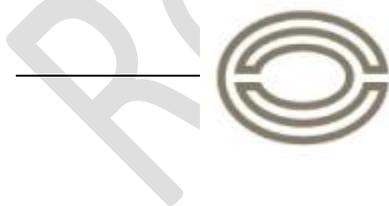
The legal research contained within the Regulated Use Study is prepared primarily for the use of Northport and Tuscaloosa city staffs and their respective legal counsel. The research and analysis has been prepared by Eric Damian Kelly, who holds a law degree but who does not maintain an active license to practice law in Alabama or any other jurisdiction. He is fully qualified to provide this material as a research reference for local government lawyers and even for knowledgeable local government staff. No one, however, should rely on this as providing legal advice or a legal opinion without consulting with an attorney who is licensed to practice law in Alabama.

STUDY OF REGULATED USES

CITIES OF NORTHPORT & TUSCALOOSA, AL

REVISED DRAFT

April 24, 2013



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Table of Contents – Study of Regulated Uses

Introduction to the Study of Regulated Uses	1
Approach/Issues	1
Inventory of Businesses	3
Survey of Regulated Businesses – Northport.....	3
Survey of Regulated Businesses – Tuscaloosa	7
Land Use, Zoning & Signage Analysis of Regulated Uses	12
Overall Land Use Analysis	12
Overall Zoning Analysis	17
Overall Sign Regulations Analysis	22
Other Local Impacts of Regulated Uses	27
Local Payday/Title Loan/Pawnshop Business Densities.....	27
Operating Hours.....	27
Understanding the Business of Pawnshops, Payday Loans and Title Loans	28
Pawnshops and Payday Loan Businesses.....	28
Title Loan Businesses	34
Pros and Cons of Payday Loans and Title Loans	39
Facts about Short Term Lending – The Industry Viewpoint.....	41
Legal Context of Regulated Uses	42
Introduction	42
Reviewed Regulated Uses.....	42
Location of Businesses – Generally.....	52
Regulation of Operating Hours – Generally	55
Regulation of Signage – Generally	56
Findings and Choices.....	58
Introduction	58
Pawnshop Businesses	58
Payday Lenders	59
Title Loan Businesses	63
“We Buy Gold” Dealers	64

Check Cashing Services	65
Tattoo Parlors	66
Tobacco Shops	68
Sexually Oriented Businesses.....	69
Hand Car Washes.....	70
Appendices	72
Northport Photographic Summary	72
Tuscaloosa Photographic Summary.....	76
Federal Military Lending Act.....	83
Consultant Team Resumes	84
Endnotes.....	86

List of Tables

Table 1 - Regulated Uses in Northport - Sorted by Location (2013)	3
Table 2 - Regulated Uses in Tuscaloosa - Sorted by Location (2013).....	7
Table 3 - Types of Regulated Businesses - Number and Percentage	12
Table 4 - Location of Regulated Businesses - Major Arterials & Other Roadways.....	13
Table 5 - Existing Regulated Uses by Street Location - City of Northport.....	15
Table 6 - Existing Regulated Uses by Street Location - City of Tuscaloosa	16
Table 7 - Existing Zoning of Regulated Uses - City of Northport	17
Table 8 - Existing Zoning of Regulated Uses - City of Tuscaloosa	19

Introduction to the Study of Regulated Uses

Approach/Issues

This is a Study of Regulated Uses within the Cities of Northport and Tuscaloosa. For the purpose of the Study, “Regulated Uses” include Pawnshop Businesses; Payday and Title Loan Businesses; Convenience Stores with Check Cashing; Tattoo/Body Piercing Shops; Tobacco Outlets; Businesses with Adult Merchandise and/or Media; and Hand Car Wash Businesses. Although title loan businesses are licensed under the State of Alabama’s “pawnshop” license, only businesses that accept “pawned” goods and carry an array of for-sale merchandise are termed “pawnshops” within the Study. Also, we have added some research and recommendations related to businesses that buy/sell gold on the retail level, we do not include these within the survey of businesses. Also we do not include traditional financial institutions such as banks or credit loan companies, although we do discuss the fact that some traditional banking institutions offer “payday loan” type of services.

Moratorium

The Cities of Northport and Tuscaloosa are concerned about the above Regulated Uses’ potential negative effects of the businesses operating or potentially operating within their respective jurisdictions. In September of 2012, the City of Northport adopted a six-month moratorium to allow sufficient time to study the impacts of certain businesses on the City’s business corridors. The moratorium prohibits the issuance of any new business licenses or transfer of existing business locations for Tattoo / Body Piercing Parlors, Pawnshops, Title or Payday Loan Businesses, Cash-and-Go Businesses, Check Cashing Businesses, Tobacco Outlets, Adult Book Stores and Sex Items Shops, Hand Car Wash Businesses, and Fire Works Stands. However, in December of 2012, the City of Northport voted to make the sale and use of fireworks within the city limits illegal, effective January 3, 2013. The prohibition does not include the sale of fireworks within the City’s police jurisdiction. Thus, Fire Works Stands are not a part of the Study. In February of 2013, the City of Northport voted to extend the moratorium on Regulated Uses another three months, until June 17th to allow City officials time to receive and review the recommendations of the Regulated Use Study.

Simultaneously, officials in Tuscaloosa became concerned as to the potential negative impacts of certain businesses wanting to rebuild within the Alberta community following the devastation of the April 2011 tornado. Of particular concern were businesses such as tattoo parlors, tobacco shops, check-cashing businesses and pawnshops. The City is making substantial investments in the rebuilding of these areas and is concerned that certain types of businesses might stymie redevelopment opportunities.

In early October the City of Tuscaloosa considered, but did not pass, a moratorium similar to the City of Northport’s. Instead, the City recommended that a study be jointly funded by Tuscaloosa and Northport to study the negative impacts of these “Regulated Uses” and to provide the necessary guidance for drafting ordinances to better regulate these businesses.

Approach

Although many of the Regulated Uses may have similar negative effects on surrounding property values and attract criminal activity, there is a major legal advantage in addressing them as a group. To the extent that some of the businesses have additional Constitutional protection (such as sexually oriented businesses), the legal challenge may claim that new regulations are an attempt to censor protected

speech or other forms of protected communication. When a local government addresses issues related to these businesses at the same time that it addresses businesses like the title loan or payday loan businesses, it is clear that the focus is on the special problems posed for the communities by all such businesses – sometimes referred to as “negative secondary impacts.”

In regulating businesses such as payday loan businesses and tobacco shops, local governments need only the sort of “rational basis” that they have for regulating other types of businesses. The comprehensive plans and policies and the redevelopment efforts ongoing within Tuscaloosa and Northport, particularly the tornado recovery efforts, provide a strong rational basis for adopting regulatory changes related to businesses that the Cities view may have deleterious impacts on their future growth and development.

However, certain sexually oriented businesses, and possibly tattoo businesses, enjoy protection under the First Amendment. For regulations affecting these businesses, several elements are important but the two most critical are having a “legislative predicate” or findings that reflect the “negative secondary effects” that Tuscaloosa and Northport intend to address by regulating them and a strategy that ensures that there are actually sites available for such businesses. Most courts that have addressed the issue have refused to extend First Amendment protection to tattoo art, but a recent decision from the Ninth Circuit (West Coast) takes the position that tattoos are a form of “protected speech.”

Inventory of Businesses

This section of the Study summarizes the number of Regulated Uses within Northport and Tuscaloosa, and provides a “quick look” at the types of businesses, their respective operating names, physical location, and business start dates. The “Regulated Uses” include Pawnshop Businesses; Payday and Title Loan Businesses; Convenience Stores with Check Cashing; Tattoo/Body Piercing Shops; Tobacco Outlets; Businesses with Adult Merchandise and/or Media; and Hand Car Wash Businesses. Although title loan businesses are licensed under the State of Alabama’s “pawnshop” license, only businesses that accept “pawned” goods and carry an array of for-sell merchandise are termed “pawnshops” for the purpose of the Study.

Survey of Regulated Businesses – Northport

As shown in the table below, there are 34 “Regulated Uses” within Northport (population 23,400): 2 Pawnshops; 19 Payday /Title Loan Businesses, 3 Tattoo/Body Piercing Shops; 4 Tobacco Outlets; and 6 Hand Car Wash Businesses.

Table 1 - Regulated Uses in Northport - Sorted by Location (2013)

Business Name [23,400 Estimated Population	Street No.	Street Name	Start Date
Pawnshop Businesses (2)			
Pawn Royale	1019	McFarland Blvd	2010
Southern Jewelry & Pawn	2813	McFarland Blvd	1999
Payday Loan / Title Loan Businesses (19)			
Speedy Cash/Cash Advance	3410	Hwy 69 N	2011
Money In A Flash	2201	Lurleen B Wallace Blvd	2003
Cash Plus	2801	Lurleen B Wallace Blvd	2002
Titlemax	3003	Lurleen B Wallace Blvd	2000
Money In A Flash	3020	Lurleen B Wallace Blvd	2003
EZ Title Loans	3330	Main St.	2012
EZ Payday Advance	350	McFarland Blvd	2008
North American Title Loans	601	McFarland Blvd	2000
Alabama Title Loans	726	McFarland Blvd	1999
Lifestyle Cash Advance	1420	McFarland Blvd	2006
The Money Store	2491	McFarland Blvd	2003
Check 'n Go	2509	McFarland Blvd	2003
Approved Cash / Advance Centers	2805	McFarland Blvd	2005
Title Loan Express / Cash on the Spot	3076	McFarland Blvd	1999
Advance America / Cash Advance	3120	McFarland Blvd	2004
Cash Connection	3380	McFarland Blvd	2008
TitleBucks (Titlemax of Alabama)	3385	McFarland Blvd	2006
Easy Money	4705	McFarland Blvd	2006
Check into Cash	5550	McFarland Blvd	2003

Business Name (continued)	Street No.	Street Name	Start Date
Tattoo / Body Piercing Shops (3)			
Cynical Tattoos Shop	2205	Lurleen B Wallace Blvd	2006
Eternal Art Tattoos & Piercing	3380	McFarland Blvd	2005
Symbolic Ink	1804	Lurleen B Wallace Blvd	2012
Tobacco Outlets (4)			
Discount Tobacco Outlet	1013	Lurleen B Wallace Blvd	2011
Maggie Tobacco Shop	2110	Lurleen B Wallace Blvd	2008
Tobacco & Convenience	2801	Lurleen B Wallace Blvd	2012
Northport Tobacco Outlet	3380	McFarland Blvd	2003
Hand Car Wash Businesses (6)			
Mike's Car Wash	1655	5th St	2004
Auto Care Hand Carwash	523	Bridge Ave	2009
Dynamic Detailing / Auto Appearance	1211	Bridge Ave	1999
Northport Hand Carwashing	1104	McFarland Blvd	2012
Scrubby's Car Wash	3131	McFarland Blvd	2010
A Perfect Touch Car Wash	3828	McFarland Blvd	2007

Of these 34 Regulated Uses, 20 are located directly on McFarland Boulevard and two others are clearly visible from McFarland (Hwy. 69 N. and Main St.).

In examining “business start dates” (based on Northport’s Revenue Department Database), of the 21 Pawnshops and Payday/Title Loan businesses, only 1 Pawnshop and 4 Payday/Title Loan businesses existed in Northport prior to 2002. Between 2002 and 2008, 13 new Payday/Title Loan businesses opened in Northport, most of which located on McFarland Boulevard. Since that time, only 1 Pawnshop and 2 Payday/Title Loan businesses have located within the City, but all three are either on McFarland Boulevard or visible from McFarland.

Two of the three Tattoo / Body Piercing Shops opened in 2005/2006, one located on Lurleen Wallace Boulevard and the other on McFarland Boulevard. The newest one, Symbolic Ink, opened in 2012 on Lurleen Wallace Boulevard.

Three of the four Tobacco Outlets are located on Lurleen Wallace Boulevard with start-up dates in 2008, 2011 and 2012. Only Northport Tobacco Outlet on Lurleen has been around for some time – 10 years.

The six Hand Car Wash Businesses appear to be spread out as far as business start dates, starting with Dynamic Detailing in 1999, to Northport Hand Carwashing in 2012. Of these, three are on McFarland Boulevard, two are on Bridge Street, and one is on 5th Street, but effectively looks closed down.

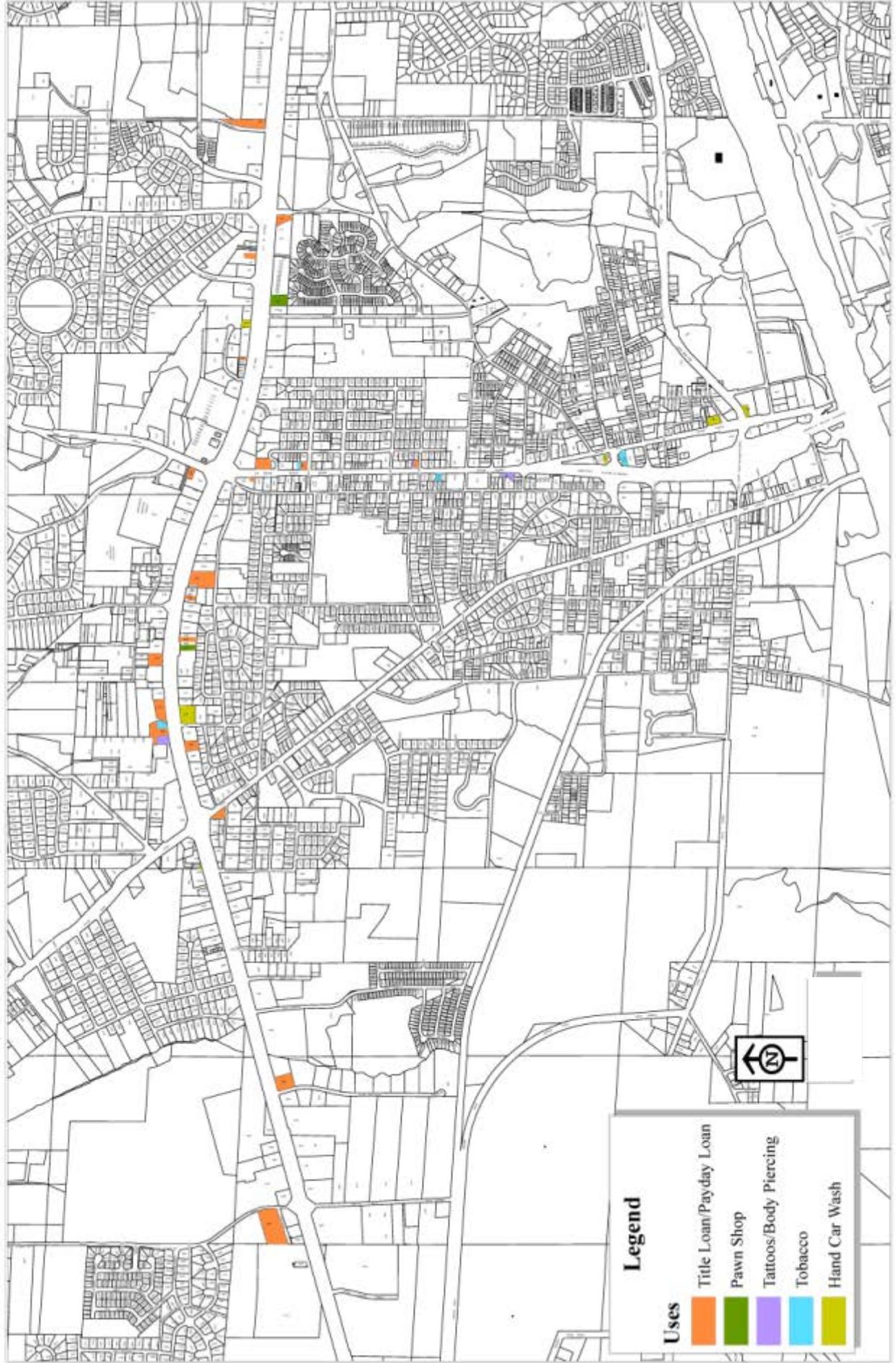
Maps

The geographical locations of the above Regulated Uses are illustrated on maps on the following pages.

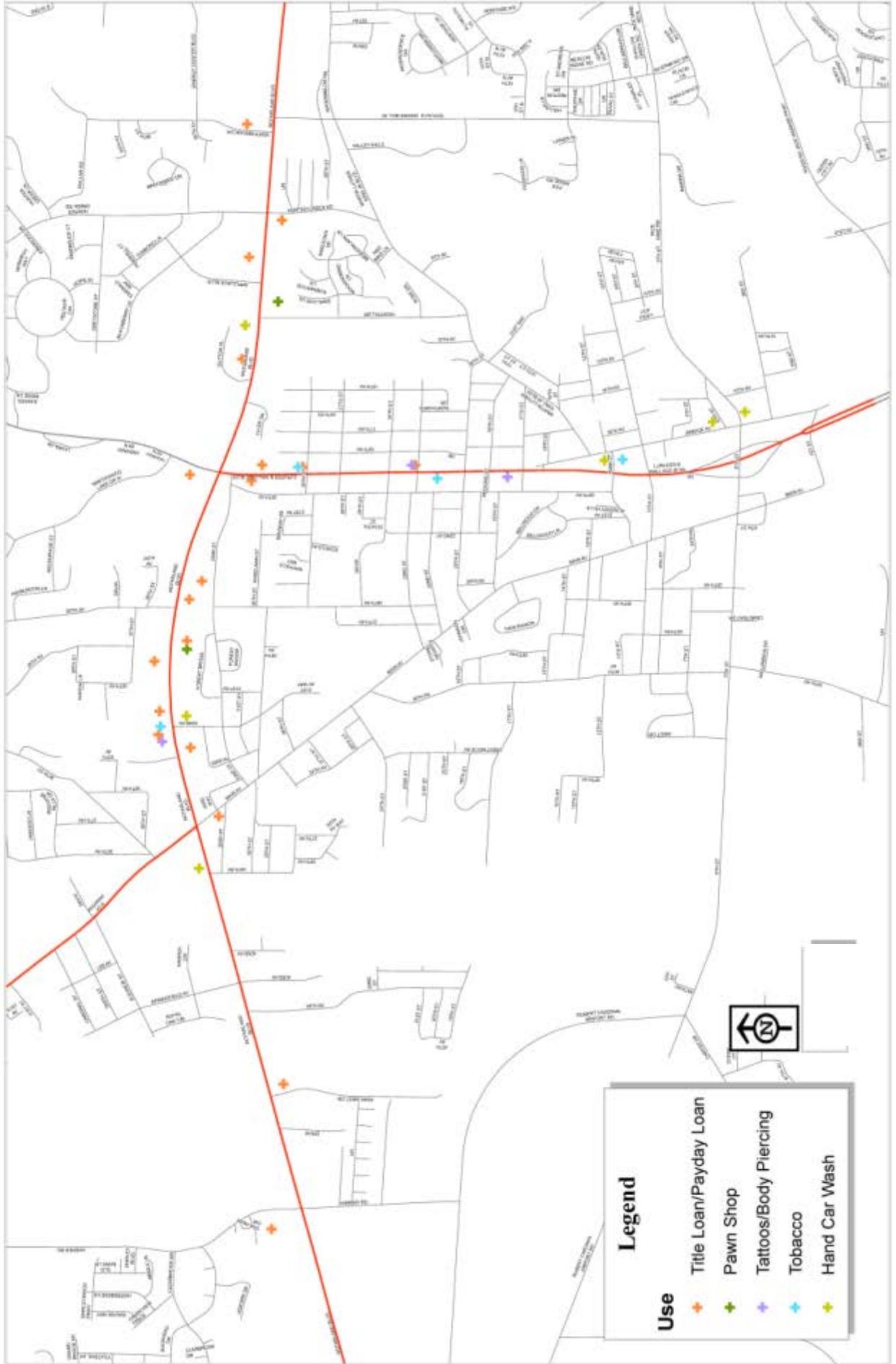
Photos

Photos of each of the Regulated Uses in Northport are provided in the Appendices.

Regulated Uses Northport, AL



Regulated Uses Northport, AL



Survey of Regulated Businesses – Tuscaloosa

As shown in the table below, there are 67 “Regulated Uses” within Tuscaloosa (population 90,500): 3 Pawnshops; 25 Payday /Title Loan Businesses, 4 Tattoo/Body Piercing Shops; 11 Tobacco Outlets; 15 Hand Car Wash Businesses; 8 Convenience Stores with Check Cashing; and 1 Retail Store with Adult Merchandise.

Table 2 - Regulated Uses in Tuscaloosa - Sorted by Location (2013)

Business Name	Street No.	Street Name	Start Date
Pawnshop Businesses (3)			
QUIK PAWN SHOP	620	15th St	1992
WADE'S JEWELRY & PAWN	3525	McFarland Blvd	2005
EZ PAWN & EZ PAYDAY LOANS	3728	McFarland Blvd	1993
Payday Loan / Title Loan Businesses (25)			
The Money Store	1420	10th Ave	2004
Titlemax #2	92	15th St	2000
City Check Advance	326	15th St	2008
Pay Day Loans	420	15th St	2005
E-Z Cash-N-Pawn	1110	15th St	1999
Bama Payday Loans & Check Cashing	2215	15th St	2011
Check Depot	700	23rd St	2001
Title Cash Of Tuscaloosa County	3712	Greensboro Ave	1993
Advance America / Cash Advance	5980	Old Greensboro Rd	2003
Cash Connection	1425	Martin Luther King Jr Blvd	2003
Great American Loan	2603	McFarland Blvd	1993
Cash Connection	2821	McFarland Blvd	1998
Easy Money	2925	McFarland Blvd	2004
Money In A Flash	3310	McFarland Blvd	2003
Titlebucks	3318	McFarland Blvd	2001
Fast Cash	4200	McFarland Blvd	2003
Money In A Flash #4	308	Skyland Blvd	2004
Car Title Loans	715	Skyland Blvd	1999
Titlemax #3	720	Skyland Blvd	2006
Cash Express	1031	Skyland Blvd	2003
Advance America / Cash Advance Centers	1480	Skyland Blvd	2005
Check Into Cash	1911	Skyland Blvd	2004
Cash Spot	2015	Skyland Blvd	2006
Tucker Title Exchange	3010	Skyland Blvd	1993
Money In A Flash - Alberta	2815	University Blvd	2003

Business Name	Street No.	Street Name	Start Date
Tattoo / Body Piercing Shops (4)			
Evol Ink	1028	15th St	2013
All Inkd Up	1700	Greensboro Ave	2011
Tat205 Ink	3401	Greensboro Ave	2011
Tattoo Experience, The	2703	University Blvd	1995
Tobacco Outlets (11)			
Smoke It Up Tobacco	424	15th St	2005
E-Z Shop Tobacco	1700	Greensboro Ave	2007/2012
Mid-City Station	2219	Greensboro Ave	2011
Key Discount Store	201	Hargrove Rd	2011
Cheap Smokes Discount Tobacco Store	615	Hargrove Rd	2011
Winston Mart	2503	Martin Luther King Jr Blvd	2006
Smokehouse	3310	McFarland Blvd	2011/2013
Crimson Tobacco Outlet	1809	Skyland Blvd	2003
Stillman Tobacco Outlet	3109	Stillman Blvd	2011
R & R Cigars	2720	University Blvd W	2012
Smoker's Outlet 5	2820	University Blvd	2011
Hand Car Wash Businesses (15)			
Best Hands Car Wash	3014	15th St	2012
Dirty 2 Clean Auto Detailing	3101	25th Ave	2012
Championship Auto Detailing	1833	Culver Rd	2010
Dynasty Barber/Styling & Car Detail	3504	Greensboro Ave	2012
Chuck's Hand Carwash	3911	Greensboro Ave	2010
West Coast Customs	204	Hargrove Rd	2000
Southside Cuts And Suds	1416	Hargrove Rd	2011
Affordable Car Wash	3310	Hargrove Rd	2008
Mac Hobbies	6509	Hwy 69 S	2012
Discount Car Wash	800	Martin Luther King Jr Blvd	
The Spillway Hand Car Wash & Detailing	4396	Rice Mine Rd	2012
Skyland Discount Store	90	Skyland Blvd	2011
Gosa's Car Wash	338	Skyland Blvd	2010
Like New Car Wash	500	Skyland Blvd	2011
Lolo's General Store & Thrift Shop	3210	Stillman Blvd	2012
Convenience Stores wt Check Cashing (8)			
Staci's #1	3506	29th St	2011
Shop & Save	3112	Greensboro Ave	2011
Ciber Tienda La Chiquita	625	Hargrove Rd	2012
Quick Stop #2	1000	Hargrove Rd	2011
Super C Store	1708	Hargrove Rd	2012
Super Stop	101	James I Harrison Jr Pkwy	2011
Quick Stop	708	Martin Luther King Jr Blvd	2011
Raceway #829	3410	McFarland Blvd	2011
Retail Store with Adult Merchandise/Videos (1)			
Video Zone & Tan	504	15th St	1997

Of these 67 Regulated Uses, almost half are located on McFarland Boulevard, Skyland Boulevard, or 15th Street. Of these uses, 9 are located on McFarland Boulevard, 8 of which are Pawnshops or Payday/Title Loan businesses; 12 are located on Skyland Boulevard, 8 of which are Payday/Title Loan businesses; and 10 are located on 15th Street, of which 6 are Pawnshops or Payday/Title Loan businesses.

In examining “business start dates” (based on Tuscaloosa’s Revenue Department Database), of the 28 Pawnshops and Payday Payday/Title Loan businesses, 2 Pawnshop and 9 Payday/Title Loan businesses existed in Tuscaloosa prior to 2002. Between 2002 and 2008, 1 Pawnshop and 15 Payday/Title Loan businesses opened in Tuscaloosa, many located on Skyland Boulevard, McFarland, Boulevard, and 15th Street. Only 1 Payday/Title Loan business has opened in Tuscaloosa since 2008.

Of the four of the Tattoo / Body Piercing Shops in Tuscaloosa, only 1 has been opened since 1995 (The Tattoo Experience on University Boulevard in Alberta); the other three opened in 2010 or later, 2 of which are on Greensboro Avenue and 1 on 15th Street.

Of the 11 Tobacco Outlets, it appears 8 opened in 2011 or later (there is some confusion as to the actual start dates for two businesses), and 3 opened between 2003 and 2006. There is no apparent concentration of these businesses on any one commercial corridor.

Of the 15 Hand Car Wash Businesses, 12 opened in 2010 or later; 1 opened in 2008; 1 opened in 2000; and the open date for one is unknown (it may no longer be open for business). There is no apparent concentration of these businesses on any one commercial corridor, and many of these businesses are very rudimentary in their setup.

There are 8 Retail Stores offering Check Cashing Services, many of these appear to have opened in 2011 or later; however, the “start dates” may appear very recent due to a change in ownership, or recently adding check cashing services to their more mainstream convenience store activities.

There is only one retail store offering adult merchandise (Video Zone & Tan) in Tuscaloosa. The store has been opened since 1997 and the merchandise (adult videos and novelties) clearly appears to be incidental to the store’s primary purpose of renting traditional videos and tanning services.

Maps

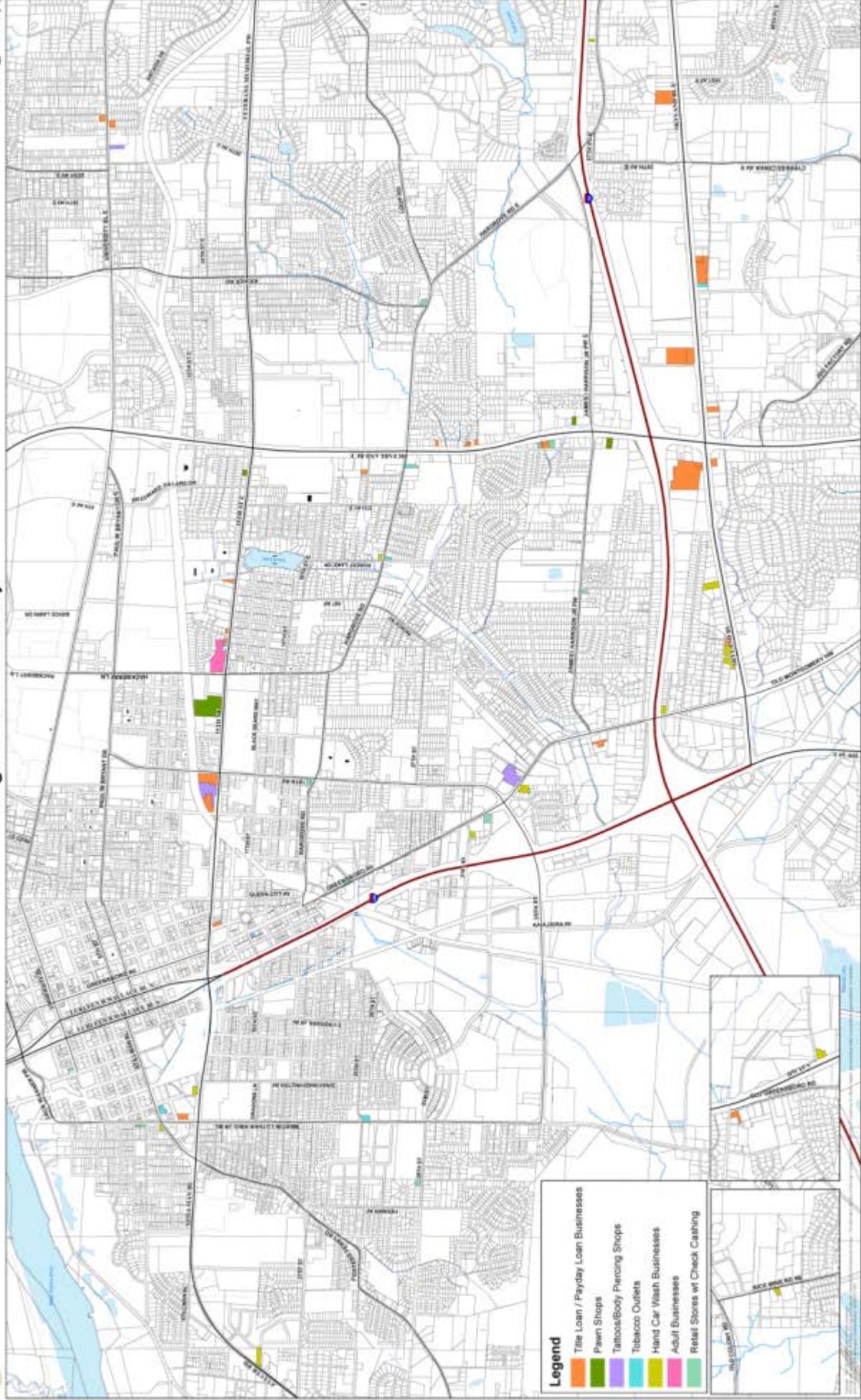
The geographical locations of the above Regulated Uses are illustrated on maps on the following pages.

Photos

Photos of each of the Regulated Uses in Tuscaloosa are provided in the Appendices.

Regulated Use Study

1 inch = 1,000 feet
 0 1000 2000 Feet



Land Use, Zoning & Signage Analysis of Regulated Uses

Overall Land Use Analysis

As previously mentioned, “Regulated Uses” include Pawnshop Businesses; Payday and Title Loan Businesses; Convenience Stores with Check Cashing; Tattoo/Body Piercing Shops; Tobacco Outlets; Businesses with Adult Merchandise and/or Media; and Hand Car Wash Businesses. It should be noted, that although title loan businesses are licensed under the State of Alabama’s “pawnshop” license, only businesses that accept “pawned” goods and carry an array of for-sale merchandise are termed “pawnshops” within the Study. We have added some research and recommendations related to businesses that buy/sell gold on the retail level, we do not include these within the survey of businesses. Also we do not include traditional financial institutions such as banks or credit loan companies, although we do discuss the fact that some traditional banking institutions offer “payday loan” type of services.



Although there is a wide range of Regulated Uses that are a part of this study, we feel it worthwhile to provide a summary of the percentages each of these uses comprise within the respective cities as well as a combined analysis. As summarized in the table below, there are 93 Regulated Uses within Northport and Tuscaloosa, with Northport having 34 (37%) and Tuscaloosa 59 (63%). The most prolific use is the Payday/Title Loan business comprising a combined total of 44 (47%) of the Regulated Uses. There is also a significant number tobacco of outlets 15 (16%) and hand car wash businesses 21 (23%). Pawnshop businesses (5) and tattoo/body piercing shops (7) comprise the smallest percentage of Regulated Uses (5% and 8%, respectively).

Table 3 - Types of Regulated Businesses - Number and Percentage

Type of Use	Northport		Tuscaloosa		Combined	
	No.	%	No.	%	No.	%
Pawnshops	2	6%	3	5%	5	5%
Payday / Title Loan Businesses	19	56%	25	42%	44	47%
Tattoos / Body Piercing Shops	3	9%	4	7%	7	8%
Tobacco Outlets	4	12%	11	19%	15	16%
Hand Car Wash Businesses	6	17%	15	25%	21	23%
Retail wt Adult Merchandise	0	0%	1	2%	1	1%
Sub Totals	34	100%	59	100%	93	100%
Convenience Stores wt Check Cashing	0	0%	8	12%	8	8%
Grand Totals	34		67		101	

Convenience stores providing check cashing for a fee are included in Tuscaloosa businesses but not in Northport; therefore, they are broken out separately in the totals. One of the reasons is check cashing

services provided by convenience stores is an accessory service to the primary use, the sale of food, gas, and merchandise; thus it is difficult if not impossible to determine the amount of their business related to this service, but it is most likely a small percentage. In our work, we found some convenience stores cash personal and payroll checks without charging a fee – often viewing it as an opportunity for the customer to make purchases in their store.

The majority of the Regulated Uses are located within sections of commercial arterial corridors having a significant amount of older strip commercial retail buildings. As shown in the table below, the largest concentration is found along McFarland Boulevard (20 in Northport and 10 in Tuscaloosa), 23 of which are Pawnshop Businesses or Payday/Title Loan businesses, or 47 percent of all Pawnshops Businesses and Payday/Title Loan businesses in Northport and Tuscaloosa. There are no Regulated Uses in Tuscaloosa along Lurleen B. Wallace Boulevard; however, Northport has nine within this corridor. Northport’s remaining five Regulated Uses are found along commercial corridors in close proximity to McFarland or Lurleen B.



Wallace Boulevards. Other major arterials with significant numbers of Regulated Uses are located within Tuscaloosa along Skyland Boulevard (12), 15th Street (10), Greensboro Avenue (7), and Hargrove Road (8 – included in “Other”).

Table 4 - Location of Regulated Businesses - Major Arterials & Other Roadways

Type of Use	McFarland		Lurleen		Skyland		15 th St.		Greensboro		Other		Total
	Npt	Tusc	Npt	Tusc	Npt	Tusc	Npt	Tusc	Npt	Tusc	Npt	Tusc	
Pawnshop Businesses	2	2	0	0	0	0	0	1	0	0	0	0	5
Payday / Title Loan Businesses	13	6	4	0	0	8	0	5	0	1	2	5	44
Tattoos / Body Piercing Shops	1	0	2	0	0	0	0	1	0	2	0	1	7
Tobacco Outlets	1	1	3	0	0	1	0	1	0	2	0	6	15
Hand Car Wash Businesses	3	0	0	0	0	3	0	1	0	2	3	9	21
Retail wt Adult Merchandise	0	0	0	0	0	0	0	1	0	0	0	0	1
Sub Total	20	9	9	0	0	12	0	10	0	7	5	21	93
Stores wt Check Cashing	0	1	0	0	0	0	0	0	0	1	0	6	8
Grand Total	30		9		12		10		8		32		101

Generally, the existing regulated uses are located in older, strip commercial environments along heavily travelled arterials. Most are with strip developments or free-standing buildings that exceed 30 years of age, have had little updating in the exterior facades, and employ extensive signage to draw customer

attention to their businesses. A few use vibrant paint colors for roofing or exterior façades to be more visible. Not considering car wash businesses which are always in free-standing buildings, 45 percent of the 80 Regulated Uses are located in older strip commercial centers adjacent to the other businesses with moderate rents and little exterior improvements. Approximately 13 percent are in what appear to be strip commercial centers with newer façades. The remaining 52 percent are primarily older, detached buildings located within commercial corridors typical of what is found along older arterials.



As mentioned above, exterior signage is often used excessively in many of the Regulated Uses. With the exclusion of Hand Car Wash Businesses that generally have very limited signage, 54 of the 80 Regulated Uses have excessive amounts of signage. Brightly colored or excessively large signage is often employed for the businesses' primary signage. Extensive window signage is also used within the Payday/Title Loan Businesses and Tobacco Outlets, and some Tattoo Shops. The window signage was particularly extreme in many of the Tobacco Outlets, and to a large extent with the Payday/Title Loan

Businesses and Stores offering Check Cashing. A few Payday/Title Loan Businesses have brightly or starkly colored façades and/or roofing to make their businesses stand out among the array of strip commercial businesses.

We recognize that the excessive use of signage, as well as overuse of strong colors, is not limited to the above Regulated Uses. Many businesses along the major commercial corridors employ strong use of primary colors and excessive signage in their efforts to be noticed.

Northport Land Use Analysis

The 34 regulated uses in Northport include five different categories of land use: pawnshop businesses, payday/title loan businesses; tattoo/body piercing shops; tobacco outlets; and hand car wash businesses. Payday/title loan businesses are by far the most dominant Regulated Use in Northport with 19 establishments making up 56 percent of the total existing Regulated Uses. All but six of these businesses are located on McFarland Boulevard (two of which are clearly visible from McFarland (Hwy. 69 N. and Main St.).



The majority of all Regulated Uses, 59 percent, are located along McFarland Boulevard followed by Lurleen Wallace Boulevard with 26 percent. The remaining uses are located on three different streets but all are in close proximity to these two major commercial corridors; therefore, effectively all Regulated Uses within the City of Northport are in either the McFarland or Lurleen Wallace corridors. However, this is not surprising, given the limited number of major arterial roadways within the City.

The greatest single concentration of Regulated Uses in Northport, as well as the overall Northport/Tuscaloosa study area, is along a one-mile stretch of McFarland Boulevard between Main

Avenue and Lurleen Wallace Boulevard where 12 Regulated Uses exist in a strip commercial environment.

As is often true throughout Northport and Tuscaloosa, Regulate Uses are located in sections of older strip commercial development. In Northport, a higher percentage, 47 percent, of Regulated Uses are located in older strip commercial centers than in the overall study area or in Tuscaloosa. This is especially true of Payday/Title Loan businesses.



The table below illustrates the distribution of the 34 Regulated Uses along major commercial corridors within Northport.

Table 5 - Existing Regulated Uses by Street Location - City of Northport

Type of Use	No	%	McFarland Blvd	Lurleen Wallace Blvd	Other Streets
Pawnshop Businesses	2	6%	2		
Title Loan / Payday Loan Businesses	19	56%	13	4	2
Tattoos / Body Piercing Shops	3	9%	1	2	
Tobacco Outlets	4	12%	1	3	
Hand Car Wash Businesses	6	17%	3		3
Retail Stores wt Adult Merchandise	0	0%			
Sub Totals	34	100%	20 (59%)	9 (26%)	5 (15%)
Stores wt Check Cashing	0	0%			
Totals	34				

Tuscaloosa Land Use Analysis

The 59 Regulated Uses in Tuscaloosa include six different categories of land use: Pawnshop Businesses; Payday and Title Loan Businesses; Tattoo/Body Piercing Shops; Tobacco Outlets; Businesses with Adult Merchandise and/or Media; and Hand Car Wash Businesses. The eight Convenience Stores with Check Cashing are not specifically, a part of the Regulated Uses discussion here because their checking cashing services are more accessory services to their main business of selling convenience goods.

Payday Loan/Title Loan businesses are by far the most dominant Regulated Use in Tuscaloosa with 25 establishments making up 42 percent of the total existing Regulated Uses; adding the three Pawnshops increases the percentage to 47percent.



As the table below illustrates, 64 percent of the Regulated Uses is along four major commercial corridors in Tuscaloosa: McFarland Boulevard, Skyland Boulevard, 15th Street, and Greensboro Avenue. The three largest concentrations of Regulated Uses in Tuscaloosa are found in: McFarland Boulevard between I-59 and Hargrove Road (9); 15th Street between 12th Avenue and Contemporary Drive (9); and Skyland Boulevard from McFarland Boulevard eastward to approximately 21st Avenue E. (7).

Table 6 - Existing Regulated Uses by Street Location - City of Tuscaloosa

Type of Use	No	%	McFarland Blvd	Skyland Blvd	15th St.	Greensboro Ave	Other Streets
Pawn Shops	3	5%	2	0	1	0	0
Payday / Title Loan Businesses	25	42%	6	8	5	1	5
Tattoos / Body Piercing Shops	4	7%	0	0	1	2	1
Tobacco Outlets	11	19%	1	1	1	2	6
Hand Car Wash Businesses	15	25%	0	3	1	2	9
Retail wt Adult Merchandise	1	2%	0	0	1	0	0
Sub Totals	59	100%	9 (15%)	12 (20%)	10 (17%)	7 (12%)	21 (36%)
Stores wt Check Cashing	8		1	0	0	1	6
Grand Totals	67		10	12	10	8	27

In Tuscaloosa, like elsewhere in the Northport/Tuscaloosa study area, Regulated Uses are located in older commercial sections along major arterials. The percent of Regulated Uses in strip commercial centers is lower, 36 percent, than in Northport primarily because of the large number of free-standing Hand Car Washing facilities.

Overall Zoning Analysis

The zoning ordinances regulating the Regulated Uses within Northport and Tuscaloosa are two extremely different zoning ordinances. Neither zoning ordinance has specific definitions for any Regulated Uses discussed in this Study. In addition, in most cases, only a few are listed as actual uses in the ordinances' Permitted or Conditional Use Tables. Tuscaloosa has recently adopted new mixed use districts in the areas devastated by the April 2011 tornado, but although the Regulated Uses are permitted within these mixed use districts, they are not defined. Following is a discussion of Northport's and Tuscaloosa's Zoning Ordinances and their respective treatment or lack thereof of the Regulated Uses.

Existing Zoning of Regulated Uses – Northport

As the table below illustrates, Northport's 34 Regulated Uses are located in four different Zoning Districts; however, the majority (23) are located in the C-6 Highway Commercial Zoning District. The C-3 General Commercial Zoning District encompasses most of the remaining Regulated Uses (7), leaving only 4 uses in two other Zoning Districts, one of which appears to be in a residential district (RS-8).

Given that McFarland Boulevard is almost exclusively zoned C-6 Highway Commercial and that the highest percentage of Regulated Uses is located on McFarland Boulevard, it is not surprising that 68 percent of the Regulated Uses fall within the C-6 Zoning District.

Table 7 - Existing Zoning of Regulated Uses - City of Northport

Type of Use	No.	%	Zoning Districts			
			BAN	C-3	C-6	RS-8
Pawn Shops	2	6%			2	
Payday / Title Loan Businesses	19	56%		3	16	
Tattoos / Body Piercing Shops	3	9%		2	1	
Tobacco Outlets	4	12%	1	2	1	
Hand Car Wash Businesses	6	18%	2		3	1
Retail wt Adult Merchandise	0	0%				
Sub Totals	34	100%	3 (9%)	7 (21%)	23 (68%)	1 (3%)
Stores wt Check Cashing	0					
Grand Totals	34					

Zoning Districts: BAN - Bridge Avenue North C-3 - General Commercial
 RS-8 - Residential Single Family C-6 - Highway Commercial

Zoning Districts by Type of Regulated Use – Northport

Pawn Shop, Tobacco Outlet, Tattoos / Body Piercing Shop

These three Regulated Uses are specifically permitted in Northport's C-3 General Commercial and C-6 Highway Commercial Zoning Districts under the broad category of "Pawn/Smoke/Tattoo Shops." There are no special conditions placed on these types of uses. All but one of these nine uses (2 Pawnshops, 3 Tattoo/Body Piercing Shops, and 4 Tobacco Outlets) is located in the C-3 and C-6 Zoning Districts. The remaining one Tobacco Outlet is located in the BAN Zoning District and was probably permitted under that district's broad "retail" listing as a permitted principal use given it has a 2011 start date.

Title Loan / Payday Loan

The Northport Zoning Ordinance permits "Bank or Financial Services" in the following four Zoning Districts: O-1 Office-Institutional; C-2 Neighborhood Commercial; C-3 General Commercial; and C-6 Highway Commercial. They are permitted as a Conditional Use in the M-1 Light Industrial Zoning District. The Zoning Ordinance makes no distinction between banks, loan office, title loans, payday loans, etc.; therefore, it appears that all of Northport's 19 existing payday /title loan businesses are permitted in any district that permits "Bank and Financial Services."

Hand Car Wash Business.

Northport's Zoning Ordinance permits a "Car Wash" in the following six Zoning Districts: BAN Bridge Avenue North; C-2 Neighborhood Commercial; C-3 General Commercial; C-6 Highway Commercial; M-1 Light Industrial; and the M-2 Heavy Industrial. This broad terminology results in the six existing Hand Car Wash facilities to be located in the C-6 Highway Commercial (3); the BAN - Bridge Avenue North (2); and one in a residential district, the RS-8 Residential Single Family Zoning District, which makes it nonconforming.

The Zoning Ordinance makes no distinction between the different types of car wash facilities except for parking which has separate requirements for "car wash, self-serve." The parking requirement for car-wash, self-serve is "one (2) stacking spaces per stall (including stall); plus one drying space per stall. This indicates that the drafter of the Zoning Ordinance realized there is a difference between a hand car wash and a self-serve car wash, but did not recognize it when creating the Permitted Use Table.

Although the Zoning Ordinance makes no distinction between different kinds of car wash facilities, it does place the following special development conditions on car wash uses:

- location at least forty (40) feet from the front property line;
- bay openings not less than right angles to the primary street frontage; and,
- adequate vegetative screening to limit views from the public street.

The BAN district places special conditions on car wash use but they are related to building scale, placement, building design and façade standards and not to the peculiar characteristics of a car wash operation.

Existing Zoning of Regulated Uses – Tuscaloosa

As is illustrated in the table below, Tuscaloosa’s 59 Regulated Uses are located in eight different Zoning Districts; however, 83 percent (49) of the Regulated Uses are located in one district, the BN Neighborhood Commercial District. Interestingly, most of Tuscaloosa’s major commercial arterials have a zoning district classification of “Neighborhood” Commercial – none of which would be viewed as neighborhood oriented. The remaining Regulated Uses are scattered across a number of Zoning Districts, as the Table illustrates.

Table 8 - Existing Zoning of Regulated Uses - City of Tuscaloosa

Type of Use	No.	%	Zoning Districts							
			BGO	BH	BN	MG	MX-3	MX-5	MX-8	R-3
Pawn Shops	3	5%			3					
Payday / Title Loan Businesses	25	42%		1	23			1		
Tattoos / Body Piercing Shops	4	7%			2			2		
Tobacco Outlets	11	19%	1		8	1	1			
Hand Car Wash Businesses	15	25%			12	1			1	1
Retail wt Adult Merchandise	1	2%			1					
Sub Totals	59	100%	1 (2%)	1 (2%)	49 (83%)	2 (3%)	1 (2%)	3 (5%)	1 (2%)	1 (2%)
Stores wt Check Cashing	8				7				1	
Grand Totals	67		1	1	56	2	1	3	2	1

Zoning Districts BGO – General Business-Office
 BH – Highway Related Commercial
 BN – Neighborhood Commercial
 MG – General Industry
 MX-3 – Mixed Use
 MX-5 – Mixed Use
 MX-8 – Mixed Use
 R-3 – Single-Family

The Zoning Ordinance provides no specific definition for the Regulated Uses addressed in this study. Other than “Hand Car Wash,” none of the seven categories of Regulated Uses is specifically listed as a “permitted” use in any Zoning District except in the recently adopted “Mixed Use” Districts – but with no definitions provided.

Three commercial districts permit “Hand Car Wash” under the listing “Automobile Washing Facility” and a “Car Wash” is permitted by right within three of the Mixed Use Districts. Three Mixed Use Districts (MX-3, MX-5 and MX-8) list “check cashing, pawnshop, payday loan, sexually-oriented adult use, tattoo / body piercing parlor, title loan, and tobacco shop” as permitted uses subject to Use Standards of Section 24-303 (c) of the Zoning Ordinance. This Section establishes locational limits of only one such use on the same block face and no location within 300 feet of another restricted use (measured from the property line). Additionally, the Mixed Use Districts have rules for building types and design standards for lighting, landscaping, building materials, site development and neighborhood compatibility, but none address the use or operational characteristics of the Regulated Uses – nor are they defined.

Zoning Districts by Type of Regulated Use – Tuscaloosa

Pawnshop.

A Pawnshop is only specifically listed as a permitted use in the Mixed Use Districts, and as noted above, are subject to locational restrictions. The four existing pawnshops are within the BN Neighborhood Commercial District and are classified as “retail sales stores.”

Title Loan / Payroll Loan Business.

A “Financial Institution, including bank, saving and loan company, credit union, finance company or mortgage company” is listed as a permitted uses within the following Zoning Districts: BC Central Business; BGO General Business-Office; BN Neighborhood Commercial; BNS Special Neighborhood Commercial; and BH Highway-Related Commercial. The definition of a “Financial Institution” does not specifically list Payday or Title Loan businesses, but title loan / payday loan uses are classified as “financial institutions,” and thus permitted within the BN and BH Zoning Districts as other financial institutions are permitted. The Mixed Use Districts (MX-3, MX-5 and MX-8) specifically list payday loan and title loan as a permitted use subject to the previously discussed locational and design standards. Tuscaloosa’s existing Payday / Title Loan businesses are located almost exclusively in the BN District except for one in the BH District and one in the MX-5 District.

Tattoo / Body Piercing Shop.

Tattoo / Body Piercing Shops are only specifically listed as a permitted use in the Mixed Use Districts subject to previously discussed locational and design standards. Two of the four existing Tattoo / Body Piercing Shops are in the MX-5 District and two are in a BN District. These uses are permitted in the BN District under the broad definition of “Personal Services” such as tailor, barber, beauty shop, shoe repair and the like” since they were opened as late as 2011 and 2013.

Tobacco Outlet.

Tobacco Outlet is only specifically permitted in the Mixed Use Districts under the listing “tobacco shop.” As with other Regulated Uses in the Mixed Use Districts, they are subject to the locational and design standards. Only one of the existing tobacco outlets is in a Mixed Use District, eight are located in the BN District, and one each is located in the BGO and MG Districts. These uses are permitted in the BN and BGO Districts under the broad listing of “retail sales stores.” It is unclear how the one Tobacco Outlet, which is also a convenience store / gas station, is permitted within the MG District.

Hand Car Wash Business.

Automobile Washing Facility is a permitted use in the following Zoning Districts: BC Central Business; BN Neighborhood Commercial; and BH Highway-Related Commercial. “Car Wash” is a use permitted by right in all three Mixed Use Districts. Whether listed as “automobile washing facility” or “car wash,” there is no distinction made between the two different types of car wash facilities. Twelve of the 15 Hand Car Wash businesses are located in the BN District; one is in the MX-8 District; one is in the MG General Industrial District; and one is in the R-3 Residential District. A “Car Wash” facility without any distinction regarding the peculiar aspects of its equipment or method of operation is permitted in the BN and MX-8 Districts, and is assumed to be permitted in the MG District under the broad wording that states “business uses not including taverns, lounges, package liquor stores and convenience stores, which in the opinion of the Board of Adjustment are similar to those listed in the district concerned.” It would appear that the one Hand Car Wash located in the R-3 District is either nonconforming or simply an unlawful use of the property.

Adult Business.

Sexually Oriented uses are only specially listed as a permitted use in the three Mixed Use Districts; they are not defined but are subject to the previously discussed locational and design standards. The one existing retail video/tanning salon that has some sexually oriented merchandise (videos and novelties) is located in the BN District and has been since 1997. Given that the sexually-oriented merchandise represents such a small amount of the business's traditional videos it would not be considered as a "sexually oriented use" by most definitions.

Retail Stores with Check Cashing.

Check Cashing is only listed as a specific use in the Mixed Use Districts; although not defined, it is subject to the previously discussed locational and design standards. Of the eight existing retail Check Cashing businesses, seven are within the BN Neighborhood Commercial District and one is in the MX-8 District. Those located in the BN district appear to be traditional retail operations that provide check cashing services as an incidental or accessory use to their primary business.

Revised Draft

Sign Regulations – Tuscaloosa

The Tuscaloosa Zoning Ordinance includes building/wall sign regulations almost identical Northport's:

Building/wall signs on any single development site shall not exceed a total of two (2) square feet per linear foot of the main or entry facade. Individual businesses are allowed a minimum of thirty-two (32) square feet. No individual business shall be allowed more than five hundred (500) square feet of building signage, and no single sign shall exceed three hundred (300) square feet.⁵



Tuscaloosa's permitted square footage for a freestanding sign is substantially more permissive (permitting twice the square footage per sign) than Northport's and adds provisions for freestanding signage in proximity to the Interstate:

(c) Freestanding general business signs shall not exceed two hundred (200) square feet in area and twenty-five (25) feet in height ...

(d) Freestanding signs located along the Interstate 20/59 corridor shall not exceed four hundred fifty (450) square feet in area and sixty (60) feet in height provided that the development site conforms to the following conditions:

(e) Freestanding signs are limited to one per parcel except corner or double-frontage lots where one sign is allowed per street frontage.⁶ [Note: corner lots are allowed one freestanding sign per street frontage with each sign limited to 200 square feet]

The Tuscaloosa's sign regulations contain a provision related to window signs "not legible from the street or adjoining properties:"

Any sign located on the inside or outside of a window and not legible from the street or adjoining properties. Signs may contain a noncommercial message or related to a business, profession, or activity conducted, or to a commodity or service sold or offered, upon the premises where such sign is located and shall not occupy more than twenty (20) per cent of the glass area.⁷

Sign Analysis

It is clear that the excessive amount of signage on buildings, walls and/or windows of the Regulated Uses within the commercial corridors of Northport and Tuscaloosa contribute significantly to the cluttered appearances of those corridors.

Window Signs

A key part of the problem is "temporary" signage appearing in windows that exceeds the limits within both Cities' sign ordinances. Much of this problem may be the lack of business owners fully understanding what signage they are permitted – particularly when they consider these window signs as simply "temporary" in nature. The other aspect is the lack and difficulty of enforcement.

In short, community education coupled with better enforcement of current sign regulations would address some of the problems that we observed; however, effectively enforcing temporary signage is difficult, for the following reason:

Enforcement of any sort of temporary sign (and most window signs fall in that category) is labor-intensive. Inspectors may do a full inspection of a major corridor on a Friday, and a re-inspection on Monday may find that a number of new signs have gone up over the weekend. Most permanent signs require permits and we find that most of the contractors who install signs for businesses are reputable and abide by the code. Anyone, including a store manager or even a bored clerk can stick up a new window sign with no permit, cheap materials and very little effort.

It is instructive to compare window signage choices of One Main Financial, a small loan company, with Cash Advance shown below, both located within the City of Northport.



Enforcement of the current window regulations in both cities would make a significant difference in the appearance of both of these cities and the affected businesses. There are also ways in which the ordinances could be improved. One could argue that under the current Tuscaloosa ordinance, a wall sign could be allowed to cover or partially cover a window, thus getting around the intent of the ordinance, which is to limit window signs to signs to be viewed by pedestrians ("not legible from the street"). It would be easy to clarify that aspect of the ordinance, just as it would be easy to move the Northport 25 percent limitation on window coverage from the "Exempt Signs" to the "Permitted Signs." portion of the sign provisions within the Zoning Ordinance.

Both cities' window sign regulations focus on the total area covered by signs, without imposing a limit on the number of separate signs. The signage at CHEAP SMOKES in Tuscaloosa illustrates the effect of sign clutter from multiple signs in a window – although it also far exceeds the percentage limit in the ordinance.



Wall Signs

The *Money in a Flash* wall signage in Northport illustrates another sign issue. Store operators might argue that the end wall has four or five separate signs, although the Tuscaloosa ordinance requires that all elements of the sign on a wall be included in one measurement. A similar provision could be added to the Northport ordinance, and perhaps the one in Tuscaloosa could be clarified or reemphasized.



In addition, the practice of covering multiple sides of a building with signage should be addressed in the respective sign ordinances. Where practical, signage should be limited to the primary entry points of the business, unless a corner lot. On corner lots signs should be permitted on the side wall with street frontage, with a reduction in the signage on the primary entry point to the building.

Just as with window signs, however, some of these businesses clutter their walls with multiple signs. The *North American Title Loans* store shown below may meet Northport's sign limits for *Building (wall) sign* of "two square feet per linear foot of the main or entry façade," but the use of multiple signs adds to a cluttered appearance—not to mention the choice of placing the signage on the building's roof.

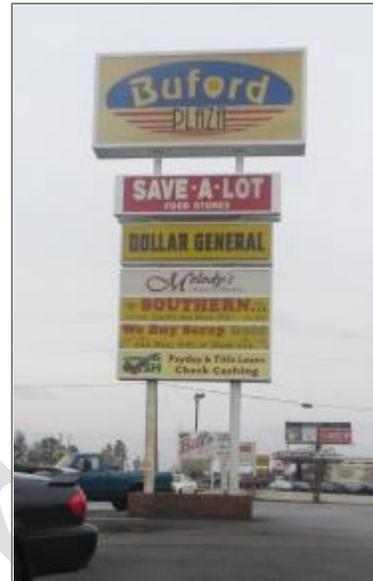


Freestanding Signs

Freestanding signs also contribute to the clutter along the major commercial corridors. Again, the businesses that are subject to this Study are not alone in using such signs, but those signs add to the clutter. Northport allows a basic sign height of 20 feet for pole-mounted signs and 10 feet for monument signs, but shopping center signs for a center as small as 66,000 square feet can be up to 35 feet tall. Tuscaloosa allows freestanding signs of 25 feet in height or up to 60 feet along the interstate corridors.

Existing sign heights are arguably excessive along the busy commercial corridors of both cities – along most of which speeds range from 30 to 40 miles per hour.

Another factor that contributes to the sense of clutter is the proliferation of unrelated signs as part of one larger permitted sign for a multi-tenant center. This is a common problem in commercial corridors around the United States and results in part from pressure from individual tenants to maintain a sense of their own identities along the street.



Building Color as Signage

Some of the businesses included in the Regulated Use Study use brightly colored building features as part of their visual identity. Again, this practice is not unique to these businesses. Motels, ice cream chains and others are well-known for using distinctive roof treatments and colors as forms of visual differentiation.

This is a difficult issue to regulate. Sometimes a green roof is just a green roof – and sometimes it is intended as an “extension” of the building’s sign “message.” Distinguishing between the two is difficult both in writing and in enforcing a sign ordinance. We comment on the issue because it is another one that was notable as we looked at these businesses in the field.



Conclusion

Taking significant steps to address the proliferation of signage within both cities requires political will as well as administrative commitment. It is not unusual for someone faced with a sign enforcement action to call a council member and complain. It is also not unusual for an elected official to call enforcement staff and say “Hey, what’s the big deal with this little window sign advertising their spring sale?”

Before either city spends time and effort on modifying current sign provisions, elected officials, staffs, affected businesses, property owners, and the general citizenry should have serious work sessions to discuss the level of support for increased enforcement of current sign provisions and the need to modify the existing regulations.

If either or both cities then decide to make changes to their sign ordinances, it will be important to remember that such changes will affect more than just the businesses included in this study.

Other Local Impacts of Regulated Uses

Local Payday/Title Loan/Pawnshop Business Densities

There is an estimated 1,527 payday loan, title loan and pawnshop licensed businesses within the State of Alabama. This number only counts once those businesses that have both a “pawnshop” and “deferred presentment” license at the same business address. As mentioned earlier, title loan businesses are licensed under the “pawnshop” license, but frequently have a “deferred presentment” license for payday loan services that they offer at the same location.

In the 46 Alabama cities with populations exceeding 14,000, there is approximately 976 payday loan, title loan and pawnshop licensed businesses (64 percent of the State’s total). Jasper with an estimated population of 14,350 has 27 licensed payday loan, title loan and pawnshop businesses or one per every 530 residents. Comparatively, Northport, with an estimated population of 23,330, has 21, or one per every 1,111 residents. Of the cities with populations over 14,000, Northport ranks eighth in the State in licensed payday loan, title loan and pawnshop businesses per capita, with Jasper ranking first; in contrast, Tuscaloosa with its estimated population of 90,500 and 28 licensed businesses has one business for every 3,231 residents (ranking 35th).

Operating Hours

This Study does not include an intensive review of the operating hours for the 101 Regulated Businesses that are within Northport and Tuscaloosa; however we can make some general observations based on a sampling of the businesses. With the exception of EASY MONEY located on McFarland Boulevard in Tuscaloosa, most payday/title loan and pawn shop businesses close by 7:00 pm. However, EASY MONEY is open 24 hours.

Most of the tobacco outlets closed by 10:00 pm, but two in Northport were opened until midnight, and one in Tuscaloosa stayed open until 2:00 am (Winston’s is a combination convenience store, gas station, tobacco outlet). Many convenience stores (with gasoline) that provide check cashing stayed open until midnight but a couple in Tuscaloosa were open 24 hours (Raceway on McFarland and Quick Stop 2 on Hargrove). Most all of the hand carwash businesses closed by 6:00 pm, but Northport Hand Carwashing indicated it was open 24/7.

Of the seven tattoo shops, several are open until midnight, one is open until 2:00 am, and others close by 10:00 pm. When we met with two of the tattoo shop operators, one with a business in Northport and the other a long established tattoo artist in Tuscaloosa, both agreed that reputable tattoo businesses would not suffer by imposing 10 pm closing hours. This eliminates dealing with late-night customers that are often “impaired” or under age clients with fake IDs. However, they did agree that the artists should be able to continue completing a tattoo after closing hours.

Understanding the Business of Pawnshops, Payday Loans and Title Loans

A significant segment of the Study of Regulated Uses is devoted to alternative lending businesses, specifically Pawnshops, Payday Loans and Title Loan Businesses. These uses have garnered a significant amount of public discussion, not only within the cities of Northport and Tuscaloosa, but more recently within the Alabama State Legislature. It is for this reason that we provide additional background on these uses in order for readers to have a better understanding of how these businesses operate, their magnitude and impacts, and the “pros and cons” of these uses provided by respective advocacy groups.

Pawnshops and Payday Loan Businesses

Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets is a report prepared by the Divisions of Research & Statistics and Monetary Affairs, of the Federal Reserve Board, prepared by Robin A. Prager, 2009. The following are excerpted passages related to describing the business of pawnshops and payday lenders and the locational determinants for these businesses. [Note: the report includes Checking Cashing Outlets, but because it did not include the type of check cashing outlets discussed in the Study of Regulated Use, we felt it was not of value to include here.]

I. Introduction

A large and growing number of low-to-moderate income U.S. households rely upon alternative financial service providers (AFSPs) for a variety of credit products and transaction services, including payday loans, pawn loans, automobile title loans, tax refund anticipation loans and check-cashing services. The rapid growth of this segment of the financial services industry over the past decade has been quite controversial.⁸ Supporters argue that AFSPs have flourished because they meet consumers’ growing demand for quick, convenient access to cash and short-term credit. At the same time, critics assert that these firms charge unconscionably high prices that are not justified by costs, thereby taking advantage of some of the most economically vulnerable members of society.⁹

A. Pawn Lending

Pawnshops make small, non-recourse loans collateralized by tangible personal property, such as jewelry, consumer electronics, tools, musical instruments or firearms. Pawnbrokers do not attempt to assess the creditworthiness of their customers; rather, they rely upon the estimated value of the collateral in making their loan decisions. The amount loaned is determined as a percentage of the estimated resale value of the pledged collateral and, according to one large pawnshop operator, is typically between 25 and 65 percent.¹⁰

Pawnshop operators rely on a number of different sources for determining the resale value of the pledged collateral, including catalogues, “blue books,” newspapers, internet sites, and at least for some of the larger companies, their own proprietary computerized valuation systems. The average size of a pawn loan is quite small – on the order of \$75 to \$100 – and its term is typically one month.

Fees charged for pawn loans are typically stated as a percentage of the loan amount, and can vary from as low as 12 percent to as high as 300 percent annually, depending, to a large degree, on legal limits imposed by the state in which the loan is made. At the time of the pawn transaction, the borrower receives a document, commonly referred to as a pawn ticket, which includes the customer's name and identifying information (e.g., driver's license number), the name and address of the pawnshop, a description of the pledged collateral, the amount of the loan, the maturity date of the loan, the amount that must be paid to redeem the collateral at maturity, and the annual percentage rate. If the loan is not repaid at or prior to maturity, the customer is given a grace period (typically 30 to 60 days) within which to redeem the pledged property by paying the loan amount and all accrued charges. If, at the end of the grace period, the customer has neither redeemed his property nor extended the loan, the collateral is forfeited to the pawnshop. The pawnshop then sells the property to recover the principal amount of the loan plus a profit margin.¹¹

Pawnbroking went through a period of decline from about 1930 through the mid-1970s, followed by a period of rapid growth that lasted through the mid-1990s. Over the past decade, the number of pawnshops operating in the U.S. has experienced a modest decline, which may be attributable to the rapid growth of payday lending during this period. As of 2007, the number of pawnshops in the U.S. was estimated to be between 10,000 and 15,000. Most of these shops were owned by small, independent operators, each of whom owned between one and three locations. At the end of 2007, Cash America International, Inc., the largest provider of pawn loans in the U.S., operated 499 pawnshops in 22 states, and the three largest publicly traded firms in the pawn lending business (Cash America, EZPAWN, and First Cash Financial Services) together operated a total of approximately 900 stores.¹² All three of these companies diversified into the payday lending business between 1998 and 2000.¹³

C. Payday lending

A payday loan is a small, short-term, unsecured, single-payment, consumer loan. The borrower writes a personal check to the lender, with the amount of the check equal to the loan amount plus the finance charge. The lender agrees to hold the check for a specified period of time (usually until the customer's next payday) before depositing it. The term of the loan is typically between seven and thirty days. The borrower can repay the loan at or prior to its maturity by (i) paying the lender in cash the face value of the check and retrieving the check from the lender, or (ii) allowing the lender to deposit the check. If the borrower does not wish to repay the loan at maturity, the loan can often be renewed or "rolled over" by paying the finance charge and having the lender agree to hold the check for another specified period of time. Payday loans vary in size from \$50 to \$1000 [Note: limited to \$500 in Alabama], with the average loan size being between \$300 and \$400. Finance charges, which are subject to legal limits in many states, typically range from about \$10 to \$20 per \$100 borrowed [Note: in Alabama limited to \$17.50 per \$100]. For a two-week loan, these fees translate into APRs ranging from 260 to 520 percent [Note: extrapolation of two-week loan at \$17.50/\$100 = 455 percent APR].

Payday loan customers are required to have a bank account and a job (or other regular source of income). The largest payday lender in the U.S., Advance America, reports that it does not undertake any evaluation of a customer's creditworthiness in deciding whether to approve a

loan application.¹⁴ The company does, however, take into consideration the customer's income in determining the size of the loan. Although payday lenders generally do not obtain credit reports on their loan applicants, some lenders subscribe to a service that provides information about a potential customer's prior payday borrowing and repayment behavior.¹⁵

From its emergence in the early 1990s through about 2006, the payday lending industry enjoyed explosive growth.¹⁶ In 1996, there were an estimated 2,000 payday lending stores operating in the U.S.¹⁷ By 2007, the number of payday lending locations had grown to approximately 24,000.¹⁸ The majority of these stores were owned by small, independent operators. The largest provider of payday loans (as measured by number of stores) operated 2,813 stores in 35 states, and the ten largest firms together accounted for less than 40% of all payday lending locations. In recent years, some payday lenders have begun to provide loans over the internet, as well as through their stores. Stephens Inc. estimates that in 2006 internet lending accounted for nearly 12 percent of the industry's \$47.65 billion volume of payday loans.¹⁹

III. Regulatory Environment

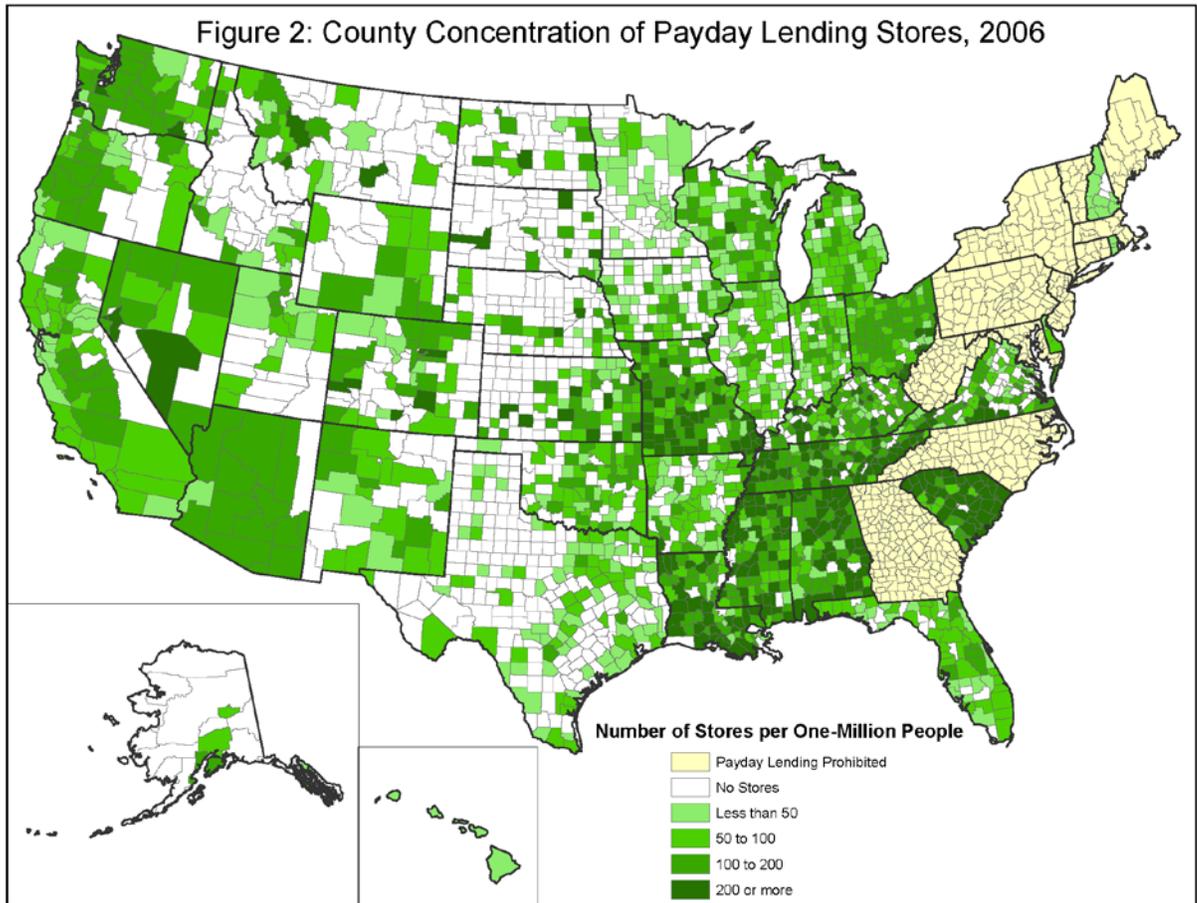
Providers of alternative financial services are subject to numerous legal and regulatory restrictions, at both the state and federal levels. At the federal level, all financial service providers must comply with the Gramm-Leach-Bliley Act, the USA PATRIOT Act, and the Bank Secrecy Act. In addition, all loan providers must comply with the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Talent-Nelson Amendment to the 2007 Defense Authorization Bill. [Note: The Talent-Nelson Amendment limits annual interest rates on loans to military borrowers to 36 percent.] At the state level, restrictions typically vary across different types of AFSPs [Alternative Financial Service Providers].²⁰

As of year-end 2007, payday lending was explicitly permitted by law in 38 states and explicitly prohibited in one (Georgia). Eleven states had no payday lending laws, but effectively prohibited payday lending through the application of usury ceilings or small loan interest rate ceilings that rendered payday lending unprofitable. ... [Note: In 2008, Ohio and New Hampshire passed legislation that effectively prohibits payday lending.]

In those states where payday lending is explicitly permitted, payday lenders are typically subject to licensing requirements and regulatory restrictions. Restrictions vary from state-to-state, but may include limitations on the maximum size of a payday loan [Note: Alabama limits Payday loans to \$500], the maximum number of loans that can be made to a single customer at one time, the fees that can be charged for a loan [Note: Alabama limits fees to \$17.50 per \$100], the term of a loan, and the number of times a payday loan may be renewed or "rolled over."²¹

The geographic distributions of the numbers of payday lending stores, pawnshops, and check-cashing outlets per million capita, at the county level, are shown in Figures 2 through 4, [Note: Only Figure 2 is shown below] respectively. The **highest concentrations of payday lending stores on a per capita** basis are in **those southern states** that do not explicitly or effectively prohibit payday lending – **Alabama**, South Carolina, Tennessee, Mississippi and Louisiana. The number of **pawnshops per capita** is also relatively **high in the south**, particularly Georgia, **Alabama**, Mississippi and Tennessee. The number of check-cashing outlets per capita shows a

somewhat different pattern, being highest in California, Delaware, Mississippi and North Carolina.^{22 23} [Note: Emphasis added]



VI. Determinants of the Locations of AFSPs

In order to better understand the factors influencing the location decisions of AFSPs, I model the number of AFSP outlets per million population in each county as a function of various demographic characteristics of the county's population (racial/ethnic mix, age, education, poverty status, population density), measures of the population's creditworthiness, and variables reflecting the state regulatory environment.^{24 25}

Although there is variation across the three types of AFSPs examined and between urban and rural counties, a few general patterns emerge.

(i) AFSPs are more likely to locate in counties where a large share of the population has no credit rating or (for payday lenders and pawnshops) a low credit rating and in counties where a large share of the population lacks a high school diploma;

(ii) AFSPs generally avoid areas with a large fraction of the population living below the poverty level;

(iii) there is no evidence that AFSPs (with the exception of check cashers in urban counties) concentrate in areas with large Hispanic populations – in fact, the concentrations of all three types of AFSPs in rural markets and payday lenders in urban markets are significantly negatively related to the share of the population that is Hispanic;

(iv) the concentrations of payday lenders and check cashers (but not pawnshops) are higher in areas with large non- Hispanic black populations;

(v) population density is a strong predictor of locations per capita in rural counties, but not in urban counties; and

(vi) more stringent limits on the rates that can be charged for payday (pawn) loans are associated with reductions in the number of payday lending stores (pawnshops) per capita.

VII. Conclusion

A large segment of the population relies on alternative financial service providers as a source of credit products or transaction services. While some view these firms as filling a niche which traditional financial service providers have chosen to avoid, others view them as targeting and preying upon economically vulnerable members of society. A number of studies have examined the determinants of the locations of AFSPs in an effort to distinguish between these two views. Those studies generally find that AFSPs are more likely to locate in areas where the population is disproportionately poor, minority, and poorly educated. At the same time, a small number of studies that include a measure of bank presence find a positive relationship between the number of bank branches and the number of AFSP outlets.

The present study expands upon the existing literature by using a new, more comprehensive data set to study AFSP location and by introducing some important new variables to the analysis. The results support some of the findings from previous studies, but contradict others. Consistent with the prior research, I find that AFSPs are more prevalent in areas where a large percentage of the population is black or lacks a high school diploma. However, contrary to previous studies, I find that AFSPs generally avoid the poorest areas and areas with high concentrations of Hispanics.

Credit scores are found to be a strong predictor of AFSP concentration: counties where a larger percentage of the population has no credit score have a greater density of all three types of AFSPs examined, while counties where a larger percentage of the population has a credit score that would place them in the subprime category have increased concentrations of both payday lenders and pawnshops. This finding suggests that AFSPs may simply locate where the demand for their services is likely to be greatest because a significant portion of the population does not qualify for more mainstream (and less expensive) forms of credit. However, further research is needed to more fully assess the competing claims made by industry critics and supporters regarding the behavior of AFSPs. Finally, state laws and regulations governing AFSPs appear to have a significant effect on the number of AFSPs per capita. More stringent limits on the interest rates that can be charged on payday loans (pawn loans) are associated with significantly fewer payday lenders (pawnshops) per capita.²⁶

FDIC-Insured Financial Institutions in Payday Loan Business

During our meetings with business representatives of Payday and Title Loan business, the representatives indicated that their loan rates were much less than the fees traditional banks charge for bounced checks due to Non-Sufficient Funds (NSF) or fee-based overdraft protection. They also shared that traditional banks such as Wells Fargo and Regions, in Northport and Tuscaloosa offer very similar “payday” loan products.

We reached out to two of the large mainstream banks in Northport and Tuscaloosa, Wells Fargo and Regions. Wells Fargo indicated that although their bank offers such loans in other states, they do not provide this loan service in Alabama. Regions bank stated that they do provide such loan service under the category of “Ready Advance.” The following is excerpted from Regions’ Ready Advance Website.²⁷

Regions Ready Advance®: It is a short-term, small-dollar line of credit available to qualified checking account customers.

Qualified Customers: Ready Advance is available to qualifying customers who have a consumer checking account, open for at least six months, receives a qualified direct deposit, resides within the Regions service area and is not in default. [Note: not available in North Carolina].

Fees for Phase One and Phase Two Customers:

Phase One: The Cash Advance fee is \$1 for each \$10 advanced. For example, if an advance is made for \$100, the Cash Advance fee would total \$10, for a total balance due of \$110. When the next qualified direct deposit(s) is posted, Regions will debit the checking account for \$110 to satisfy the total outstanding balance.

Phase Two: After you have been a Ready Advance customer for at least 12 statement cycles, and if your account is not in default, the Cash Advance fee will decrease to \$0.70 for each \$10 advanced.

Credit limits:

Phase One: Credit limits range from a minimum of \$50 to a maximum of \$500

Phase Two: Credit limits range from a minimum of \$50 to a maximum of \$1,000

Your credit limit is based on 50 percent of your total qualified monthly direct deposit(s). For example, if you have qualified direct deposit(s) that total \$800, and you are a Phase One customer, your maximum credit limit would be \$400.

When are Payments Made:

Phase One: During the first 12 monthly statement cycles of your account, we will debit your outstanding balance automatically from your qualified checking account each time a direct deposit is made to your checking account and, in any event, within 35 days after the oldest outstanding cash advance was made.

Phase Two: After you have been a Ready Advance customer for 12 statement cycles, each month your entire outstanding Ready Advance balance will be automatically debited from your checking account on your monthly Payment Due Date, instead of next direct deposit.

Title Loan Businesses

*Driven to Disaster: Car-Title Lending and Its Impact to Consumers*²⁸ is a report recently completed (February 2013), by the Consumer Federation of America's Center for Responsible Lending. This resource document was not selected due to it being produced by a consumer-advocacy group; it was selected because of the wealth of information it provides on the Title Loans business. The following are excerpted passages from the above report as well as the Center for Responsible Lending's website related to describing the Title Loan business.

Fast Facts--Car Title Loans

- Car title loans are based on the value of a borrower's car – the ability to repay the loan is not a factor in the lending decision.
- Lenders hold onto the title of the vehicle. If the borrower cannot repay the loan when it comes due, the lender has the legal right to repossess the car from the borrower.
- The nation's largest car title lender's average loan is about 25% of the vehicle's retail value.
- Loan rates for car title are typically 20-30 times that of rates charged by credit card issuers.
- While most car title loans are due within a month, most borrowers are unable to fully repay the loan and interest within 30 days.
- The average car title customer renews their loan 8 times.
- On a \$500 title loan, this average customer will pay back \$650 in interest over eight months; the principal borrowed will be in addition.
- Because of renewals, title lenders derive far more profit from triple-digit interest than from loan principal.
- Today, 31 states have outlawed high-cost car title loans.
- In 2006, President George W. Bush and Congress capped car title loans at 36 percent annually for members of the military.²⁹

*Driven to Disaster: Car-Title Lending and Its Impact to Consumers*³⁰

Background

As their name makes clear, car-title loans are secured by a borrower's title to a vehicle owned outright. While there are variations, this paper focuses primarily on 30-day car-title loans with balloon payments due at the end of the term (hereafter "car-title loans").³¹ These loans average \$951 and are underwritten primarily based on the value of the vehicle that secures the loan.³² The majority of state car-title loan laws either directly authorize 300 percent APR loans or set no interest rate caps at all. Car-title loans are commonly advertised with interest of 25 percent per month, which equates to an APR of 300 percent.

Car-title loans have many similarities to payday loans, as the chart below demonstrates. Just as most payday borrowers cannot afford to repay their loan in full and cover their living expenses for the next pay period, neither can most car-title borrowers.³³ Car-title lenders also often offer a "free" or heavily-discounted first loan.³⁴ These borrowers are likely to renew their loan multiple times, incurring several rounds of fees, allowing lenders to more than make up for the initial discount. Car-title lenders rely on the threat of repossession to ensure that the majority of

borrowers repeatedly renew their loans when they cannot repay the full amount of the loan in just 30 days. As a result, short-term car-title loans turn into long-term, high-cost debt with borrowers paying more than twice in interest what they receive in credit.

Features	Payday Loans	Title Loans
Typical loan size	\$350	\$951
Fee/interest	\$16 per \$100 borrowed	\$25 per \$100 borrowed
Typical loan term	Two weeks	30 days
Typical APR	416 percent	300 percent
Loan term	Full payment due on next payday (usually in about two weeks)	Full payment due in one month
Collateral	Secured by personal check or access to bank account	Secured by car title

A typical car-title loan requires no credit check.³⁵ Unlike payday lending, car-title loan borrowers can qualify without having a bank account, and some car-title lenders do not even require proof of income or employment.³⁶ Lenders simply assess the car's wholesale value and offer to lend up to a certain percentage of that value. Car-title borrowers retain use of their car during the loan term but relinquish a copy of the keys and the title. Once the loan comes due, the borrower can either repay the entire amount borrowed (plus interest) or extend the loan by paying only the monthly interest.^{37 38}

Characteristics of Car-Title Borrowers

For many households, a car is not just a financial asset; it is necessary to get to work, school or child care. The very nature of car-title lending poses a significant risk to borrowers' financial well-being and their livelihood, particularly given the typical characteristics of car-title borrowers.

Based on trade association data, Professor Todd Zywicki notes that about half of all car-title borrowers are unbanked. A recent FDIC report notes that the unbanked, which make up about eight percent of the U.S. population, are more likely than the U.S. population as a whole to earn less than \$30,000 per year, be non-white, be unmarried, have less than a high school degree and be a foreign-born Spanish speaker.³⁹

This income information for unbanked individuals is consistent with car-title borrower income reported by regulators in Illinois and New Mexico, who found that borrowers make less than \$25,000 on average (\$24,200 and \$24,493, respectively).⁴⁰ Additionally, most car-title loan borrowers appear to be renters. The most recent data available finds 80 percent of these borrowers rent their homes.^{41 42}

Analysis

The Long-Term Debt Trap of Car Title Loans.

The combination of short-term balloon payments and minimal underwriting is particularly harmful to borrowers. Our analysis (see Appendix I) suggests that the typical borrower is unlikely to repay a car-title loan (both principal and interest) in just one month. If they do, they

generally will not have enough money left to pay the next month of their regularly occurring expenses. For example, taking into account residual income after paying for only their most basic living expenses, borrowers making \$25,000 or \$35,000 a year are unable to retire their car-title loan debt when due in 30 days.⁴³ Even for borrowers who earn more, paying off a car-title loan in one month likely consumes a substantial portion of residual income that may be needed for other debt payments, child care, clothing, or other needs.⁴⁴

Borrowers without sufficient disposable income are likely to end up renewing their loan multiple times—that is, paying the monthly interest only and repeatedly extending the loan for another 30 days. Many borrowers remain indebted until a windfall, such as a tax refund, allows them to finally pay off the balance.

For example, a report from TMX (TitleMax) notes that “we have historically experienced a reduction of 9% to 14% in our title loans receivable in the first quarter of each fiscal year, primarily associated with our customers’ receipts of tax refund checks.” ... Payday borrowers similarly rely on irregular cash infusions to truly break the cycle of repeat borrowing. According to a recent study by Pew, forty-one percent need an outside cash infusion to eliminate payday loan debt— including getting help from friends or family, selling or pawning personal possessions, taking out another type of loan, or using a tax refund. See Payday Lending in America: How Borrowers Choose and Repay Payday Loans at <http://www.pewstates.org/research/reports/how-borrowers-choose-and-repay-payday-loans-85899452131>⁴⁵

As we discuss later in this report, other borrowers eventually go into default and face additional repossession fees even after paying two times more in fees and interest than they originally borrowed.

The president of TitleMax, one of the nation’s largest car-title lending chains with locations in many states, notes that “loans are typically renewed at the end of each month and thereby generate significant additional interest payments.”⁴⁶ In fact, the average TitleMax customer renews his or her loan eight times.^{47 48}

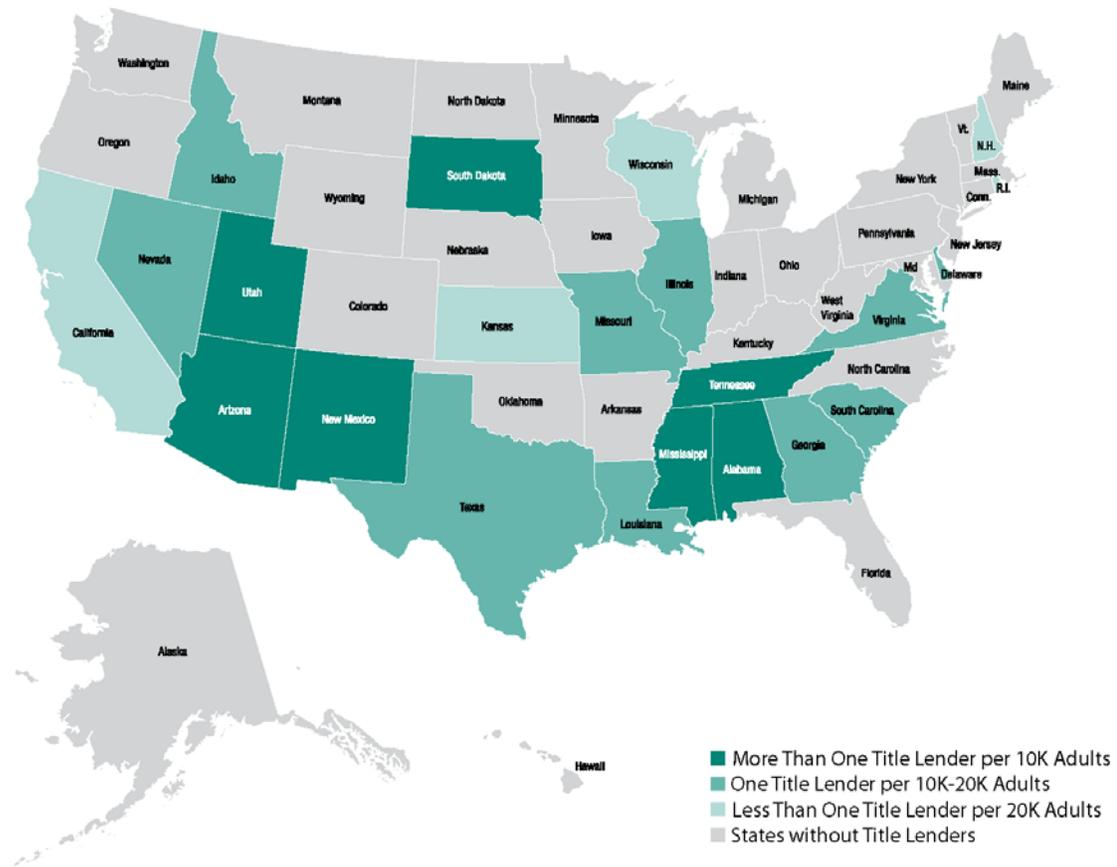
Assuming a consumer will renew their loan eight times as in the TitleMax example, that consumer will be charged over \$2,100 in interest in order to borrow \$951 (see Table 3).

Table 3: Total Cost to Car-Title Loan Borrower for a \$951 Loan, 25 Percent per Month Interest (300% APR)	
Loan principal	\$951
Initial Interest (\$951*25%)	\$238
8 additional renewal fees (\$238*8)	\$1,904
Total interest paid	\$2,142
Total amount paid by borrower in both interest and principal for \$951 car-title loan	\$3,093

Our estimate of the costs of the typical car-title loan is similar to publicly-available data provided by state consumer credit regulators. From October 2009 to November 2010, Illinois borrowers took an average of about 10 months to complete a loan of \$785.⁴⁹ During this time, they paid an average of \$1,531 in fees in addition to the principal.⁵⁰

Additionally, as a result of the 2006 Military Lending Act, car-title loans cannot legally be made to active duty service members or their dependents, regardless of where they live.⁵¹ This protection was enacted after the Department of Defense grew concerned about active-duty service members becoming deeply indebted to high-cost lenders, putting their security clearances—and their financial well-being—at risk.^{52 53}

Car-Title Lending Concentrations by State⁵⁴



Conclusions and Policy Recommendations

... the FDIC Affordable Small Dollar Loan Guidelines, which suggest that small loans be made under the following parameters to be sustainable for borrowers:

FDIC Small Loan Guidelines

- Loan amount: \$2,500 or less
- Minimum 90-day loan term
- 36% APR or lower
- Approval within 24 hours; streamlined underwriting, proof of identity, address, income, and credit report⁵⁵

Alabama Experience with Title Loans

As stated earlier, there has been significant discussion about Payday Loan and Title Loan businesses within the cities of Northport and Tuscaloosa, as well as within the Alabama State Legislation. An article appearing in the Birmingham News, September 23, 2012, by Chris Izor titled, *VIEWPOINTS: Alabama leads nation in car-title loan outlets*,⁵⁶ shared some very explicit information on car-title loans in Alabama. The following are excerpts from the News article:

- Alabama has the largest number of vehicle-title-loan outlets per capita, according to preliminary research conducted recently by the center. [Center for Responsible Lending, a national advocacy organization in Durham, N.C.]
- The practice of vehicle-title lending began in the early 1990s and has since proliferated in states with lax regulation of small-dollar, high-interest loans. Only 16 states -- most concentrated in the South and Midwest -- explicitly allow these types of loans.
- According to a 2006 report from the Consumer Federation of America, Alabama and Georgia are the only states in which a lender can keep the entire proceeds from the resale of a vehicle repossessed after a loan default. If a borrower defaults on payment of a \$1,500 loan on a \$6,000 car, for example, the lending agency can repossess the car, resell it and legally keep the whole sum from the sale. [Authors' Note: In discussions with representatives of TitleMax, they indicated that upon default, they sell the repossessed vehicle, pay off the balance of the loan and any outstanding expenses, and return the balance to the vehicle owner.]
- Shay Farley, legal director at Alabama Appleseed Center for Law and Justice, said this perspective -- that title lending and payday lending agencies offer needed loans to people who don't have access to credit -- is the central argument for offering loans that require high interest without a credit check. The fact that people need money and willingly choose to take these risky loans doesn't justify the practice, she said.
- Since 2007, there hasn't been a legislative action in Alabama addressing title lending or payday lending. Currently, title loans are governed by the Pawnshop Act, which allows 300 percent annual interest rates, and payday loans remain under the Deferred Presentment Services Act, which allows 456 percent annual interest rates.

Pros and Cons of Payday Loans and Title Loans

As stated earlier, there has been significant discussion about Payday Loan and Title Loan businesses within the cities of Northport and Tuscaloosa, as well as within the Alabama State Legislation.

Pros & Cons of Payday Loans

*Pros – Payday Loans*⁵⁷

- **Quick and simple process.** A payday loan is a quick, short-term loan to help cover any expenses till your next paycheck. You walk in, tell them how much you need and after exchanging paperwork, you walk out with your money. If you come prepared with the necessary documents, you can often get approved and receive your funds, cash in hand, within 15-20 minutes.
- **Complete privacy.** Many payday loan employees will give you the money with no questions asked. You won't have to answer any questions [as to why you might need the loan] or account for how you will spend the money.
- **No credit check.** A credit check is not necessary in order to start the approval process. All you need is a bank statement, paycheck stub and a post-dated check to complete the transaction.
- **Fast approval and receipt of funds.** Upon completion of the application, you will receive funds almost instantly.
- **No collateral required.** These loans are considered unsecured debt, meaning there is no collateral required for you to borrow the money. The only guarantee on the loan is your post-dated check which will be submitted to your bank at the end of the agreed upon loan period (14 – 31 days).
- **Less paperwork.** Conventional loans from banks and credit unions can take several hours to complete and there is a lot of paperwork. But not with payday loans, there's much less paperwork involved and you get your money faster.
- **Very convenient.** Physical stores conveniently located everywhere; you have access to payday loans online. The transactions are conducted in a safe and secure manner, and you don't need to talk to an employee face to face.

Cons – Payday Loans

- **Very expensive.** Interest rates and fees on payday loans and cash advances are very expensive, sometimes even as high as 500% interest per year, or more. While the loans are simple, quick and easy to obtain, you will pay a high price for that convenience.
- **Risks high:** The short-term benefits of payday loans may seem like a good idea in some cases, but the risks and long-term effects can be very dangerous.
- **Not long-term financial solution.** Borrowing money against future paychecks is not a long-term solution to your financial problems. If the loan is not repaid in full it can quickly lead to soaring debt and put you into a dangerous cycle.
- **Questionable contracts.** When you're in a financial bind, you will do almost anything to get the money you need, including signing questionable contracts. Borrowers are often forced to sign contracts stipulating terms that benefit the lender, instead of favoring the borrower.

- **Often unethical.** Like many collections agencies, payday lenders will often use forceful, unscrupulous and illegal means to collect on unpaid loans. This is money you rightfully owe them, and they will do whatever it takes to get it paid back.

Pros & Cons of Title Loans

Pros – Title Loan (excerpted from Title Max Website)

- **No credit check:** Transactions are based on your collateral, not your credit history. There is no credit check. All you need is a clear car title to get the cash you need.
- **No insurance required:** You do not need insurance of any kind to get a title loan – unlike many lenders who require consumers to have collision insurance on the vehicle before making a loan.
- **Viable alternative to selling your vehicle:** An alternative to selling your car in a time of financial need.
- **You are always in control:** You are always in control of the transaction because you maintain the use of your vehicle throughout the term of the title loan.
- **All Kinds of people get title loans for short-term cash needs:**
 - Consumers who have a sudden and unexpected need for cash due to common financial challenges, such as: medical emergencies, home repairs, unexpected bills, etc.
 - Consumers who need cash immediately and don't have time to wait for a bank to approve a loan.
 - Self-employed small business owners with an immediate need for short-term working capital.
 - Consumers who have low credit ratings, causing them not to have access to traditional credit-based lenders, like banks and credit card companies.⁵⁸

Cons – Title Loans

- **Most valuable possession put up as collateral:** You have to put one of your most valuable and biggest ticket possessions up as collateral in order to get your loan.
- **High interest rates:** You can face intensely high interest rates, well beyond even what you might expect from a credit card offer if you have fair to poor credit.
- **Create more debt:** It can create more debt than it was meant to alleviate to take out one of these types of loans over the long run.
- **Disreputable companies exists:** If not careful, you run the risk of taking out a loan with a disreputable company that will charge you extra fees on top of the accrued interest, or insert hidden or fine print that you don't know to check for.
- **You can lose your car:** If you do have to default on your payments for any reason - and unforeseen emergencies can occur despite your best-laid plans - you will lose your car.
- **Length of loan short:** Term on an auto title loan is often quite abbreviated, and sometimes as short as three months. So you will need to have a plan in place to repay the loan in short order before you take it out, which often conflicts with the reasons you are needing a short term emergency auto title loan in the first place.

Facts about Short Term Lending – The Industry Viewpoint

Max Wood, president of *Borrow Smart Alabama, Council for Fair Lending*, a trade organization based in Birmingham representing payday and title lenders, provided the following “Facts About Short Term Lending:”

Consumers have a need for short-term credit

- There has always been and will always be a need for short term, small dollar loans.
- These are \$100-\$500 loans not available from traditional financial institutions.

Short term lending is most often cheaper than the alternatives

- Overdraft fees (\$35 avg.), utility reconnect fees (\$46 avg.) and credit card late payment fees (\$35 avg.) are typically higher than fees charged by payday or title lenders.
- \$100 cash advance is \$17.50.

Alabama has strong short term loan regulations.

- Rollovers are illegal. The entire loan MUST be paid off IN FULL at the end of the 14-30 day loan period.
- Rates are capped at 17.5 percent. There are no late fees or additional interest for loans that go beyond the initial term.

Our customers are hard-working people with jobs and families

- Payday lending customers must have a job, a checking account and a permanent address.
- The average customer nationwide is 41 years old and has an income of \$39,000 per year.

Short term loan stores locate in high traffic areas

- This is a convenience business just like a gas station or a pharmacy.
- Stores may be located near each other in high traffic areas, just like other convenience businesses.

Cities can and should regulate store appearance

- New short-term lending stores and signage should be congruent with their surroundings.
- Local lenders would be willing to work with city leaders on such regulations.

Short term loan stores are declining in number

- The number of short term loan stores in Alabama has declined since 2005.

Short term lenders are primarily small business owners

- Approximately 75 percent of lenders are Alabamians and are “mom and pop” businesses.

Short term lending is a low-margin, low-profit, high-risk industry.

- An analysis of the nation’s five publically traded payday lending companies concluded that cash advance lenders earn an average profit of \$1.37 per \$100 loan or about 9.1 percent margin, before taxes.
- Nationwide, the short term lending industry has an annual revenue of approximately \$6 billion while commercial banks have an annual revenue of about \$480 billion.

Legal Context of Regulated Uses

Introduction

This “Legal Context of Regulated Uses” is a brief review of Alabama statutes that regulate a number of the studied businesses, court cases involving these businesses, and land use tools such as zoning that are often used to mitigate any potential negative impacts that land uses may have within a governmental jurisdiction.

The discussion below includes the following Regulated Uses: pawnshop businesses; payday loan businesses; title loan businesses; “We Buy Gold” dealers; convenience stores that offer check cashing services; tattoo/body piercing shops; tobacco outlets; sexually oriented businesses; and hand car wash businesses. We do not include traditional financial institutions such as banks or credit loan companies, although we know some of these institutions offer “payday loan” type of services.

Reviewed Regulated Uses

Pawnshop Businesses

State Regulation

Alabama has a comprehensive system of regulating pawnshop operations, codified in the Alabama Pawnshop Act.⁵⁹ The Act imposes several requirements, of which the major ones are:

- Entry of detailed information about each item on the pawn ticket;⁶⁰
- Statement that “Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of 30 days past maturity date of the original contract, and no further notice is necessary.”⁶¹
- Detailed record-keeping requirements and a further requirement that such records be “made available to” law enforcement officials;⁶²
- A pawnbroker may contract for and receive a pawnshop charge in lieu of interest or other charges for all services, expenses, costs, and losses of every nature but not to exceed 25 percent of the principal amount, per month, advanced in the pawn transaction.⁶³
- Licensing standards and procedures.⁶⁴

The State appears to have preempted most direct regulation of pawnshops with this language:

Any municipality may enact ordinances which are in compliance with but not more restrictive than this chapter. Any existing or future order, ordinances, or regulation which conflicts with this provision shall be null and void.⁶⁵

That language would not appear to have any effect on aspects of regulation that the State has not addressed – such as location, which would be regulated via zoning.

Implications for Local Regulations

The State appears to have “occupied the field” of licensing such businesses and requiring that pawnshops keep records necessary to help law enforcement track goods that may have been stolen.

Thus, there appears to be no basis for local regulation of these issues, despite the odd language regarding municipal regulation.

In contrast, the State has imposed no restrictions on the location of pawnshops. Local governments thus can establish zoning criteria for the location of such businesses, by limiting them to specific zoning districts and, possibly, by imposing locational requirements, such as separation from one another or from other specified uses, signage standards, and possibly regulation of operating hours.

Payday Loan Businesses

State Regulation

Payday lenders appear to be subject to the “Deferred Presentment” provision of the State banking law,⁶⁶ which applies to businesses that accept checks for “deferred presentment.”⁶⁷ This does not appear to apply to a business that simply cashes checks, with no loan involved.

The law:

- Establishes licensing standards, requiring liquid assets of \$20,000 or more per location and disqualifying those with certain types of criminal records or with a record of disqualification for similar licenses;⁶⁸
- Establishes licensing procedures;⁶⁹
- Establishes requirements for reporting of events that would disqualify the licensee⁷⁰ and establishes procedures for license revocation;⁷¹ and,
- Establishes disclosure and record-keeping procedures.⁷²

Furthermore, the law establishing “Transaction fees; renewal or extension; repayment; bad check charge:”⁷³

- A maximum fee not to exceed 17.5 percent (per \$100) with the maximum amount advanced limited to \$500.
- The deferred presentment transaction may be renewed or extended to the same customer no more than one additional time at the above fee for a maximum of two continuous transactions. After two continuous transactions, the transaction shall not be renewed until repaid in full.
- After the initial loan period and one rollover, if the customer is unable to repay the outstanding balance, the licensee may offer the customer an extended repayment option of four equal monthly installments. After notice, if the customer fails to exercise his or her rights within 15 days of the notice, the licensee may commence action to collect on a transaction in default.
- If there are insufficient funds to pay a check on the date of presentment, the licensee may charge a fee authorized in Section 8-8-15 [\$30]; however, only one such fee may be collected.

The only reference to physical location for deferred presentment businesses is a modest limitation on co-location of these businesses with others:

No licensee shall conduct the business of making deferred presentment transactions under this chapter within any office, suite, room, or place of business in which any other business except check cashing or a business conducted pursuant to Chapter 19A [deals with pawn businesses] is solicited or engaged in or in association or conjunction with any other business until 15 days' written notice of an intention to do so has been given the supervisor. Upon receipt of written notification, the supervisor [Supervisor of the Bureau of Loans] may investigate the facts and, if

he or she finds that the character of the licensee and the nature of the other business warrant belief that such conduct of business would conceal violation or evasion of this chapter or of regulations lawfully made hereunder, he or she shall enter an order directing the licensee to discontinue the other business. The order shall be entered in the manner specified in and subject to the provisions of Section 5-18A-7.⁷⁴

Alabama Small Loan Act

There is a separate state law that governs the “small loan” business.⁷⁵ The law applies to the business of making loans of less than \$1,000⁷⁶ but exempts banks, trust companies, credit unions, pawnbrokers and other financial institutions that are separately regulated.⁷⁷ The legislative findings (from 1979) are worth setting forth in full, because they relate to other aspects of this study and were not repealed or even contradicted by the later adoption of the “deferred presentment” law:

- (1) There exists among citizens of this state a widespread demand for small loans. The scope and intensity of this demand have been increased progressively by many social and economic forces;
- (2) The expense of making and collecting small loans, which are usually made on comparatively unsubstantial security to wage earners, salaried employees and other persons of relatively low incomes, is necessarily high in relation to the amounts lent;
- (3) Such loans cannot be made profitably under the limitations imposed by existing laws relating to interest and usury. These limitations have tended to exclude lawful enterprises from the small loan field. Since the demand for small loans cannot be legislated out of existence, many small borrowers have been left to the mercy of those willing to bear the opprobrium and risk the penalties of usury for a large profit;
- (4) Interest charges are often disguised by the use of subterfuges to evade the usury law. These subterfuges are so complicated and technical that the usual borrower of small sums is defenseless even if he is aware of the usurious nature of the transaction and of his legal rights;
- (5) As a result, borrowers of small sums are being exploited to the injury of the borrower, his dependents and the general public. Charges are generally exorbitant in relation to those necessary to the conduct of a legitimate small loan business, trickery and fraud are common and oppressive collection practices are prevalent; and
- (6) These evils characterize and distinguish loans of \$749.00 or less. Legislation to control this class of loans is necessary to protect the public welfare.⁷⁸

That law, recognizing the costs and risks of making such loans, allowed for an interest rate higher than otherwise allowed under Alabama law – 3 percent per month on the first \$200 and 2 percent per month on the balance above \$200 and less than \$1,000, plus a \$3 per month “account maintenance charge.”⁷⁹ This effective interest rate could amount to 50 percent or more on a \$100 loan but would still be far below the amounts often charged by payday lenders.

Implications for Local Regulations

The State appears to have fully “occupied the field” of licensing such businesses and requiring that they keep appropriate records related to financial transactions.

The only locational restriction in the State law relates to co-location of a deferred presentment business with another business (other than a pawnshop, with which co-location is freely allowed). It appears that

the State has effectively occupied the field of dealing with co-location of such a business in the same store or office as other businesses. Local governments thus can establish zoning criteria for the location of such businesses, by limiting them to specific zoning districts. A local government can also impose separation requirements between deferred presentment businesses and can probably impose separation requirements between such businesses and other types of alternative financial institutions, although the fact that the State has dealt with the co-location issue to some extent could create a question about such requirements.

Title Loan Businesses

State Regulation

It is our understanding that the title loan business in Alabama is treated as a pawn business and regulated under the pawnshop laws discussed above.

Implications for Local Regulation

The State appears to have “occupied the field” of licensing such businesses and requiring that pawnshops keep records necessary to help law enforcement track goods that may have been stolen. Thus, there appears to be no basis for local regulation of these issues, despite the odd language regarding municipal regulation.

In contrast, the State has imposed no restrictions on the location of pawnshops. Local governments thus can establish zoning criteria for the location of such businesses, by limiting them to specific zoning districts and, possibly, by imposing locational requirements, such as separation from one another or from other specified uses, signage standards, and possibly regulation of operating hours.

“We Buy Gold” Dealers

State Regulations

We have included in our research businesses that sell gold or other precious metals since this type of business appears to deal in a commodity where actual ownership of the merchandise is difficult to confirm (i.e., potential for being stolen property), and these businesses, much like the short term loan business (title and payday loans), are a land use that is being seen more and more frequently.

In 2010, the Alabama legislature adopted a law regulating “Dealers in Gold or Precious Items.”⁸⁰ The law has four principle elements:

- It requires that each dealer obtain an annual license from the Alabama Department of Banking (fee of \$100) and a license from each county where it operates (fee of \$50 each), and provide copies of those licenses to “the local law enforcement agency”;⁸¹
- It requires that dealers obtain identification from sellers, maintain detailed transactions of all purchases, and submit detailed weekly report about items purchased to local law enforcement agencies;⁸²
- It requires that payment to sellers be made by check;⁸³ and
- It requires that the dealers maintain each item “in the same shape and form as receipted for in the dealer’s custody for 15 business days.”⁸⁴

Although the State law provides that “A dealer may only operate from the permanent place of business listed on the business license,” it imposes no substantive restrictions on such locations.⁸⁵

Implications for Local Regulations

The State appears to have at least partially “occupied the field” of licensing such businesses and requiring that they keep records necessary to help law enforcement track goods that may have been stolen. There may or may not be room for additional licensing standards of these businesses. In contrast, the State has imposed no restrictions on the location of gold and precious metals dealers. Local governments thus can establish zoning criteria for the location of such businesses by limiting them to specific zoning districts, and possibly, by imposing other locational requirements, such as separation from one another or from other specified uses.

Convenience Stores with Check Cashing Services

We distinguish the business of simply cashing checks from the “deferred presentment” business of cashing post-dated checks that are typically dated for the maker’s next payday – a business often called “payday lending.” These are typically convenience stores such as quick shops, gas stations or corner stores that cash payroll checks from known employers and government checks, such as social security and other benefit checks. Such establishments typically charge a nominal fee – or no fee if the person cashing the check also makes a purchase. That is a significant contrast to the very high cost of payday loan transactions.

State Regulation

We found no Alabama statutes dealing with the business of simply cashing checks.

Implications for Local Regulation

To the extent that there is a need for regulation, the field appears to be entirely open to local action.

Tattoo Businesses

State Regulation

The Alabama Department of Public Health has the authority and responsibility to regulate certain aspects of the tattoo business.⁸⁶ Although the tattoo license is issued to a specific individual at a specific location, the only substantive licensing requirement in the statute is for an inspection of the premises, with no reference to qualifications of the individual licensee.⁸⁷ The law does go on to provide operating standards applicable to the individual⁸⁸ and to establish penalties for violation.⁸⁹

Other than the reference to issuing a license for a specific [inspected] location, the State law imposes no restrictions on the location of tattoo parlors or similar businesses.

Constitutional Issues

Tattoo parlors are often classified with sex businesses in local zoning ordinances, perhaps because of the somewhat tawdry image presented by such establishments, and perhaps because they are believed to have some of the same types of secondary effects as sexually oriented businesses.

Until 2010, it seemed clear that local governments were free to regulate tattoo establishments as another potentially problematic land-use, without unusual Constitutional constraints. In 2010, in *Anderson v. City of Hermosa Beach*,⁹⁰ the Ninth Circuit Court of Appeals held that the tattooing process

is protected by the First Amendment, thus substantially increasing the evidentiary and defense burden imposed on communities on the West Coast that want to regulate tattoo parlors. The law in the rest of the country, discussed below, remains unchanged, with no apparent First Amendment protection for tattooing – but it is worth a brief discussion of the Ninth Circuit decision.

The case arose in California. The court explained that the State licenses tattoo artists and that Los Angeles County nominally provides inspection services, although the court acknowledged that there is only one inspector and more than 300 establishments. Hermosa Beach did not allow tattoo parlors.⁹¹ A tattoo artist brought a facial challenge to the Hermosa Beach ordinance; in an unreported decision summarized in the appellate opinion, a federal court held that tattooing lacked First Amendment protection in part because the customer chose the art, thus arguably eliminating any communicative element by the artist. The appellate court reversed, holding that a tattoo is expressive activity. It went on to conclude that the process of tattooing is an expressive activity.⁹² The court included this discussion:

Tattooing is a process like writing words down or drawing a picture except that it is performed on a person's skin. As with putting a pen to paper, the process of tattooing is not intended to symbolize anything. Rather, the entire purpose of tattooing is to produce the tattoo, and the tattoo cannot be created without the tattooing process any more than the Declaration of Independence could have been created without a goose quill, foolscap, and ink. Thus, as with writing or painting, the tattooing process is inextricably intertwined with the purely expressive product (the tattoo), and is itself entitled to full First Amendment protection.

We are further persuaded by the fact that the process of tattooing is more akin to traditional modes of expression (like writing) than the process involved in producing a parade, which the Supreme Court has held cannot be meaningfully separated from the parades expressive product in terms of the constitutional protection afforded. See *Hurley*, 515 U.S. at 568 (holding that [p]arades are a form of expression, not just motion, and noting the inherent expressiveness of marching). Thus, we have no difficulty holding that the tattooing process is entitled to the same First Amendment protection as the process of parading.⁹³

The court then applied strict scrutiny to the ordinance and found that it failed the test because the ban was not narrowly tailored and it failed to provide alternative avenues.⁹⁴ In reviewing this decision, it should be kept in mind that the Ninth Circuit Court of Appeals (westernmost part of US) has somewhat of a history of provocative decision-making.

In contrast, a federal court in Illinois has held:

The First Amendment protects speech. It also protects expressive conduct, as long as the conduct is sufficiently imbued with elements of communication to fall within the scope of the First Amendment. *Spence v. Washington*, 418 U.S. 405, 409, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974). To determine whether an activity warrants First Amendment protection, the court must determine whether there was intent to convey a particularized message and whether there is a great likelihood that the message would be understood by those who view it. *Miller v. Civil City of South Bend*, 904 F.2d 1081, 1086 (7th Cir. 1990) (citing *Texas v. Johnson*, 491 U.S. 397, 404, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989)).

The act of tattooing fails the first prong of this test because the act itself is not intended to convey a particularized message. The very nature of the tattoo artist is to custom-tailor a different or unique message for each customer to wear on the skin. The act of tattooing is one step removed from actual expressive conduct, which is similar to a sound truck, which enables

each customer to express a particularized message, but the sound truck vehicle itself is not expressive.⁹⁵

Similarly, a federal court in Minnesota held in part:

For a variety of reasons, the Court has concluded that the actual process of tattooing is not sufficiently communicative in nature so as to rise to the plateau of important activity encompassed by the First Amendment.⁹⁶

Other courts have similarly concluded that tattoo parlors lack First Amendment protection.⁹⁷ For example, two employment-related decisions (in Texas and Connecticut) both rejected arguments that the display of tattoos by individuals was protected by the First Amendment.⁹⁸

Existing Local Regulations

As it does with many other health-related issues, the State of Alabama has delegated actual regulation of tattoo artists and operators to the counties. In Tuscaloosa County, the Health Department carries out those responsibilities under the rather limited and vague state regulations.

Implications for Additional Local Regulations

Other than the State licensing of individual that provide tattoo services and the inspection of the premises, the State has left the issue of regulating tattoo businesses to local governments. Thus, the cities are free both to adopt zoning regulations restricting the location of such businesses and to adopt licensing or other police-power ordinances dealing with the operation of the businesses.

Tobacco Shops

State Regulation

Alabama has a number of laws dealing with tobacco, but few of them address the issue of retail sales. One apparently very old provision reads:

Any person who sells, barter, exchanges or gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them shall, on conviction, be fined not less than \$10.00 nor more than \$50.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.⁹⁹

A separate and later chapter gives the Alcoholic Beverage Control Board the authority and responsibility to regulate the sale of tobacco products,¹⁰⁰ with an emphasis on preventing the sale of such products to minors.¹⁰¹ Anyone selling tobacco products must obtain a location-specific permit for such sales.¹⁰² There are no criteria for issuance of the permit.¹⁰³ Unlawful actions under the law are selling without a permit¹⁰⁴ and selling to minors.¹⁰⁵ Another section of the Alabama Code establishes business privilege license fees for retail tobacco dealers, with such fees payable to local governments.¹⁰⁶ The tobacco tax provisions are set out in a separate article of the Code.¹⁰⁷ Several sections deal with “delivery sales” of tobacco, where the buyer is not physically present at the time of purchase to take delivery of the product.¹⁰⁸

Other than the requirement for location-specific permits issued by the Alcoholic Beverage Control Board, there is no reference in the State law to locations and no indication that the State intends to regulate the choice of locations.

Constitutional Issues

Although there are no apparent Constitutional issues related to the regulation of the location or even operation of tobacco retailers, it is important to note that the U.S. Supreme Court has held that Federal law largely preempts state or local efforts to regulate the advertising of tobacco products.¹⁰⁹ The case involved a challenge to advertising of tobacco products on billboards or other signs located near public parks or schools. The Court found that the restrictions on advertising cigarettes were preempted by the Federal statute that requires health warnings on cigarette packages, but it went on to find that the entire law – including restrictions on advertising tobacco products not covered by the Federal disclosure law – was a content-based, unconstitutional restriction on protected speech. The Court said in part:

A careful calculation of the costs of a speech regulation does not mean that a state must demonstrate that there is no incursion on legitimate speech interests, but a speech regulation cannot unduly impinge on the speaker's ability to propose a commercial transaction and the adult listener's opportunity to obtain information about products. After reviewing the outdoor advertising regulations, we find the calculation in this case insufficient for purposes of the First Amendment.¹¹⁰

Implications for Local Regulations

Other than the Alcoholic Beverage Control Board's authority to regulate the sale of tobacco products and the Federal laws related to tobacco advertisement, the State and Federal governments have left to local governments the issue of regulating businesses that sell tobacco products. Thus, cities are free to adopt zoning regulations restricting location of such businesses by limiting them to specific zoning districts and, possibly, by imposing locational requirements, such as separation from one another or from other specified uses, as well as signage standards (that do not run afoul of Federal laws discussed above), and possibly regulation of operating hours.

Sexually Oriented Businesses

Our discussion here deals with lawful sex businesses. Alabama, like all other states except Nevada, prohibits prostitution. All fifty states prohibit the distribution of "obscene" material. Our discussion here deals with businesses that sell, rent, show, or exhibit sexually oriented media, certain sexual devices (but see discussion immediately below), sexually oriented motion picture theaters and sexually oriented live entertainment establishments.

State Regulation

The State of Alabama has two laws that directly affects what otherwise would be lawful sex businesses. In 1998, the legislature added to the definition of obscene material – which it is illegal to distribute – the following:

[A]ny device designed or marketed as useful primarily for the stimulation of human genital organs....¹¹¹

The statute appears to outlaw sex toys such as dildos and artificial vaginas, although how it treats bullet-shaped vibrators that might be used for other things is unclear. The law was the subject of protracted court proceedings, but in the last round, the Eleventh Circuit Court of Appeals held that the law was Constitutional in a 2-1 decision,¹¹² and the Alabama Supreme Court held that it was Constitutional as applied to a retail store in Hoover.¹¹³

A separate section of State law focuses live performances:

It shall be unlawful for any business establishment or any private club to show or allow to be shown for entertainment purposes the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state. A violation of this section shall be a Class C felony.¹¹⁴

Another section requires that specified sexually oriented establishments obtain a special license:

Any business establishment that operates as an "adult bookstore," "adult movie house," "adult video store," or other form of adult-only entertainment enterprise shall obtain in addition to any licenses required by existing law a special operating license, except that a video rental store that does not engage predominantly in and whose principle business is not the sale or rental of adult material, if it is maintained in compliance with Section 13A-12-200.5(2) or is located in an area restricted to adults.¹¹⁵

The statute essentially delegates the licensing authority to the local government.¹¹⁶ A clause in that section gives local governments the authority to "restrict the type of advertisement that the business establishment can display outside the establishment,"¹¹⁷ but there are significant Constitutional challenges in adopting any content-based regulation of signage or advertising material (See separate discussion of regulation of signage.). However, nothing in the State law addressing these issues deals with locational issues or operating hours of sexually oriented businesses.

Constitutional Issues

Regulation of sexually oriented businesses has become one of the more challenging tasks facing local governments today. The regulation must balance legitimate community concerns about the businesses with the First Amendment rights of the business owners and customers.

Courts increasingly demand that local governments base their zoning and licensing regulations of sexually oriented businesses on documented secondary effects of those businesses. Regulation of sexually oriented businesses is made more complex politically by society's division and ambivalence over this issue. Most regulations of sexually oriented businesses are directed at topless bars, XXX video stores and other establishments devoted almost entirely to sexually oriented activities. However, many well-regarded merchants include in their stock a measurable proportion of arguably sexually oriented material; such businesses include the video rental stores with "over-21 only" backrooms, news dealers with isolated racks of adult magazines and a variety of retail stores that may include certain sexually oriented items.

If the Cities of Northport and Tuscaloosa wish to go further in their regulation of sexually oriented businesses, they will need to seek balance in how it regulates land uses. Regulation of sex businesses is one of the most litigated areas of land-use law today. Communities that have tried to bar most or all sex businesses have generally lost court challenges to their regulatory schemes. In that context, a community must make reasonable provisions for the existence of some fully sexually oriented businesses; on the other hand, it is also clear that a community need not necessarily allow every such establishment to offer the full range of sexually oriented products or activities that its proprietors might like to offer or to allow such businesses to locate in neighborhood shopping centers. The courts have also recognized that a sexually oriented business (such as a book store) is different from other businesses offering similar products that are not sexually oriented; thus, the community can adopt and implement different zoning and licensing regulations for such businesses, provided that the effect of them is not a complete ban on all such businesses.

Clearly the courts have supported sexually oriented business ordinances that are drafted to reduce the **negative secondary effects** of sexually oriented businesses, but that do not infringe upon the First Amendment rights of these businesses. In one of the earliest major court decisions involving the regulation of sexually oriented businesses, *Young v. American Mini-theaters*, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976), the Supreme Court upheld the City of Detroit’s zoning regulations that required specified “regulated uses” (most were sexually oriented businesses) be separated from other such uses by at least 1,000 feet. The distance separation was supported by a study completed by a sociologist at Wayne State University who found that a concentration of such regulated uses created negative secondary effects. Nearly 30 years later, when Los Angeles was defending a different separation requirement for sex businesses, that city, too, was able to offer to the courts a careful study of negative secondary effects, based in significant part on local experience. *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (U.S. 2002).

The Supreme Court has imposed a significant condition on this interpretation of the First Amendment. It will interpret regulations meeting these standards as “time, place and manner” regulations of speech (which are far easier to defend than content-based ones) only if the regulations allow “adequate alternative avenues” for the communication within the community. In the context of sexually oriented businesses, that means that there must be available sites in the community. The Court first dealt with this issue in *Playtime Theaters v. City of Renton*.¹¹⁸ See, also, *Schad v. Borough of Mt. Ephraim*, where a small town tried to ban all live entertainment – without regard to the message – and the Supreme Court held that the ordinance was unconstitutional.¹¹⁹ Ordinances that appear to allow such businesses but that actually preclude them because there are no sites that meet all of the “buffer” and separation requirements do not count.¹²⁰ Ordinances that allow such businesses only through special use or conditional use review also do not qualify.¹²¹ Thus, one of the political challenges of adopting a Constitutional, effective set of regulations for sexually oriented businesses is that the regulations must explicitly allow the businesses. The adoption process for such an ordinance may lead to questions from constituents like “Why are you allowing these businesses now when the old ordinance did not do so?” The candid answer is usually “The old ordinance was unconstitutional and will not stand up.” Local officials may want to state the issue differently – but they need to be prepared for potential criticism for providing theoretical sites for businesses that some people would prefer not to see in the community.

Existing Local Regulations

We find nothing in the Northport code addressing the issue of sexually oriented businesses. Thus, if someone applies to open a sexually oriented retail store, it would have to be treated like any other retail store. If someone applies to open an adult cabaret with exotic dancing, it would have to be treated like any other “commercial recreation and entertainment structures,” of which “nightclubs” is currently listed as an example.

Although Tuscaloosa prohibits sexually oriented adult uses in the D/R - Downtown/Riverfront Overlay District; it appears to allow them as a “restricted” use in the Mixed Use Districts subject Section 24-303 (c) of the Zoning Ordinance. This Section establishes locational limits of only one such use on the same block face and no location within 300 feet of another restricted use.

Implications for Additional Local Regulations

Other than the restriction on the sale of some sexual devices, the State has left the issue of regulating sexually oriented businesses to local governments. Thus, cities are free both to adopt zoning regulations restricting the location of such businesses and to adopt licensing or other police-power ordinances

dealing with the operation of the businesses. Northport has chosen not to regulate these businesses specifically, which it is free to do. Tuscaloosa permits them but does not define them.

Hand Car Washes

State Regulation

There appear to be no State laws specifically regulating the car washing business. Car washes in general, however, generate wastewater. Both Tuscaloosa and Northport are subject to the MS4 (Metropolitan Separate Storm Sewer System) regulations, adopted by the U.S. Environmental Protection Agency under authority of the Federal Water Pollution Control Act and its various amendments; the regulatory program is actually implemented and administered by the Alabama Department of Environmental Management. These regulations address the quality of storm water discharged into the nation's waters. Although the regulations technically apply to the cities, as operators of the storm sewer systems, the only way to ensure compliance with the regulations is to ensure the elimination or reduction of pollutants in water that runs onto the streets and into the storm sewer systems.

Constitutional Issues

We are not aware of any Constitutional or other over-riding legal issues that would limit the ability of local governments to regulate these businesses.

Existing Local Regulations

Section 21-152 of the Tuscaloosa Municipal Code prohibits "illicit discharges" to the storm sewer system. Under Section 21-152(d), facilities submitted for subdivision or site development review must be designed to remove pollutants from runoff water to the "maximum extent practicable." The effect of this language appears to ensure compliance with the ordinance only for facilities receiving a permit after the current ordinance was adopted in 2008. The "illicit discharge" language, however, is broader and would appear to apply to facilities that existed before that date.

Section 43-3 of the Northport Municipal Code similarly prohibits "illicit discharges" to the storm sewer system. Like Tuscaloosa, Northport implements the regulations in part through the subdivision and site development review process (see Section 43-5); it also requires removal of pollutants from storm water to the "maximum extent practicable." The Northport ordinance, however, includes additional language allowing the city engineer to enter onto and inspect "any site" related to potential illicit discharges.

Implications for Additional Local Regulations

Local governments thus can establish zoning criteria for the location of such businesses, by limiting them to specific zoning districts and, possibly, by imposing locational requirements, such as separation from one another or from other specified uses, signage standards, and possibly regulation of operating hours. There appears to be adequate authority for the cities to require that existing car washes without pollution control devices on-site (which many already have) install control systems within a reasonable time to eliminate their illicit discharges.

Location of Businesses – Generally

Through zoning, local governments have long regulated the location of businesses and other land-uses, generally seeking to minimize conflicts and ensure reasonable compatibility among different land uses.

Typical zoning regulations divide a community into zoning districts and list what uses are allowed in what districts.

Treating different businesses differently is standard zoning practice. Many cities allow office uses in some zoning districts where they do not allow retail stores. Many allow grocery sales in some districts where they do not allow gasoline sales. Many treat drive-through restaurants differently from sit-down or even walk-up restaurants.

Other provisions in zoning for commercial uses typically address building size and scale, building setback, parking requirements and signage standards. Some zoning regulations require “buffers” between high-impact land uses and more sensitive uses that are nearby.

The exception to the authority of local governments to regulate the location of such businesses would arise where the State has “occupied the field” and preempted local regulation.

For example, the mid-level Oklahoma Court of Civil Appeals has upheld a local ordinance regulating the operating hours of Pawnshops, because the State law regulating Pawnshops did not address the hours of operation. *Circle D. Pawn # 2 v. City of Norman*, 956 P.2d 931 (Okla. Civ. App. 1998). Note that State regulation of Pawnshops is considerably more pervasive than that of check cashing and title loan businesses, so there has been more opportunity to develop reported cases addressing the preemption issue in this context.

Note, however, that zoning is a weak tool for dealing with lawfully established uses. If a subsequent zoning ordinance adoption or amendment prohibits such a use or some aspect of the use, it becomes a lawful, nonconforming use. The cities can certainly prohibit expansion or significant modification of a lawful nonconforming use, but other changes of circumstance – like a change of ownership or operation – does not provide a basis for terminating the nonconforming use status.¹²²

Zoning as a Tool to Regulate Location

Businesses addressed in our study are similarly subject to zoning restrictions that affect where they can be located. For illustrative purposes only, we will share examples of how local governments have used zoning regulations to address land use issues related to payday lenders. The principles that evolve from the cases and articles related to this business are relevant to all of the types of businesses that are the subject of our study.

There has been a good deal of interest in payday lenders and other alternative financial institutions in recent years because of the proliferation of such businesses; that interest has resulted in litigation and some interesting articles on regulating those businesses.

Examples from Other States

Some states have directly imposed locational limitations on certain types of alternative financial institutions. Georgia has banned payday lenders, declaring in a 2004 statute that “The site or location of a place of business where payday lending takes place in the State of Georgia is declared a public nuisance.”¹²³ Wisconsin has modified its zoning enabling legislation to prohibit the issuance of a zoning permit for a payday lender to be located within 1,500 feet of another payday lender or within 150 feet of a “single-family or two-family residential zoning district.”¹²⁴ New Jersey has addressed the locational issue in the licensing law for “check cashing” offices, prohibiting such an office from being located within 2,500 feet of another such office.¹²⁵ New York’s licensing law prohibits the issuance of a license to a check-cashing services within “one thousand five hundred eighty-four feet (three-tenths of a mile)” of another such licensee without the consent of that licensee.¹²⁶

To address the perceived blight and other potential impacts of such businesses, some local governments have imposed special zoning restrictions on such uses.¹²⁷ There is little question that local governments have the authority to treat these businesses differently from others if it has a rational basis for doing so. Even in Virginia, which is notoriously restrictive of local autonomy, the Attorney General has opined, "It is my opinion that a local governing body has the authority, under existing zoning enabling statutes, to classify payday loan businesses as a special exception or special permit use."¹²⁸ Courts in other states have generally upheld local zoning ordinances excluding such businesses from specific districts.¹²⁹

In an interesting case, the New York Court of Appeals held that a local zoning ordinance that prohibited check cashing services in the downtown business district, allowing them only in the industrial district, was preempted by the State law regulating such businesses because of the apparent purpose of the ordinance.¹³⁰ A town zoning ordinance allowed check cashing services in the light industrial and manufacturing districts of the town but prohibited them in the "business" district, where Sunrise already operated. Although on the surface the ordinance was apparently a land-use one, plaintiffs at trial produced an "inter-departmental memo apparently drafted by Charles S. Kovit, Senior Deputy Town Attorney, dated December 13, 2005, written to "File." It included this language:

"Essentially, [the proposed ordinance] serves the interest of encouraging young people and those of lower incomes to establish savings and checking accounts, do their banking at sound and reputable banking institutions, and develop credit ratings. It also eliminates predatory and exploitative finance enterprises from commercial areas, which is beneficial because these enterprises tend to keep a neighborhood down.

"Studies have found that a substantial portion of young and lower income people don't have a bank account. Check-cashing and Payday Loan establishments help to perpetuate this condition, by making it convenient for them to remain in the cash-only economy. This is bad for society as a whole because it discourages savings and the development of credit ratings that will help young and lower income people later in life."

Kovit also observed that "orthodox studies have found that check-cashing establishments actually exploit the poor and African Americans." According to Kovit, the high fees charged by check-cashing establishments constituted a form of racial discrimination. Kovit continued, "Check cashing businesses ... tend to cater disproportionately to minorities and pop up predominately in minority neighborhoods, keeping its patrons in the cash economy, to their detriment." Kovit concluded that "[t]he proposed ... ordinance ... would seek to end this pernicious exploitation and encourage banks and other financial institutions to become more conveniently located for everyone, including the poor and minorities." He further concluded that enactment of section 302 (K) would remove "a seedy type of operation, akin to pawnshops and strip clubs, from the commercial areas of the Town."¹³¹

The trial court had ruled for the town. The mid-level Appellate Division reversed, in part because the State law included a broad policy statement about the importance of check cashing services. The other factor that clearly influenced the court was the fact that the State licensing law specifically addressed the locational issue by making appropriateness of the location a factor in the licensing decision and by imposing a 1,584-foot separation distance between such businesses. The Appellate Division thus held that the State law preempted the local ordinance.

The New York Court of Appeals affirmed, but it took a broader look at the history of the local ordinance, calling into question its purpose. Although the ordinance was nominally a zoning one, the record suggested that the purpose of the ordinance fell in the field occupied by the State licensing law:

The provision at issue here contradicts this principle. It is clear from the memorandum of the deputy town attorney that section 302 (K) was directed at the perceived social evil of check-

cashing services, which were thought to exploit the younger and lower income people who are their main customers. Whatever the merits of this view as a policy matter, it cannot be implemented through zoning. Section 302 (K) is obviously concerned not with the use of the land but with the business done by those who occupy it. It is true that there are cases in which the nature of the business is relevant to zoning because of the businesses' "negative secondary effects" on the surrounding community; this is true of so-called "adult entertainment" uses (see *Stringfellow's of N.Y. v City of New York*, 91 NY2d 382, 395-396, 694 N.E.2d 407, 671 N.Y.S.2d 406 [1998]), but, despite the reference to "pawnshops and strip clubs" in the deputy town attorney's memorandum, the Town has not tried to show and does not argue that check cashing services are in a similar category.

Regulation of Operating Hours – Generally

In an important decision involving the regulation of pawnshops, the Eleventh Circuit Court of Appeals (which includes Alabama in its appellate jurisdiction) upheld an ordinance requiring that pawnshops be closed from 5 p.m. to 7 a.m. See *Cash Inn of Dade, Inc. v. Metropolitan Dade County*.¹³² In upholding the ordinance, the court applied "rational basis" analysis, holding in part:

The only dispute is whether the commission's decision to require all pawnshops to close by 5:00 p.m. is a rational means of accomplishing that goal. Cash Inn advances several reasons as to why the commission's action should be invalidated.¹³³

* * * *

Cash Inn maintains that the ordinance is unsupported by empirical evidence. The county commission, however, is not required to support its conclusions with empirical data as long as the assumptions it makes are logical.¹³⁴

* * * *

[T]he plaintiff maintains that even if some limitation on hours is reasonable, the county has not only failed to justify why a closing time of 5:00 p.m. is rational, but has failed to counter evidence introduced by the plaintiff which suggests that the selection of 5:00 p.m. is irrational. Once it has been determined that pawnshop hours are subject to restrictions, however, then the setting of the exact hours obviously becomes somewhat arbitrary. Any number of opening and closing times would be permissible. Viewed in this light, it is impossible to conclude that the county commission acted irrationally or arbitrarily when it selected operating hours which coincide with those traditionally observed by a great many other businesses.¹³⁵

* * * *

The County's admission that evening sales of stolen goods are not significantly higher than daytime sales of such goods also fails to require invalidating the ordinance. In order to sustain the ordinance, the county need not prove that sales of stolen goods between the hours of 5:00 p.m. and 7:00 a.m. are higher than the sales of stolen goods during the daytime. Rather, it need only show that restricting the number of operating hours will limit criminals' ability to sell stolen goods. A limitation on the number of hours in which pawnshops can operate increases the ability of the police to monitor these stores and ensure compliance with existing regulations.¹³⁶

Other courts have also upheld local and state restrictions on the operating hours of businesses.¹³⁷

Courts have not upheld every local restriction on the operating hours of businesses, but the Eleventh Circuit in its decision in *Cash Inn* distinguished the cases striking down such restrictions:

The cases cited by plaintiff which struck down legislation limiting the hours of operation for certain businesses are inapposite. The ordinances in those cases involved restrictions on either all businesses, businesses that posed no threat to the public welfare, or businesses infused with other protected elements such as freedom of expression which necessitated the application of a higher standard. See, e.g., *Fasino v. Borough of Montvale*, 122 N.J. Super. 304, 300 A.2d 195 (1973) (striking ordinance closing all retail establishments at 11:00 p.m.); *Town of Dyess v. Williams*, 247 Ark. 155, 444 S.W.2d 701 (1969) (closing all businesses at midnight); *Goodin v. City of Philadelphia*, 222 Miss. 77, 75 So. 2d 279 (1954) (closing all businesses at 10:00 p.m.); *In re Gulf Oil Corp.*, 101 Pa. Commw. 327, 516 A.2d 420 (1986) (striking ordinance requiring gasoline service stations to close after 10:00 p.m.); *Cowan v. City of Buffalo*, 247 A.D. 591, 288 N.Y.S. 239 (1936) (striking ordinance limiting hours of fresh fruit stand); *People v. Glaze*, 27 Cal. 3d 841, 166 Cal. Rptr. 859, 614 P.2d 291 (1980) (striking ordinance limiting hours of operation for adult picture arcades under heightened First Amendment analysis).¹³⁸

An Alabama appellate court has held that the State licensing scheme for establishments selling alcoholic beverages has occupied the field of regulating such establishments and thus preempts other efforts to control operating hours of the dealers.¹³⁹ That decision does not appear to pose a problem for regulating the operating hours of payday lenders, title loan operators, tobacco shops, certain car washes and sex businesses, because the State does not regulate the operating hours of any of those businesses.

Even with the heightened scrutiny and higher burden imposed on local governments in defending regulations of sexually oriented businesses, a number of courts have upheld as constitutional restrictions on the operating hours of such businesses.¹⁴⁰

Regulation of Signage – Generally

The Supreme Court upheld the Constitutionality of a local sign ordinance in 1917, a decade before it handed down its first zoning decision.¹⁴¹ Four years earlier, the Missouri Supreme Court similarly upheld a sign ordinance in effect in St. Louis; the U.S. Supreme Court declined to hear the case, thus allowing the State court decision to stand.¹⁴²

In a confusing decision that involved seven different opinions from the nine Supreme Court justices, the plurality opinion of the Court essentially took judicial notice of the concept that signs can impair traffic safety.¹⁴³ Earlier, the Supreme Court made it clear in two separate opinions that addressing aesthetic issues is well within the police power generally exercised by local governments.¹⁴⁴

There is, in short, long-standing authority for local governments to regulate signs. Where many local governments stumble into a Constitutional quagmire is trying to distinguish among different signs based on the content of the signs. In essentially shredding a local sign ordinance,¹⁴⁵ the Eleventh Circuit Court of Appeals (which includes Alabama in its appellate jurisdiction) said in part:

[T]he sign code recites only the general purposes of aesthetics and traffic safety, offering no reason for applying its requirements to some types of signs but not others. As to traffic safety, the ordinance states that motorists' safety is affected by the number, size, location, lighting and movement of signs that divert the attention of drivers. 27-574(2). The sign code therefore permits signs that are designed, constructed, installed and maintained in a manner which does not endanger public safety or unduly distract motorists. 27-575(2). The code does not, however, explain how these factors affect motorists safety, or why a moving or illuminated sign of the permissible variety --for example, a sign depicting a religious figure in flashing lights, which would be permissible under 27-580(17)s exemption for religious displays -- would be any less

distracting or hazardous to motorists than a moving or illuminated sign of the impermissible variety -- for example, one depicting the President in flashing lights, which falls within no exemption and is therefore categorically barred by 27-581(5)'s prohibition on signs containing lights or illuminations that flash. Likewise, a homeowner could not erect a yard sign emitting an audio message saying, Support Our Troops, since 27-581(9) generally bans signs that emit any sound that is intended to attract attention, but the government would be free to erect an equally distracting -- and presumably unsafe -- sign emitting the audio message, Support Your City Council, since governmental signs are completely exempt from regulation under 27-580(4).

Regarding aesthetics, the sign code states that uncontrolled and unlimited signs may degrade the aesthetic attractiveness of the natural and manmade attributes of the community. 27-574(5). This provision similarly fails to explain how the sign codes content-based differentiation among categories of signs furthers the City's asserted aesthetic interests. For example, we are unpersuaded that a flag bearing an individual's logo (which is not exempt from regulation), is any less aesthetically pleasing than, say, a flag bearing the logo of a fraternal organization (which is exempt from regulation under 27-580(3)). Nor is it clear to us that a government-authorized sign reading, Support Your City Council in flashing lights (which is exempt from regulation under 27-580(4)), or a religious sign reading, Support Your Church (which is exempt under 27-580(17)), degrades the City's aesthetic attractiveness any less than a yard sign reading, Support Our Troops in flashing lights.

Although the sign codes regulations may generally promote aesthetics and traffic safety, the City has simply failed to demonstrate how these interests are served by the distinction it has drawn in the treatment of exempt and nonexempt categories of signs. Simply put, the sign codes exemptions are not narrowly tailored to accomplish either the City's traffic safety or aesthetic goals.

* * *

The City has provided no justification, other than its general interests in aesthetics and traffic safety -- which are offered only at the highest order of abstraction and applied inconsistently -- for exempting certain types of signs but not others. We do not foreclose the possibility that traffic safety may in some circumstances constitute a compelling government interest, but Neptune Beach has not even begun to demonstrate that it rises to that level in this case. Accordingly, we are constrained to conclude that Neptune Beach's sign code is not justified by a compelling government purpose.

Because its enumerated exemptions create a content-based scheme of speech regulation that is not narrowly tailored to serve a compelling government purpose, Neptune Beach's sign code necessarily fails to survive strict scrutiny. Moreover, these exemptions are not severable from the remainder of the ordinance; we are therefore required to find the sign code unconstitutional.¹⁴⁶

It may be possible to draft a sign ordinance that addresses the objections of the Eleventh Circuit to content-based distinctions by basing the distinctions on the type of business at which the sign appears, but the safest way to address the issue is with regulations that apply generally within the commercial districts where these businesses are allowed.

If the proliferation or type of signs on a check cashing business seems too garish or too distracting, the same array of signs on a fast-food outlet would presumably be equally distracting or ugly. Thus, the issue in considering the sign ordinances in the cities should involve a consideration of whether the commercial sign regulations outside the downtown areas are adequate generally.

Findings and Choices

Introduction

In the following pages, we discuss the general issues surrounding each of the Regulated Uses, and describe *possible* regulatory approaches that Northport and Tuscaloosa might consider, either collectively or separately, or in a different ways. We cite regulatory examples from other communities (using Alabama examples as much as possible) and then provide legal and policy comments. The legal comments are mostly brief references to issues discussed earlier in the Study.

Where we believe that there are clear steps that Northport and Tuscaloosa should take, for policy or legal reasons, we have indicated that under “policy comments.” On many issues, however, we have simply outlined a *range of options*, leaving it to elected officials, with input from their citizens and advice from their capable professional staffs, to decide how far they want to go in addressing the issues that we have identified. Even where we have made specific recommendations, it is not our intent to preempt the public policy-making process; if the elected officials – chosen by the people to make tough decisions – disagree with any of these recommendations, they should proceed as they find appropriate.

We have offered legal comments to facilitate the decision-making process. In several cases, we have indicated that we believe that a pervasive system of state regulation has probably preempted the authority of local governments to address a particular issue through regulation. We are not, however, licensed to practice law in Alabama. If the attorneys for the respective cities believe that either or both cities have authority to proceed despite our concerns, we will absolutely defer to them.

City officials should consider this a classic “white paper” or “policy paper” to serve as a basis for further discussion. We have tried to listen carefully and to do our homework. We thus hope that most of what we suggest will make perfect sense to both Northport and Tuscaloosa, and that they will be able to proceed in directions outlined here. Even if each city decides to accept every *possible* regulatory approach we make, additional public discussion of the issues and how to address them is a critical part of the process.

Pawnshop Businesses

Issues

The issues with pawnshops are primarily land-use issues; some people believe that pawnshops, particularly if found in large numbers, contribute to a perception of blight. We found only five pawnshops in the two cities and believe that the land-use issues with pawnshops have arisen primarily because of the recent proliferation of other ready-cash businesses – title lenders and payday lenders.

The operation of pawnshops as they relate to consumers and to concerns with the sources of property pawned or sold appears to be thoroughly and effectively regulated by the State of Alabama. We contrast this with the State regulation of payday lenders, for which the State has adopted what appears to be enabling legislation without addressing in the State law some of the serious issues related to those businesses. In contrast, the State law related to pawnshops provides both consumer protection and detailed requirements to help police track the source of property that is pawned or sold.

One confusing aspect of the State licensing laws is that Title Loan businesses are required to hold a pawnshop license, even though they are not what most individuals would view as a “pawnshop.”

Regulatory Approaches

Zoning

Consider requiring separation between two or more pawnshops and between pawnshops and title lenders and payday lenders.

Examples

Trussville, Alabama, allows pawnshops only in the “Commercial Adult Entertainment District,” which also allows:

- Adult amusement, entertainment or recreational facilities.
- Adult retail establishment and Adult theater.
- Body piercing, excluding ear piercing only.
- Fortune teller, palm reader, psychic advisor.
- Tattoo parlors.
- Title pawn.
- Massage parlors.

For reasons that are unclear, Jasper, Alabama, has a local ordinance dealing with record-keeping and reporting requirements that appear to duplicate state law.

Legal Comments

The comprehensive system of state regulation appears thoroughly to occupy the field of regulating the operation of these businesses. We see no room for local regulation beyond zoning.

Policy Comments

The pawnshop operators who met with us understood what we were doing and were eager to help us understand their businesses. We have dealt with the businesses elsewhere and largely concurred with their comments – that the biggest need is to ensure that similar businesses not licensed as pawnshops (“we buy gold”) are subjected to a regulatory scheme similar to that for pawnshops.

Payday Lenders

Issues

There is clearly a general unease among public officials with the proliferation of payday lenders in Northport and Tuscaloosa. Part of it is simply the number of them and the concentration of such businesses along three major corridors (McFarland, Skyland and Lurleen Wallace). The fact that there are pawnshops and title loan operations mixed into these corridors can contribute to an impression that “this place must be poor, because a lot of people sure need money fast here.” As a proposed Birmingham Zoning ordinance says in the findings:

- b. According to public statements made by real estate developers, real estate agents, community leaders, clergy, and members of the general public, a “negative community reputation” has been created by these businesses because of the extraordinarily high

interest rates for these loans. Consumers of the services offered by these businesses have also made statements that terms and conditions associated with these types of loans are confusing and very difficult to understand.

- c. Real estate developers and agents have stated that this "negative community reputation" has a detrimental effect on the location of other commercial developments within the area and that these businesses tend to diminish nearby real estate values.¹⁴⁷

Some of the payday loan businesses that we saw in the two cities had surprisingly large amounts of signage on relatively small buildings. A proliferation of window signs at some of the businesses contributes to a somewhat cluttered appearance. Some are painted in very bright colors. Those obvious (and addressable) visual issues do not fully explain the local concerns, however, because we heard no similar expressions of concern about fast-food restaurants and convenience stores that present similarly garish and cluttered appearances.

Many of the issues with these businesses go to the core of the business, which is the service that they provide and the fees that they charge for providing it. Representatives of the businesses who met with us asserted with considerable confidence that they, like pawnshops, serve as lenders to moderate income customers. There is certainly data to back up that assertion.¹⁴⁸ Note that they do not serve the lowest income customers, because dealing with a payday lender requires that the customer have a checking account – something that is rare for lower income individuals.

But there is a high cost to this service. Although industry representatives have their own methods of calculating interest costs, the effective cost of a payday loan can amount to 400 percent or more when calculated using the same methods used in mortgage and credit-card disclosures.¹⁴⁹ The industry avoids state usury laws by imposing fees rather than interest charges and by operating under “deferred presentment” laws (like that in Alabama) in some states – laws which exempt them from regulation under other laws affecting lenders. The fees may not seem burdensome to a borrower. A borrower may go into such a store and exchange a post-dated check of \$352.50 for \$300 in cash. The fee is “only” \$52.50, but it is for a time period of 14 days (some payday lenders have indicated that they offer school teachers and some others, 30-day loans).

As some of the discussion within this Study indicate, many state and local governments have determined that such lending charges are effectively (if not legally) usurious and predatory and have taken steps to ban or limit the industry. The legislature in Georgia actually declared that the industry was a “public nuisance” and banned it from the state.¹⁵⁰ Georgia has broadly defined and prohibited payday lending in the state.¹⁵¹

Regulatory Approaches

Zoning

- Require separation of payday lenders from one another and from other businesses that may contribute to a perception of blight, including pawnshops, title loan establishments, sexually oriented businesses, and tattoo parlors.
- Require separation of payday lenders from residential districts.
- Using zoning, limit the total number of such businesses in the community, either directly or by imposing very large separation requirements between such businesses.

Other Choices

- Consider banning the business entirely (but see Legal Comment below); such a ban could be moderated with language expressly allowing “small loan” businesses, which are separately regulated (and subject to significant limits on interest costs) under Alabama law.
- Attempt to regulate the lending practices of the business (but see Legal Comment below).

Examples

Local Governments in Alabama

A proposed ordinance in Birmingham would amend the zoning regulations and prohibit the location of any two payday lending or title loan businesses within 1,000 feet of each other. We found no other Alabama ordinances directly regulating these businesses (see Legal Comment below).

Sampling of Local Governments in Other States

Cleveland, Ohio, has limited the number of such businesses to one per 20,000 residents; Parma and Cuyahoga Falls, Ohio, have limited the number of the businesses to one per 10,000 residents. A number of communities in Utah have also limited the number of such businesses to one per 10,000 residents (American Fork, Midvale, Murray, Orem, Salt Lake County, Taylorsville).

Separation requirements between two such establishments appear to be fairly common in Arizona, Illinois, Kansas, Nevada, Ohio, Texas and Wisconsin.

Some local governments in other states have adopted ordinances directly regulating the lending practices and operations of these businesses. Those include Portland, Oregon, and several nearby communities. The Portland ordinance gives the borrower a one-day period in which to seek cancellation of the transaction without penalty and give the borrower the right to have the payday loan converted to a “payment plan” when it has been renewed the maximum number of times allowed under state law.¹⁵²

Texas has legislation providing for the licensing and registration of “certain consumer credit services,” including title loans and payday loans.¹⁵³ The City of Dallas has supplemented the state licensing with local limits on the amounts that can be loaned.¹⁵⁴

Surrounding States

Arkansas has a usury limit in its State constitution. The maximum interest rate to be charged in the state on “consumer loans and credit sales” is 17 percent.¹⁵⁵ A “check cashers” act adopted in 1999 and updated in 2001 apparently allowed “deferred presentment” transactions.¹⁵⁶ The state supreme court in 2008 struck down the law as unconstitutional because it allowed “usurious interest rates” that exceeded the constitutional maximum.¹⁵⁷

Arkansas has a usury limit in its constitution. The maximum interest rate to be charged in the state on “consumer loans and credit sales” is 17 percent.¹⁵⁸ A “check cashers” act adopted in 1999 and updated in 2001 apparently allowed “deferred presentment” transactions.¹⁵⁹ The state supreme court in 2008 struck down the law as unconstitutional because it allowed “usurious interest rates” that exceeded the constitutional maximum.¹⁶⁰

Florida regulates payday lenders under a separate law dealing with “deferred presentment” (the same term used in the Alabama statute). Although it allows deferred presentment providers a greater margin than it does for check cashing services, it limits them significantly. They are limited to the same

“verification fee” of \$5 allowed for check cashing services.¹⁶¹ The statute also includes the following important financial limitations:

- (6) A deferred presentment provider or its affiliate may not charge fees that exceed 10 percent of the currency or payment instrument provided. However, a verification fee may be charged as provided in s. 560.309(8). The 10-percent fee may not be applied to the verification fee. A deferred presentment provider may charge only those fees specifically authorized in this section.
- (7) The fees authorized by this section may not be collected before the drawer's check is presented or redeemed.
- (8) A deferred presentment agreement may not be for a term longer than 31 days or less than 7 days.¹⁶²

Mississippi’s usury law imposes significant limits on the business practices of any industry that may collect effective interest rates of 200 percent or more. The maximum interest rate allowed in Mississippi under its small loan acts is 36 percent, with lower rates allowed on loans in excess of \$1000;¹⁶³ the lender can also charge a “closing fee” of four percent of the loan amount or less.¹⁶⁴ In addition, that state imposes substantial penalties on those who violate the law:

If any finance charge in excess of that expressly permitted by Section 75-17-21 is contracted for or received, all finance charges and other charges shall be forfeited and may be recovered, whether the contract be executed or executory. If any finance charge is contracted for or received that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit; and, in addition, the licensee and the several members, officers, directors, agents, and employees thereof who shall have participated in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$ 1,000.00) and not less than One Hundred Dollars (\$ 100.00), in the discretion of the court; and, further, the Commissioner of Banking and Consumer Finance shall forthwith cite such licensee to show cause why its license should not be revoked and proceedings thereon shall be as is specifically provided in the Small Loan Privilege Tax Law (Section 75-67-201 et seq.).¹⁶⁵

Tennessee has a statutory approach similar to that in Alabama, requiring a license for anyone operating a deferred presentment business but imposing no operational requirements and simply requiring a \$25,000 net worth as qualification for a license.¹⁶⁶

Legal Comments

Requiring separation distances between two or more of these businesses, requiring separation from other high-impact businesses and requiring separation from residential districts are reasonably common regulatory techniques for these businesses and appear to be well within the scope of traditional zoning. There is certainly a rational basis for such regulations, given the extensive literature that deems these uses as “predatory and a nuisance.” A proposed zoning ordinance’s adoptive “findings” could find that the number and concentration of these businesses have greater negative land use impacts than one or two businesses located within an area.

Extending the separation distances to distances that effectively limit the number of such businesses in one or both cities or directly limiting the number of such businesses can be seen as a logical extension of

the requirement for separation distances between such businesses. Such a practice is far less common than the use of separation distances of 1,000 to 2,500 feet or a little more.

Although we have provided examples of cities that regulate the operation of such businesses beyond the requirements of state law, we do not know whether Alabama's home rule principles would allow cities to do that in dealing with a business for which the state has adopted specific legislation regulating its practices, albeit to a limited extent.

One or both cities may decide to consider completely banning the payday lending business, perhaps allowing "small loan" businesses under a separate section of state law as an alternative (see "Alabama Small Loan Act" discussion). We express no opinion on whether a city can ban entirely a business that the state allows and licenses, except that it is a matter for careful review with the respective city attorneys. To the extent that a city may be able to adopt such an ordinance under its general police power, rather than through zoning, the action may avoid the "legal nonconforming use" status under zoning and provide a way for dealing with already established businesses.

Policy Comments

We understand this business much better than we did before we began this project, but we do not pretend to understand it fully. At this point, it appears to us that the business fulfills a real need but many individuals and advocacy groups feel that meeting these "needs" is being done in an arguably predatory manner. Although Alabama has adopted a law dealing with "deferred presentment" transactions, it appears to us essentially to enable the operation of this business outside the otherwise applicable usury laws and not a comprehensive regulatory approach.

Our public listening session was well-attended by representatives of this payday lending industry, including "government affairs" officers from the national offices of two of national payday lending chains located in Northport and Tuscaloosa. It is clear that the industry is carefully watching what Tuscaloosa and Northport are studying. The industry appears to enjoy substantial gross revenues. Thus, if either city decides to add local regulations of the operations of such businesses or attempt to ban or substantially limit the number of such businesses, city officials should be prepared for possible litigation. The industry or one or more operators might also decide to challenge new spacing or separation requirements, but our professional judgment is that the cities would have no more difficulty in defending such requirements than in defending most other dimensional requirements under a zoning ordinance.

Finally, we re-state what we have noted before – as we understand Alabama zoning law, the only effect of new spacing or separation requirements would be to make existing businesses lawful nonconforming uses, not to eliminate them.

Title Loan Businesses

Issues

This is another type of convenient-cash business. Title lenders provide loans on vehicle titles but do not keep the vehicles – just the titles – as security. Although these businesses are licensed by the state as pawnshops, as land uses they more nearly resemble payday lenders, with small offices and, in most cases, little apparent retail function.

The land-use issues with these businesses appear to be similar to the land-use issues with payday lenders and pawnshops, with a proliferation of any or all of these potentially contributing to a negative image of a business area as being one that serves people in financial need.

According to the title loan business representatives who met with us, this business is somewhat more reasonable in its charges to consumers than is the payday loan business – something that makes perfect sense for a business that has collateral for its loans. The true issue is that Title Loans are more often made for larger dollar amounts, and failure to repay the loan, forfeits the borrower’s vehicle.

Regulatory Approaches

Zoning

- Expressly allow this business as an accessory use to a lawfully established pawnshop or automobile dealer
- Require separation of title loan operations from one another and from other businesses that may contribute to a perception of blight, including pawnshops, payday lenders, sexually oriented businesses, and tattoo parlors.
- Require separation of title loan businesses from residential districts.
- Using zoning, limit the total number of freestanding title-loan businesses in the community, either directly or by imposing very large separation requirements between such businesses.

Other Choices

- Consider banning the business entirely (but see Legal Comment below); such a ban could be moderated with language expressly allowing “small loan” businesses, which are separately regulated (and subject to significant limits on interest costs) under Alabama law.
- Attempt to regulate the lending practices of the business (but see Legal Comment below).

Examples

See legal comments under Payday Lenders, since local and state governments typically regulate title loan businesses together with payday lenders or pawnshops.

Legal Comments

See legal comments under Payday Lenders.

Policy Comments

See policy comments under Payday Lenders.

“We Buy Gold” Dealers

Issues

These appear to us to be competitors to pawnbrokers that are subject to considerably less state regulation. [See discussion of “We Buy Gold” in the Legal Context section of this Study] As discussed earlier, this business operates under the 2010 enacted “Dealers in Gold or Precious Items” Alabama statute.

As we understand them, the record-keeping and reporting requirements for these businesses are somewhat less detailed than those for pawnshops. Investigations elsewhere have suggested that such dealers become logical outlets for stolen goods; we have no evidence of such problems in Tuscaloosa or Northport, but the gap in regulatory requirements would appear to leave the door open for that to occur.

Regulatory Approaches

Zoning

- Consider requiring separation between two or more pawnshops and between pawnshops and title lenders and payday lenders.

Other Choices

- Consider imposing local requirements to bring record-keeping and reporting requirements in line with those for pawnshops.

Examples

It is our understanding that Northport already requires these businesses to submit to the same record keeping and reporting standards as pawnshops.

Legal Comment

Although the legislature has partially occupied the field of regulating these businesses, it does not appear to have occupied it fully. The state law establishes the principles of required reporting and record-keeping; there would appear to be room for a local government to fill in some of the details of such requirements. Further, it is hard to imagine a business seeking an injunction in a court of equity and explaining that it does not want to keep the kinds of records that discourage criminals from doing business with it.

Policy Comment

There is every reason to ensure that these businesses are subject to the same record-keeping and reporting requirements as pawnshops.

Check Cashing Services

Issues

Although only Tuscaloosa identified “Check Cashing” businesses operating within their jurisdiction, we feel certain that there are local convenience and gas stations that cash checks within Northport. The check cashing service is generally an auxiliary service provided by convenience stores and other retailers who will cash pay checks from known employers. As we understand it, the charges are generally nominal and are often waived by retailers if the person cashing the check simultaneously makes a purchase of any amount in the store.

Regulatory Approaches

Zoning

- Expressly allow as an accessory use to grocery, convenience and other retail businesses
- Consider severe restrictions on this business as a principal use, because “deferred presentment” or other businesses might try to avoid new restrictions by re-casting themselves as check cashing businesses.

Other Choices

Although some states regulate this business directly, we found no Alabama laws dealing with it. The cities might consider directly regulating this business, using the Florida law, below, as a model.

Examples

Florida directly regulates the check cashing business, limiting the fees that a “check cashing” service can charge as follows:

- (8) Exclusive of the direct costs of verification, which shall be established by rule not to exceed \$ 5, a check casher may not:
 - (a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or \$ 5, whichever is greater;
 - (b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or \$ 5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or
 - (c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or \$ 5, whichever is greater.¹⁶⁷

Legal Comments

We see no legal obstacles to the adoption of local regulations addressing issues in this business.

Policy Comments

Based on the admittedly limited information available to us, we did not find serious issues with this business that would particularly call for local regulation. We offer the suggestions above primarily for the use of the cities if additional evidence emerges suggesting the need for regulation.

Tattoo Parlors

Issues

Tattoo parlors are sometimes viewed as blighting influences, particularly when they are located in close proximity to one another or to sexually oriented businesses or pawnshop businesses, both of which are also often considered to contribute to blight. Some of this is perception, some undoubtedly relates to the garish graphics found on the exterior of some (but certainly not all) establishments – and some is based on reality, as the example from East Brewton, cited below, shows.

In Northport and Tuscaloosa, however, the issues go far beyond the land-use issues. According to some tattoo operators with whom we spoke and to a Northport police officer who knows the industry (although his bare arms showed no sign of it when we met him), state and county regulation of this industry is virtually nonexistent. We found it refreshing to hear the long-established tattoo artists wanting greater regulation of the business that would ensure that only competent and safe operators be allowed to operate within both cities. The current operators opined that it is much more difficult to get a license as a cosmetologist (1200 credit unit hours of education or 3000 hours of apprenticeship, plus a written exam, plus a practical exam¹⁶⁸) in Alabama than to get a license as a tattoo operator (no substantive requirements¹⁶⁹).

Regulatory Approaches

Zoning

- Allow only in more intense business districts – not neighborhood business districts;
- Require separation from residential districts, elementary school, houses of worship and other sensitive uses;
- Require separation from other tattoo parlors and from other businesses that may contribute to an image of blight, such as sexually oriented businesses, pawnshop businesses, and payday lenders.

Public Health

- Consider working with County Health Department to adopt and implement a comprehensive regulatory ordinance that, at a minimum:
 - Requires a significant apprenticeship under a licensed or otherwise qualified operator;¹⁷⁰
 - Prohibits tattoos of minors or persons who are intoxicated or under the influence of drugs;
 - Requires that each tattoo parlor have an autoclave for cleaning equipment and require that the autoclave be inspected on the same cycles as autoclaves in dental offices;
 - To the extent possible under the Americans with Disabilities Act, requires that tattoo operators with infectious disease, including hepatitis and HIV, disclose the existence of the diseases with posted notice and take appropriate additional precautions to prevent spreading infection
 - Requires that each tattoo parlor have a contract for the disposal of bio-hazardous waste with a licensed or certified operator.
- Licensing fees should be used to help provide training to a County Health Department staff member or other person assigned to enforcement of the new ordinance.

Other Choice

- Consider pursuing existing problem operator working from a home in Northport (and known to Northport Police) as a public nuisance.

Examples

Jasper, Alabama, has a detailed licensing ordinance for tattoo operators. Opelika and Montevallo have added some substantive regulations to the business privilege licensing ordinances as they apply to tattoo parlors. Guntersville and Valley have less detailed ordinances. Arab has added a provision to its zoning ordinance requiring that tattoo parlors be separated by 1,000 feet from any school.

The City of East Brewton in late 2012 raided a tattoo parlor where police found drugs and other violations of the law; the city council revoked the operator's license.¹⁷¹ The action apparently followed a significant investigation and stakeout.

Legal Comments

This is clearly an issue of public health that the cities can address, as Jasper and the other cities have done.

Policy Comments

The state has clearly delegated responsibility given by statute to the state Department of Health to local health departments, including the one serving Tuscaloosa and Northport. Any solution should be adopted, if possible, in cooperation with the Tuscaloosa County Health Department. It may be possible for the County to adopt county-wide regulations accomplishing the same purposes recommended here.

Tobacco Shops

Issues

Tobacco shops were originally on the list of potential Regulated Uses for Northport but not for Tuscaloosa. After some discussion at the project kick off meeting, Tuscaloosa staff indicated that we should look at these businesses in Tuscaloosa. Some elected officials at a later meeting confirmed that there are issues with these establishments. No representatives of tobacco shops attended our public input session, so we did not learn anything about their current business practices.

The Tuscaloosa's MX Use Zoning Districts permit Tobacco Outlets but stipulates that they shall not be located on the same block face as another restricted use and shall not be located within 300 feet of another restricted use.

Our understanding of the issues remains somewhat vague. A couple of people indicated that if we spent time in some of the businesses we would see inappropriate and possibly illegal activities. We did notice that the Alberta area of Tuscaloosa appears to have at least two businesses that have large signage related to smoking in close proximity to the school grounds.

One issue is clear, however. Persons under 18 cannot legally buy tobacco products. To the extent that there may be inappropriate activities occurring in some of these businesses, it would certainly be desirable to protect young people from them.

Regulatory Approaches

Zoning

- Limit to busy corridors with convenience stores and other auto-oriented uses.
- Consider possible separation requirements from schools, parks and playgrounds.

Examples

None found, but this is a standard technique used with other adult businesses, like liquor outlets and sexually oriented businesses.

Legal Comments

Although the state regulates the aspects of the business that relate to the actual sale of tobacco products, the state appears to have no regulations dealing with the location of these businesses; that issue is thus open to local regulation.

Policy Comments

None.

Sexually Oriented Businesses

Issues

Although we found only one retail business in the two cities that carries a significant quantity of sexually oriented materials, there are three important reasons why both cities should address this issue as they update their ordinances:

First, for reasons that are not entirely clear, this business – and particularly the retail aspects of it – is growing again, with particular interest in smaller cities;

Second, unless the zoning ordinance defines and sets standards for these businesses, an application for a XXX media store or a sex shop must be treated as just another retail shop under the zoning ordinances of both cities and thus allowed in virtually any commercial zoning district, without any separation requirements from residences or other sensitive uses;

Third, for reasons explained in the “Sexually Oriented Business” discussion within the Legal Context section of this Study, simply banning these businesses is not an option for dealing with those that are protected by the First Amendment. The “negative secondary effects” of these businesses on communities and surrounding land-uses are well-documented in the literature and explained briefly in this Study.

Regulatory Approaches

Zoning

- Define sexually oriented uses specifically;
- Allow those uses that are protected by the First Amendment in one or two heavy commercial or industrial zoning districts;
- Require separation of such uses from one another and from sensitive uses such as single-family residential districts, houses of worship, schools and public parks;
- Establish some basic standards for such businesses to prohibit video viewing booths and performances in back rooms;
- Consider other design standards dealing with lighting and other public safety issues.

Other Choices

We typically recommend licensing such businesses where they involve on-premises entertainment, such as exotic dancing or motion pictures. Through licensing it is possible to establish controls on how the businesses are operated – controls that can help to minimize the kinds of negative primary and secondary impacts of these uses. At this time, it does not appear that sexually oriented businesses are interested in locating within Tuscaloosa and Northport; therefore, there is little reason to set up a new licensing program. Such a program can be established later if needed and applied to any businesses that may be established in the meantime, with a reasonable grace period.

Examples

We have personally worked on regulations for sexually oriented businesses in a number of communities and can provide appropriate examples as needed.

Some communities in neighboring states for which we have provided such regulations include Alachua (city), Florida, Alachua County, Florida, Gainesville, Florida, Plant City, Florida, and Biloxi, Mississippi. The regulations for sexually oriented businesses in some communities have practical and legal defects, so we are reluctant to provide quick references to ones with which we do not have detailed familiarity; thus we have provided no Alabama examples.

Legal Comment

For reasons explained in the separate legal analysis, regulations for sexually oriented businesses must be prepared and adopted with considerable care. In particular, it is important for the community to have documentation of the “negative secondary effects” which it intends to mitigate with the regulations. A legislative predicate showing such secondary effects can easily be prepared for two communities at once; in Kenton County, Kentucky, we prepared such a study for the entire county and all the municipalities in it.

Policy Comment

The cities need to address this issue. We are surprised that no problems have arisen to date.

Hand Car Washes

Issues

The primary issues presented to us by staff and public officials relate to informal gatherings at some of these establishments, particularly on weekends. Some of the gatherings are apparently large and sometimes noisy. As possible evidence of such activities, we saw a basketball hoop affixed to one such establishment, an odd fixture for a business focused on vehicles.

Another issue that we identified in our field work is that of handling the runoff water from the car washing operations. Some of the newer car washes in Northport and Tuscaloosa have relatively elaborate filtration systems that pre-filter and almost pre-treat the wash water before discharging it into the public sewer system. One specific car wash was the subject of numerous complaints from neighbors regarding large gatherings, litter and noise.

Regulatory Approaches

Zoning

- Limit to busy corridors with convenience stores and other auto-oriented uses.
- Consider possible separation requirements from residential uses to minimize noise conflicts.

Water Quality and Limits

- Specifically require that all car washes (whether hand or wand, self-serve, automated or fully staffed) be connected to the public sewer system with approved pre-filtration devices; allow 12-month grace period for connections for existing establishments.
- While addressing this issue, the cities may want to consider adding provisions to allow for the suspension of car wash operations during times of water emergencies or at times of peak water use.

Examples

- Both Northport and Tuscaloosa already prohibit “illicit discharges” of water from private property, with compliance review through the subdivision and site plan review processes.
- Hartselle, Alabama, has a detailed ordinance dealing with discharges from car washes; it provided a 6-month “grace period” for existing operations to come into compliance.
- Dothan, Oneonta and Vestavia Hills all provide for the suspension of operations at car washes in times of water emergencies.

Legal Comments

To fully conform to federal and state laws discussed earlier in this Study, the cities should take some sort of action to bring the existing car washes that discharge onto the public streets into compliance with best management practices, as used at the newer car washes in both cities.

Policy Comments

One of the car washes about which we heard specific neighborhood complaints regarding noise and informal gatherings could be addressed via other measures such as requiring them to invest in their properties to install modern pollution-control systems. This could lead to the discontinuance of these car wash services and reduction in the business serving as a local hangout.

Appendices

Northport Photographic Summary

Pawnshops		
		
PAWN ROYALE 1019 McFarland Blvd	SOUTHERN JEWELRY & PAWN 2813 McFarland Blvd	
Title Loans / Pay Day Loans		
		
SPEEDY CASH TITLE PAWN 3410 Hwy 69, N	NORTHPORT CHECK ADVANCE 2201 Lurleen B Wallace Blvd	CASH PLUS 2801 Lurleen B Wallace Blvd, Ste 5
		
TITLE MAX 3003 Lurleen B Wallace Blvd	MONEY IN A FLASH 3020 Lurleen B Wallace Blvd	TITLE CASH 3330 Main Ave.

		
EZ PAYDAY ADVANCE 350 McFarland Blvd, Suite A	NORTH AMERICAN TITLE LOANS 601 McFarland Blvd	ALABAMA TITLE LOANS 726 McFarland Blvd
		
LIFESTYLE CASH ADVANCE 1420 McFarland Blvd, Suite 5	ALWAYS MONEY 2491 McFarland Blvd, Suite C	CHECK N' GO 2509 McFarland Blvd
		
APPROVED CASH 2805 McFarland Blvd	CASH ON THE SPOT/ TITLE LOAN 3076 McFarland Blvd	ADVANCE AMERICA 3120 McFarland Blvd, Suite 15
		
CASH CONNECTION 3380 McFarland Blvd	TITLEBUCKS 3385 McFarland Blvd, N	EASY MONEY 4705 McFarland Blvd, Suite 3



CHECK INTO CASH
5550 McFarland Blvd, Suite 500

Tattoo Shops



SYMBOLIC INK
1804 Lurleen B Wallace Blvd



CYNICAL TATTOOS SHOP
2205 Lurleen B Wallace Blvd



ETERNAL ART TATTOOS/PIERCING
3380 McFarland Blvd, Suite 3

Tobacco Outlets



DISCOUNT TOBACCO OUTLET
1013 Lurleen B Wallace Blvd



MAGGIE TOBACCO SHOP
2110 Lurleen B Wallace Blvd



TOBACCO & CONVENIENCE
2801 Lurleen B Wallace Blvd



NORTHPORT TOBACCO OUTLET
3380 McFarland Blvd, Suite 9

Hand Car Wash Businesses

		
<p>MIKE'S CAR WASH 1655 5th St</p>	<p>AUTO CARE HAND CARWASH 523 Bridge Ave</p>	<p>DYNAMIC DETAILING/AUTO APPEARANCE 1211 Bridge Ave</p>
		
<p>NORTHPORT HAND CAR WASHING 1104 McFarland Blvd</p>	<p>SCRUBBY'S CAR WASH 3131 McFarland Blvd</p>	<p>A PERFECT TOUCH CAR WASH 3828 McFarland Blvd</p>

Revised

Tuscaloosa Photographic Summary

Pawnshops		
		
QUIK PAWN SHOP 620 15th St	WADE'S JEWELRY & PAWN 3525 McFarland Blvd E	EZ PAWN & EZ PAYDAY LOANS 3728 McFarland Blvd E
Title Loans / Pay Day Loans		
		
The Money Store 1430 10th Ave	TITLEMAX #2 OF TUSC. 92 15 th St	CITY CHECK ADVANCE 326 15 th St
		
Pay Day Loans 420 15th St	E-Z CASH-N-PAWN 1110 15 th St	BAMA PAYDAY LOAN / CHECK CASHING 2215 15 th St, Suite A

		
Check Depot 700 23rd St E, Suite C	TITLE CASH OF TUSCALOOSA CO 3712 Greensboro Ave	ADVANCE AMERICA 5980 Old Greensboro Rd, Unit B
		
Cash Connection 1425 Martin Luther King Jr Blvd	GREAT AMERICAN LOAN, INC. 2603 McFarland Blvd E	Cash Connection 2821 McFarland Blvd E
		
EASY MONEY 2925 McFarland Blvd E	MONEY IN A FLASH 3310 McFarland Blvd E	TITLEBUCKS OF TUSCALOOSA 3318 McFarland Blvd E
		
FAST CASH 4200 McFarland Blvd E	MONEY IN A FLASH #4 308 Skyland Blvd E	CAR TITLE LOANS 715 Skyland Blvd E



TITLEMAX #3 OF AL
720 Skyland Blvd E

CASH EXPRESS
1031 Skyland Blvd E, Suite 2A

ADVANCE AMERICA #3846
1480 Skyland Blvd E



CHECK INTO CASH
1911 Skyland Blvd E



CASH SPOT
2015 Skyland Blvd E



TUCKER TITLE
3010 Skyland Blvd E



MONEY IN A FLASH – ALBERTA
2815 University Blvd E

Check Cashing / Retail Stores



STACI'S #1
3506 29th St



SHOP & SAVE
3112 Greensboro Ave



CIBER TIENDA LA CHIQUITA
625 Hargrove Rd E

		
QUICK STOP #2 1000 Hargrove Rd W	SUPER C STORE 1708 Hargrove Rd E	SUPER STOP 101 James Harrison Jr Pkwy
		
QUICK STOP 708 Martin Luther King Jr Blvd	RACEWAY #829 3410 McFarland Blvd E	

Tattoo Shops

		
EVOL INK 1028 15 th St	ALL INKD UP 1700 Greensboro Ave, Suite 3	TAT205 INK 3401 Greensboro Ave, Suite 17
		
TATTOO EXPERIENCE 2703 University Blvd E		

Tobacco Outlets



SMOKE IT UP TOBACCO
424 15th St



E-Z SHOP TOBACCO
1700 Greensboro Ave, Suite 5



MID-CITY STATION
2219 Greensboro Ave



KEY DISCOUNT STORE
201 Hargrove Rd E



CHEAP SMOKES DISCOUNT TOBACCO STORE
615 Hargrove Rd E



WINSTON MART
2503 Martin Luther King Jr Blvd



SMOKEHOUSE
3310 McFarland Blvd, Suite B



CRIMSON TOBACCO OUTLET
1809 Skyland Blvd E



STILLMAN TOBACCO OUTLET
3109 Stillman Blvd



R & R CIGARS
2720 University Blvd W



SMOKER'S OUTLET 5
2820 University Blvd E

Hand Car Wash Businesses



BEST HANDS CAR WASH
3014 15th St



DIRTY 2 CLEAN AUTO DETAILING
3101 25th Ave, Suite A



CHAMPIONSHIP AUTO DETAILING
1833 Culver Rd



DYNASTY BARBER/CAR DETAIL
3504 Greensboro Ave



CHUCK'S HAND CARWASH
3911 Greensboro Ave



WEST COAST CUSTOMS
204 Hargrove Rd E



SOUTHSIDE CUTS AND SUDS
1416 Hargrove Rd



AFFORDABLE CAR WASH
3310 Hargrove Rd E



MAC HOBBIES
6509 Hwy 69 S



DISCOUNT CAR WASH
800 Martin Luther King Jr Blvd



SPILLWAY HAND CAR WASH & DETAILING
4396 Rice Mine Rd NE



SKYLAND DISCOUNT STORE
90 Skyland Blvd E



GOSA'S CAR WASH
338 Skyland Blvd
Or 4220 McFarland Blvd E ??



LIKE NEW CAR WASH
500 Skyland Blvd



LOLO'S GENERAL STORE & THRIFT SHOP (Name?)
3210 Stillman Blvd

Adult Retail Store



VIDEO ZONE & TAN
504 15th St

Revised Draft

Federal Military Lending Act

Press Release - September 27, 2007

Center for Responsible Lending – Consumer Federation of America – National Consumer Law Center

Military Lending Act to take effect October 1, 2007

Federal law will protect troops and their families from some predatory loans

[Note: Excerpts from Press Release]

Washington, DC - As U.S. soldiers face continuing demands in the call to protect their country, starting October 1 they gain an extra measure of protection from a lingering financial threat to their own families. The federal Military Lending Act will take effect Monday, and will bar predatory lenders from gouging military families with payday loans that trap borrowers in debt and typically carry 400 percent annual interest rates.

The new law caps interest at 36 percent for certain payday, auto title, and refund anticipation loans made to military families. “The 36 percent cap will slow the predatory lenders down,” said Jean Ann Fox, director of consumer protection for the Consumer Federation of America (CFA). “And the law says they can’t hold onto the service member’s personal check or have electronic access to their bank account as collateral for this type of loan. The threat of the lender depositing the borrower’s check, which would often not clear the bank, has been a key way to trap borrowers in loans that they end up paying back many times over in interest.”

The law will not cover all high-cost products—predatory lenders have designed some loans to get around restrictions in states. For example, payday lenders in Illinois restructured 350 percent interest loans as 121-day installment loans to get around the 120-day minimum loan term established in that state. Military would not be protected from this product under the new rules, which apply only to loans of 91 days or less.

“Still, as long as the payday lenders don’t contort their products to try to end-run the protections for military, this law will protect our soldiers and their families from the worst abuses,” said Fox.

Lawmakers passed the Military Lending Act after the Pentagon reported that predatory practices weaken the military, and that debt issues threaten the security clearances of military personnel.

In a report to Congress in August 2006, the Pentagon said: “Predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” A conservative Pentagon estimate based on payday industry data put the use of payday loans at 17 percent among military personnel.

The Military Lending Act does not replace stronger protections, so military personnel stationed in D.C., for example, will be further protected once that law takes effect.

For more information: Consumer Federation of America, Jean Ann Fox or Travis Plunkett, 202-387-6121; National Consumer Law Center, Lauren Saunders, 202-452-6252, Center for Responsible Lending, Kathleen Keest or Carol Hammerstein, 919-313-8518.

Consultant Team Resumes

Connie B. Cooper, FAICP

Education

Masters of Urban and Reg. Planning
University of Mississippi
Bachelor of Arts, Political Science
Mississippi State University

Professional Service & Recognition

Past President, American Planning Association
Past President, American Society of Consulting Planners
Fellow, American Institute of Certified Planners

CONNIE B. COOPER, FAICP, former national president of the American Planning Association, has more than 30 years of experience in planning and community development at the state, county, and local levels. This has included extensive experience throughout the US as a principal participant in the areas of urban redevelopment, strategic planning; community goal setting and visioning; comprehensive planning; economic development; zoning and subdivision; housing; transportation; market research; land development; community relations; and regulation of sexually oriented businesses. As a planning director in the public sector, Ms. Cooper's experience has included major responsibilities in the management of planning programs that have become the cornerstones of Shelby and Jefferson Counties' (Alabama).

Ms. Cooper is the co-author of the American Planning Association's Planning Advisory Service *Everything You Always Wanted to Know about Regulating Sex Businesses*, co-authored with Eric Kelly. Partnering with Mr. Kelly, Ms. Cooper has consulted extensively with local governments in developing adult use regulations in Florida, Kentucky, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Texas. As a private consultant, she has been strongly involved in the preparation of Destin, Florida's citywide visioning initiative charrette; a community-wide visioning and design charrette in Charleston, South Carolina; a land use, environmental and transportation charrette for a 10-mile river corridor in Nebraska; a marketing and promotional program for South Fulton County; a comprehensive plan update and new land development regulations for Columbia County; Georgia; an economic development plan for DeKalb County, Georgia; a growth management plan for Norman, Oklahoma; and comprehensive plans in Alabama, Georgia, Colorado, and Indiana, as well as unified development ordinances for communities in Missouri and Georgia, and an urban renewal/ downtown plan for Tuscaloosa, Alabama.

Representative Projects:

Secondary Effects of Sexually-Oriented Businesses on Market Values, Study of Texas Appraisers	Zoning & Urban Design Ordinance, Sullivan's Island, SC
Secondary Impacts of Adult Uses, Kansas City, MO	2020 Comprehensive Development Plan, Columbus, IN
Regulated Uses & Secondary Impacts, Biloxi, MS	Comprehensive Land Development Plan, Suwanee, GA
Secondary Impacts of Adult Uses, Toledo, OH	Destin Vision 2000, Destin, FL
Regulated Uses & Secondary Impacts, Northern. KY	Land Use Guiding Principles, Athens-Clarke County, GA
Regulated Uses & Secondary Impacts, Amherst, NY	Comprehensive Plan - 2015, Gainesville-Hall Co., GA
Regulated Uses & Secondary Impacts, Detroit, MI	Norman 2020 Growth Management Plan, Norman, OK
Regulated Uses, Memphis-Shelby County, TN	Ashley Bridge District Vision Plan, Charleston, SC
Sexually Oriented Uses, West Palm Beach, FL	Regional Development Plan, Pueblo, Colorado
Growth Management Plan Update, Columbia Co., GA	Transportation & Land Use Plan, Fort McClellan, AL
	Urban Renewal/Redevelopment Plan, Tuscaloosa, AL

Eric Damian Kelly, PH.D, FAICP

Eric Damian Kelly is a planner and lawyer who has long bridged the academic and practical worlds. He spent fifteen years focused primarily on professional practice while teaching part-time in the planning program at the University of Colorado. In 1990 he became chair of the Department of Community and Regional Planning at Iowa State University and in 1995 moved to Ball State University as Dean of the College of Architecture and Planning. He resigned as Dean in 1999 but remained on the faculty at Ball State, later serving as acting chair of the Department of Urban Planning.

Throughout his academic career, he has maintained a limited consulting practice in association with Duncan Associates. After resigning from his senior administrative position in 1999, he joined the firm on a long-term basis, with a part-time salary. In his career with Duncan Associates and earlier, he has consulted with more than one hundred local governments in more than 35 states. In addition to general work on land-use controls, he devotes a significant portion of his time to consulting with local governments on the complex legal issues involved in the intersection between land-use controls and the First Amendment.

He is a frequent litigation consultant and expert witness on cases involving the regulation of signs, billboards and/or sex businesses. Eric maintains a publication agenda that is both scholarly and practical. Since 1995, he has been General Editor of the 10-volume Matthew Bender set *Zoning and Land Use Controls*. He is also co-author (and sole author for annual updates) of a companion one-volume desk book from Matthew Bender. In November 2009, Island Press published the second edition of *Community Planning: an Introduction to the Comprehensive Plan*; Eric was lead author on the first edition and sole author of the second edition. He is author or co-author of six technical reports published in the Planning Advisory Service Reports series of the American Planning Association; those include *Everything you always wanted to know about regulating sex businesses* with Connie Cooper.

Eric is a past national president of the American Planning Association. In 1999 he was elected as one of the first 49 members of the College of Fellows of the American Institute of Certified Planners. He has received chapter service awards from the Colorado and Iowa Chapters of the American Planning Association and a "Planning Sagamore" award from the Indiana Planning Association. He holds a B.A. with honors in political economy from Williams College; Juris Doctor and Master of City Planning degrees from the University of Pennsylvania; and a Ph.D. in public policy from The Union Institute. He has been admitted to the practice of law in the State of Colorado but has placed his license on voluntary "inactive" status.

Endnotes

¹ Northport Munic. Code §7-5.04.

² Northport Munic. Code §7-5.01.A.

³ Northport Munic. Code §7-5.04

⁴ Northport Munic. Code §7-3.20.

⁵ Tuscaloosa Code of Ord. §24-135(8).

⁶ Tuscaloosa Code of Ord. §24-135(2).

⁷ Tuscaloosa Code of Ord. §24-134(u).

⁸ Apgar, William C., Jr. and Christopher E. Herbert. "Subprime Lending and Alternative Financial Service Providers: A Literature Review and Empirical Analysis," Prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research by Abt Associates, Inc., Cambridge, MA, 2004., page I-1

⁹ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets by the Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, D.C., Robin A. Prager, 2009, p. 2.

¹⁰ EZCORP, Inc. Form 10-K for the fiscal year ended September 30, 2007.

¹¹ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, pp. 4-5.

¹² Cash America International, Inc. Form 10-K for the fiscal year ended December 31, 2007.

¹³ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, p. 6.

¹⁴ Advance America, Cash Advance Centers, Inc. Form 10-K for Fiscal Year ending December 31, 2007.

¹⁵ Elliehausen, Gregory. "Consumers' Use of High-Price Credit Products: Do They Know What They Are Doing?" Networks Financial Institute At Indiana State University Working Paper 2006-WP-02, May 2006.

¹⁶ Industry growth largely ceased in 2007, following legislative and regulatory reforms in a number of states that adversely affected the profitability of the payday lending business.

¹⁷ QC Holdings, Inc. Form 10-K for fiscal year ended December 31 2006.

¹⁸ Stephens, Inc. *Payday Loan Industry Annual Industry Update*, 2007.

¹⁹ Stephens, Inc. (2007).

²⁰ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, pp. 7-9.

²¹ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, p. 10.

²² The Pearson Correlation Coefficient ...between the number of bank branches per capita and the number of check-cashers per capita is 0.001, and that between the number of bank branches per capita and the number of pawnshops per capita is 0.008; both of these are statistically insignificant. The remaining correlations among different types of financial service providers per capita are all positive and significant at the 0.0001 level, with the following magnitudes: 0.37 between check-cashers and pawnshops, 0.57 between check cashers and payday lenders, 0.40 between pawnshops and payday lenders, and 0.12 between banks and payday lenders.

²³ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, p. 14.

²⁴ The demographic data were obtained from the Census Bureau; the creditworthiness measures were constructed from credit score data obtained from Equifax; and the information on state laws and regulations was gathered from various state government websites.

²⁵ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, p. 15.

²⁶ Determinants of the Locations of Payday Lenders, Pawnshops and Check-Cashing Outlets, pp. 20 -22.

²⁷ http://www.regions.com/faq/ready_advance.rf#Q01.

²⁸ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, Jean Ann Fox and Tom Feltner, Consumer Federation of America, Delvin Davis and Uriah King, Center for Responsible Lending, February 28, 2013.

²⁹ <http://www.responsiblelending.org/other-consumer-loans/car-title-loans/tools-resources/fast-facts.html>

³⁰ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, Jean Ann Fox and Tom Feltner, Consumer Federation of America, Delvin Davis and Uriah King, Center for Responsible Lending, February 28, 2013.

³¹ CFA Survey of Car-Title Loan Laws, www.consumerfed.org/pdfs/Resources.CTL.StateLawTermChart12.2.12.pdf. Over half of authorization laws require 30 day terms. Additionally, the CEO of Title Max (the largest car-title lender in the country) stated that 83 percent of their outstanding loans have a term of 30 days. Affidavit of John Robinson, President of Titlemax Holdings LLC, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division (April 20, 2009).

³² *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, Table 2, p. 5.

³³ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, Appendix I, p. 13.

³⁴ For example, a search for title loan advertisements on the Mintel Comperemedia direct mail database found loans offered interest free for the first month by MoneyStore and QuickPawn, as well as loans offered with \$100 off interest charges at Allied Cash. Database accessed by authors June 2010.

³⁵ For example, TitleMax, in response to the “Frequently Asked Question” “What if I have bad credit? Am I still eligible for a title loan” responds: “Absolutely! Your credit score doesn’t matter. TitleMax can give you a title loan whether you have good credit, bad credit, or no credit. And your credit score isn’t affected by applying/obtaining a title loan with TitleMax.” In the next FAQ, it states: “You do not need good credit. TitleMax does not check your credit or use your credit history in any way during the approval process.” See <http://www.titlemax.biz/faqs/>, URL visited 9/13/12.

³⁶ “No proof of employment.” See direct mail database, Comperemedia, assessed June 2010. “Lenders may [emphasis added] verify employment, income, and perform a credit check, but practice is not uniform. Most scrutiny focuses on the value of the car rather than the borrower.” Todd Zywicki’s *Consumer Use and Government Regulation of Title Pledge Lending*, George Mason University School of Law Mercatus Center (2010), pg 13.

³⁷ For an overview of the car-title loan origination process see Nathalie Martin and Ozymandias Adams, Grand Theft Auto Loans: Repossession and Demographic Realities In Title Lending (April 17, 2012). Missouri Law Review, Vol. 77; UNM School of Law Research Paper No. 2012-03. Available at SSRN: <http://ssrn.com/abstract=2041575> and Todd J. Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending*, 22 LOY. CONSUMER L. REV. 425, 433 (2010).

³⁸ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, p. 3.

³⁹ The FDIC’s *National Survey of Unbanked and Underbanked Households* found that eight percent of U.S. households are unbanked. However, 21.7 percent of African Americans, 19.3 percent of Latinos, and 15.6 percent of Native Americans are unbanked. In addition, the unbanked are more likely to be unmarried, have incomes of less than \$30,000, less than a high school education, and a foreign born Spanish speaker than the U.S. population as a whole. See <http://www.fdic.gov/householdsurvey/>.

⁴⁰ Veritec report to the Illinois Regulator, Title Lending Activity from December 2009–November 2010. Data on file with authors. The regulator reports borrower monthly income for each loan occurring in a given month. We have taken the average of that monthly income and computed an annual income. Summary of Title Loans, Calendar Year 2009, Financial Institutions Division, New Mexico Regulation and Licensing Department (2010). The median incomes for car-title borrowers in these states are less than half of the states’ household median incomes. The New Mexico regulator reported the average income of New Mexico title loan borrowers is \$24,493, compared to a median household income in that state of \$44,631. Similarly, the Illinois regulator reports an average income of title loan borrowers of \$24,200, compared to a median household income of \$56,576. State median household incomes are the Census Bureau’s 2007–2011 state-level estimates.

⁴¹ Illinois Department of Financial Institutions, Short-Term Lending 1999 Final Report, available at <http://www.idfpr.com/dfi/ccd/pdfs/Shortterm.pdf>.

⁴² *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, p.4.

⁴³ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, Appendix I, p. 13.

⁴⁴ *Id.*

⁴⁵ For example, a report from TMX (TitleMax) notes that “we have historically experienced a reduction of 9% to 14% in our title loans receivable in the first quarter of each fiscal year, primarily associated with our customers’ receipts of tax refund checks.” See Management’s Discussion and Analysis of Financial Condition and Result of Operations, TMX Finance LLC and Affiliates (2010). On file with authors. Payday borrowers similarly rely on irregular cash infusions to truly break the cycle of repeat borrowing. According to a recent study by Pew, forty-one percent need an outside cash infusion to eliminate payday loan debt– including getting help from friends or family, selling or pawning personal possessions, taking out another type of loan, or using a tax refund. See Payday Lending in America: How Borrowers Choose and Repay Payday Loans at <http://www.pewstates.org/research/reports/how-borrowers-choose-and-repay-payday-loans-85899452131>.

⁴⁶ Affidavit of John Robinson, President of Titlemax Holdings LLC, U.S. Bankruptcy Court for the Southern District of Georgia, Savannah Division (April 20, 2009).

⁴⁷ *Id.*

⁴⁸ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, p.5.

⁴⁹ Veritec report to the Illinois Regulator, Title Lending Activity from December 2009–November 2010. Data on file with authors.

⁵⁰ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, p.6.

⁵¹ John Warner National Defense Authorization Act for Fiscal Year 2007, Sec. 987. See, also, Department of Defense, 32 CFR Part 232, “Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Final Rule, effective date October 1, 2007. Title loans covered by this cap are closed-end loans secured by the title to a vehicle, having terms of 181 days or less. See 32 CFR Part 232.3 (ii). In some states, title loans do not meet the Defense Department’s definitions and therefore could be made in excess of 36% annual interest. For example, loans of longer than 181 days are made in Illinois and California, and open-end title loans are made in Kansas.

⁵² See Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents, Department of Defense (August 9, 2006).

⁵³ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, p.8.

⁵⁴ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, Appendix IV, p. 16.

⁵⁵ *Driven to Disaster: Car-Title Lending and Its Impact on Consumers*, p.11.

⁵⁶ *VIEWPOINTS: Alabama leads nation in car-title loan outlets*, Birmingham News, Chris Izor, September 23, 2012.

⁵⁷ www.carefulcents.com by: Carrie Smith, Finance and business blogger for The Huffington Post, Yahoo!Finance and several other startup blogs

⁵⁸ See more at: <http://www.titlemax.biz/consumer-info/#sthash.Xubpl3VE.dpuf>

⁵⁹ Title 5, Chapter 19A of the Alabama Code.

⁶⁰ Ala. Code §5-19A-3.

⁶¹ Ala. Code §5-19A-4.

⁶² Ala. Code §5-19A-5.b.

⁶³ Ala. Code §5-19A-7.a.

⁶⁴ Ala. Code §5-19A-11 – 5-19A-13.

⁶⁵ Ala. Code §5-19A-19.

⁶⁶ Chapter 18A of Title 5 of the Alabama Code.

⁶⁷ Ala. Code §5-18A-3.

⁶⁸ Ala. Code §5-18A-4.

⁶⁹ Ala. Code §§5-18A-5 – 7; Ala. Code §5-18A-14 deals with denial of a license.

⁷⁰ Ala. Code §5-18A-9.

⁷¹ Ala. Code §5-18A-15.

⁷² Ala. Code §5-18A-11 – 13.

⁷³ Ala. Code §5-18A-12.

⁷⁴ Ala. Code §5-18A-11(b).

⁷⁵ Code of Ala. §§5-18-1 – 5-18-24.

⁷⁶ Code of Ala. §5-18-4.

⁷⁷ Code of Ala. §5-18-2.

⁷⁸ Code of Ala. §5-18-2.

⁷⁹ Code of Ala. §5-18-15.

⁸⁰ Now codified as Chapter 34 of Title 8 of the Alabama Code.

⁸¹ Ala. Code §8-34-2.

⁸² Ala. Code §8-34-3.

⁸³ Ala. Code §8-34-4(b).

⁸⁴ Ala. Code §8-34-4 (a).

⁸⁵ Ala. Code §8-34-2.

⁸⁶ Chapter 17A, Subtitle 1, Title 22 of the Alabama Code deals with “tattooing, branding and body piercing.”

⁸⁷ Ala. Code §22-17A-4.

⁸⁸ Ala. Code §22-17A-6.

⁸⁹ Ala. Code §22-17A-8.

⁹⁰ 621 F.3d 1051 (9th Cir. Cal. 2010).

⁹¹ 621 F.3d at 1056.

⁹² 621 F.3d at 1062.

⁹³ 621 F.3d at 1062.

⁹⁴ 621 F.3d at 1064-66.

⁹⁵ *Hold Fast Tattoo, LLC v. City of N. Chi.*, 580 F. Supp. 2d 656, 659-60 (N.D. Ill. 2008).

⁹⁶ *Yurkew v. Sinclair*, 495 F. Supp. 1248, 1253 (D. Minn. 1980).

⁹⁷ *State v. White*, 348 S.C. 532, 560 S.E.2d 420, 423-24 (S.C. 2002). The court agreed with the State’s position in that there were inherent risks to tattooing which gave the legislature wide latitude to determine how to best protect the general welfare of the State’s inhabitants. Defendant did not make any showing that the process of tattooing was communicative enough to automatically fall within First Amendment protection.

See also *Kennedy v. Hughes*, 596 F. Supp. 1487, 1493 (D. Del 1984) There the court found that plaintiffs asserted right to tattoo is not fundamental, so summary judgment for defendant granted; the court did not squarely address the First Amendment issue but rejected a broad Constitutional challenge.

State v. Brady, 492 N.E.2d 34, 39 (Ind. 1986), followed *Yurkew* (cited immediately above) on this issue, with no further discussion.

People v. O’Sullivan, 96 Misc. 2d 52, 409 N.Y.S.2d 332, 333 (N.Y. App. Term 1978), holding in part that When the object of legislation is not the suppression of free expression but the promotion of public health, there is no

constitutional violation even if there is some incidental interference with liberty or property. 96 Misc.2d at 53, 409 N.Y.S.2d at 333.

Blue Horseshoe Tattoo, V. Ltd. v. City of Norfolk, 390 (Va. Cir. Ct. 2007). There the court cited Texas v. Johnson, 491 U.S. 397, 404, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) and Stephenson v. Davenport Community Sch. Dist., 110 F.3d 1303, 1307 (8th Cir. 1997) for the proposition that the protection of the First Amendment is triggered not by mere self-expression but by the combination of an intent to convey a particularized message and a finding that the likelihood was great that the message would be understood by those who viewed it. 72 Va. Cir. Ct. at 390.

City of Albuquerque v. Sachs, 135 N.M. 578, 92 P.3d 24, 2004 NMCA 65 (N.M. Ct. App. 2004) cited State v. White, State v. Brady, People v. 'O'Sullivan and Blue Horseshoe (all cited in this note) in holding that a promotional scheme of tattoo and body piercing parlor that offered free nipple piercings to anyone who would sit for the piercing in the window of the establishment was not protected by the First Amendment.

98 Riggs v. City of Fort Worth, 229 F. Supp. 2d 572 (N.D. Tex. 2002) The case involved a claim of discrimination based on a variety of issues, including a requirement that Riggs cover his tattoos while working as a police officer. Similarly, at least one federal court has concluded that the display of tattoos by an individual is not a Constitutional right nor is it even an important but not Constitutional right in rejecting a challenge to a no visible tattoos while on duty rule of a local police department. Inturri v. City of Hartford, 365 F. Supp. 2d 240, (D. Conn. 2005), affd. 165 Fed. Appx. 66, 2006 U.S. App. LEXIS 2538 (2d Cir. 2006).

99 Ala. Code §13A-12-3.

100 Chapter 11 of Title 28 of the Alabama Code.

101 Ala. Code §28-11-1.

102 Ala. Code §28-11-7.

103 Ala. Code §28-11-7.

104 Ala. Code §28-11-8.

105 Ala. Code §28-11-13.

106 Ala. Code §40-12-72.

107 Chapter 25 of Title 40 of the Alabama Code.

108 Ala. Code §13A-12-3.1 -- §13A-12-3.7.

¹⁰⁹ Lorillard Tobacco Co. v. Reilly, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (U.S. 2001).

¹¹⁰ 150 L. Ed. 2d at 566, 121 S. Ct. at 2427.

¹¹¹ Ala. Code §13A-12-200.2.

¹¹² Williams v. Pryor, 378 F.3d 1232 (11th Cir. 2004), reh en banc denied sub nom. Williams v. AG, 2004 U.S. App. LEXIS 28061 (11th Cir. Ala., Sept. 24, 2004), cert. denied sub. nom. Williams v. King, 161 L. Ed. 2d 115 (U.S. 2005).

¹¹³ 1568 Montgomery Highway, Inc. v. City of Hoover, 45 So. 3d 319 (Ala. 2010), substituted opinion.

¹¹⁴ Ala. Code §13A-12-200.11.

¹¹⁵ Ala. Code §13A-12-200.12(a).

¹¹⁶ Ala. Code §13A-12-200.12(a) and (b).

¹¹⁷ Ala. Code §13A-12-200.12(b).

¹¹⁸ Playtime Theaters v. City of Renton, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed 2d 29 (1986).

¹¹⁹ Schad v. Borough of Mt. Ephraim, 452 U.S. 61, 67, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981),.

¹²⁰ See Franklin Jefferson, Ltd. v. City of Columbus, 244 F. Supp. 2d 835 (S.D. Ohio 2003).

¹²¹ FW/PBS, Inc. v. City of Dallas, 837 F.2d 1298 (5th Cir. 1988), modified, 493 U.S. 215 (1990).

¹²² Zoning Bd. of Adjustment v. Davis, 699 So. 2d 1264 (Ala. Civ. App. 1997), reh. den. 1997 Ala. Civ. App. LEXIS 276 (Ala. Civ. App. Mar. 28, 1997), rejecting the attempt of the city to prevent the reopening of a closed restaurant and

lounge; see, also, *Budget Inn of Daphne, Inc., v. City of Daphne*, 789 So. 2d 154 (Ala. 2000), where the court held that a hotel that had changed affiliations was entitled to install sign panels with the new name on its nonconforming sign.

¹²³ Off. C. G. Ann. §16-17-8.

¹²⁴ Wisc. Stats. §49.69(4h) (counties) and §62.23(7)(hi) (cities).

¹²⁵ N.J.S.A. §17:15A-41e.

¹²⁶ N.Y. Banking Law §369(1); construed in *Sunrise Check Cashing & Payroll Servs., Inc. v. Town of Hempstead*, 91 A.D.3d 126, 933 N.Y.S.2d 388 (N.Y. App. Div. 2d Dep't 2011), aff'd 2013 N.Y. LEXIS 125, 2013 NY Slip Op 949 (N.Y. Feb. 14, 2013).

¹²⁷ See A. Lewis, "Zoning Out Payday Loan Stores and Other Alternative Financial Service Providers," NP, ND, available at <http://ssrn.com/abstract=1885197> (accessed February 2013). See, also, Kelly Griffith and Linda Hilton, *Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions* (Nov. 2007), available at http://www.paydayloaninfo.org/pdfs/PDL%20Local%20Ordinance%20%20master%2011_08.pdf. (accessed February 2013).

¹²⁸ 2010 Va. AG LEXIS 27.

¹²⁹ *Windsor Jewels of Pa., Inc. v. Bristol Twp.*, 2005 U.S. Dist. LEXIS 2019 (E.D. Pa. Feb. 10, 2005). Here the court found no equal protection violation or other unsupportable action in the denial of a permit to open a pawnshop in a location zoned "C-SS" for "Combined Service Station" and formerly occupied by such a business.

Beck v. City of Raleigh, 2011 N.C. App. LEXIS 498 (N.C. Ct. App. Mar. 15, 2011) unpublished, but later reported at 711 S.E.2d 208, 2011 N.C. App. LEXIS 510 (N.C. Ct. App. 2011). The North Carolina court upheld an amendment to the Raleigh Zoning Ordinance that, after multiple public meetings over some two and one-half years, significantly reduced the number of districts in which pawnshops were allowed to operate; it also allowed pawnshops already in existence to continue to operate.

¹³⁰ *Sunrise Check Cashing & Payroll Servs., Inc. v. Town of Hempstead*, 2013 N.Y. LEXIS 125 (N.Y. Feb. 14, 2013), affirming *Sunrise Check Cashing & Payroll Servs., Inc. v. Town of Hempstead*, 91 A.D.3d 126, 933 N.Y.S.2d 388 (N.Y. App. Div. 2d Dep't 2011).

¹³¹ 91 A.D.3d 126, 933 N.Y.S.2d 388 [note that citations to the record are to the mid-level Appellate Division decision (affirmed by the high court), because neither the high court opinion nor its pagination was final at the time that this material was assembled.

¹³² See *Cash Inn of Dade, Inc. v. Metropolitan Dade County*, 938 F.2d 1239 (11th Cir. Fla. 1991).

¹³³ 938 F.2d at 1241-42.

¹³⁴ 938 F.2d at 1242.

¹³⁵ 938 F.2d at 1243.

¹³⁶ 938 F.2d at 1244.

¹³⁷ In *Pollard v. Cockrell*, 578 F.2d 1002 (5th Cir. Tex. 1978), the court rejected equal protection and other arguments challenging a local massage-parlor ordinance that restricted a number of aspects of operations of the establishments – including a requirement that the establishments be closed from 10 p.m. to 8 a.m. *Patch Enterprises, Inc. v. McCall*, 447 F. Supp. 1075 (M.D. Fla. 1978) upheld a local ordinance that limited hours of operation at establishments that dealt in alcoholic beverages; the State required that liquor sales end at 2 a.m., but the establishment operated an "after hours" club that allowed people to bring their own alcohol. The court upheld the ordinance, which was designed to eliminate this practice.

The mid-level Oklahoma Court of Civil Appeals has upheld a local ordinance regulating the operating hours of pawn shops, because the State law regulating pawn shops did not address the hours of operation. *Circle D. Pawn # 2 v. City of Norman*, 956 P.2d 931 (Okla. Civ. App. 1998).

¹³⁸ 938 F.2d at 1245.

¹³⁹ *Lamplighter, Inc. of Littleville v. Littleville*, 571 So. 2d 1157 (Ala. Civ. App. 1990). The case was complicated; on appeal it actually involved a court order incorporating the local government's requirement that the private club operated by Lamplighter be closed on Sunday; the court held that the statute preempted local regulatory efforts and any court order attempting to implement those same efforts. *Accord Berger v. City of Boulder*, 195 P.3d 1138 (Colo. Ct. App. 2008), where the court held that a condition on operating hours imposed on the grant of a use permit was preempted by the State liquor licensing laws.

¹⁴⁰ *Doctor Johns, Inc. v. City of Roy*, 333 F. Supp. 2d 1168 (D. Utah 2004), *aff'd*, 465 F.3d 1150 (10th Cir. Utah 2006); *Andy's Rest. & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. Ind. 2006); *Silver Video USA, Inc. v. Summers*, 2006 Tenn. App. LEXIS 714 (Tenn. Ct. App. Nov. 1, 2006), *app. den.* 2007 Tenn. LEXIS 385 (Tenn. Apr. 23, 2007), upholding Tenn. Code Ann. 7-51-1402(a); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. Wis. 2000), *reh'g denied* 2000 U.S. App. LEXIS 31121; *Deja Vu of Cincinnati, L.L.C. v. Union Twp. Bd. of Trs.*, 411 F.3d 777 (6th Cir. Ohio 2005), *cert. den.* 126 S. Ct. 1023, 163 L. Ed. 2d 853 (2006); *Ctr. for Fair Pub. Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. Ariz. 2003), *cert. denied* 541 U.S. 973, 124 S. Ct. 1879, 158 L. Ed. 2d 468 (2004); prior proceedings at *L. J. Concepts, Inc. v. City of Phoenix*, 215 F.3d 1333, (9th Cir. Ariz. 2000), reported in full at 2000 U.S. App. LEXIS 5906, upholding Ariz. Rev. Stat. 13-1422(A); Center for Fair Public Policy was followed in *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. Ariz. 2004); *Lady J. Lingerie v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999), *cert. denied*, 529 U.S. 1053, 120 S. Ct. 1554, 146 L. Ed. 2d 459 (2000); *729, Inc. v. Kenton County Fiscal Court*, 2006 U.S. Dist. LEXIS 76145 (E.D. Ky. 2006), *aff'd in part* [including this issue], *rev'd in part* [on another issue] 515 F.3d 485 (6th Cir. Ky. 2008); *Sensations, Inc. v. City of Grand Rapids*, 2006 U.S. Dist. LEXIS 77159 (W.D. Mich. Oct. 23, 2006), *aff'd* 526 F.3d 291 (6th Cir. Mich. 2008).

141 *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526, 37 S. Ct. 190, 61 L. Ed. 472 (1917).

142 *St. Louis Gunning Advertisement Co. v. City of St. Louis*, 235 Mo. 99, 137 S.W. 929 (1911), appeal dismissed, 231 U.S. 761, 34 S. Ct. 325, 58 L. Ed. 470 (1913).

143 *Metromedia v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800 (1981). The plurality opinion of Justice White (joined by three others) included this discussion:

The California Supreme Court noted the meager record on this point but held as a matter of law that an ordinance which eliminates billboards designed to be viewed from streets and highways reasonably relates to traffic safety. 26 Cal. 3d, at 859, 610 P. 2d, at 412. Noting that [billboards] are intended to, and undoubtedly do, divert a drivers attention from the roadway, *ibid.*, and that whether the distracting effect contributes to traffic accidents invokes an issue of continuing controversy, *ibid.*, the California Supreme Court agreed with many other courts that a legislative judgment that billboards are traffic hazards is not manifestly unreasonable and should not be set aside. We likewise hesitate to disagree with the accumulated, commonsense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety. There is nothing here to suggest that these judgments are unreasonable. As we said in a different context, *Railway Express Agency, Inc. v. New York*, *supra*, at 109:

We would be trespassing on one of the most intensely local and specialized of all municipal problems if we held that this regulation had no relation to the traffic problem of New York City. It is the judgment of the local authorities that it does have such a relation. And nothing has been advanced which shows that to be palpably false.

453 U.S. at 508-09, 101 S. Ct. at 2893, 69 L. Ed. 2d at 815-16 (1981).

144 *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954); and *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974).

145 *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. Fla. 2005).

146 410 F.3d at 1250.

147 Draft "Sect. 21, Payday (Deferred Presentment) and Title Loans," obtained from City staff, March 2013.

148 See Edward C. Lawrence and Gregory Elliehausen, "A Comparative Analysis of Payday Loan Customers," *Contemporary Economic Analysis*, Vol. 26, No. 2, Apr. 2008, pp. 299-316.

149 For a good explanation, see Michael A. Stegman, "Payday Lending," *Journal of Economic Perspectives*, Vol. 21, No. 1, Winter 2007, pp. 169-90.

150 Off. Code Ga. §§16-17-1 – 16-17-10.

151 Off. Code Ga. §§16-17-1 – 16-17-10.

152 Portland Mun. Code Ch. 7.26.

153 Tex. Fin. Code §§393.601 – 393.628.

154 Dallas Code §50-151.3 provides:

- (a) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed 20 percent of the consumer's gross monthly income.
- (b) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:
 - (1) three percent of the consumer's gross annual income; or
 - (2) 70 percent of the retail value of the motor vehicle.
- (c) A credit access business shall use a paycheck or other documentation establishing income to determine a consumer's income.
- (d) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25 percent of the principal amount of the extension of consumer credit. An extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.
- (e) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.
- (f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal. (Ord. 28287, eff. 1-1-12)

¹⁵⁵ Ark. Const. Art. 19 §13

¹⁵⁶ Formerly Ark. Code Ann. §§ 23-52-101- 23-52-117.

¹⁵⁷ *McGhee v. Ark. State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (Ark. 2008).

¹⁵⁸ Ark. Const. Art. 19 §13.

¹⁵⁹ Formerly Ark. Code Ann. §§ 23-52-101- 23-52-117.

¹⁶⁰ *McGhee v. Ark. State Bd. of Collection Agencies*, 375 Ark. 52, 289 S.W.3d 18 (Ark. 2008).

¹⁶¹ Fla. Stat. §560.404(6) by reference to §560.309(8).

162 Fla. Stat. §560.404(6) – (8).

163 Miss. Stat. Ann. §75-17-21(1).

164 Miss. Stat. Ann. §75-17-21(4).

165 Miss. Stat. Ann. §75-67-119.

166 Tenn. Stat. Ann. §45-17-101 – 45-17-108.

167 Fla. Stats. §560.309(8).

168 Code of Ala. §34-7A-22; for testing information, see Alabama Board of Cosmetology, <http://www.aboc.state.al.us/Exams.htm> .

169 Code of Ala. §22-17A-4 provides:

(a) Before issuing a license to an applicant under this chapter, the department shall inspect the premises of the tattoo facility that is the subject of the application.

(b) The department shall periodically inspect each tattoo facility licensed under this chapter to ensure compliance.

(c) The department shall issue a license under this chapter to a specific person for a tattoo facility at a specific location and the license issued shall be nontransferable.

170 Over the long-run, apprenticeships should be under licensed operators. Initially, however, there will be no licensed operators under whom to train.

171 See "Tattoo Shop Loses License," <http://www.brewtonstandard.com/2012/05/04/tattoo-shop-loses-license/> May 4, 2012.