

ADMINISTRATIVE ORDER NO. 53-07-02-F
of the
City Manager
City of Eugene, Oregon

AMENDING AND ADOPTING PAYDAY LOANS
BUSINESS LICENSE EMERGENCY ADMINISTRATIVE RULE R-3.552
AS A PERMANENT RULE AND REPEALING
ADMINISTRATIVE ORDER NO. 53-06-05.

The City Manager of the City of Eugene finds that:

A. Section 2.019 of the Eugene Code, 1971, authorizes the City Manager to adopt rules for administration and implementation of any provisions of that Code. On July 10, 2006 the City Council adopted Ordinance No. 20372 adding Sections 3.550 through 3.560 to that Code establishing Payday Loans business regulations. Section 3.552 specifically authorizes the City Manager to adopt rules implementing those newly adopted provisions.

B. Pursuant to that authority Payday Loans Business License Emergency Administrative Rule R-3.552 was adopted by Administrative Order No. 53-06-05 on August 11, 2006, with an immediate effective date.

C. On January 10, 2007 I issued Administrative Order No. 53-07-02 proposing that Emergency Rule R-3.552 be amended by: (a) amending Rule R-3.552-C-2 and R-3.552-D-1 to specify the information to be included in a poster to be displayed by Payday Lenders advising borrowers of their rights under the Eugene Code, 1971; (b) deleting Rule R-3.552-C-4 as being no longer applicable; (c) amending R-3.552-D-8 to require posting of a Borrower's Rights Poster in a prominent place at the licensed premises; and (d) amend R-3.552-J to add Failure to Post Borrower's Rights Poster to the list of violations for which a penalty may be imposed, and adoption of Emergency Rule R-3.552 as a permanent rule.

D. Notice of the proposed amendment and adoption was published in the Register Guard, a newspaper of general circulation within the City for five consecutive days, to-wit: January 15, 16, 17, 18 and 19, 2007. The Notice was also made available for persons who had requested such notice and provided that written comments would be received thereon for a period of 15 days from the first date of publication. Two comments were received from Nathan Peterson, Vice President of Operations for Quik Check Financial, Inc., to which I make the following findings:

Comment 1: With respect to R-3.515-H – Suspension and Revocation, Mr. Peterson commented that revoking a license for up to 45 days for two violations within a 24 month period was excessive and unnecessary, as was revoking a license permanently for a third violation within a 24 month period. He felt no consideration was provided for the seriousness of the violation and that city employees could make arbitrary decisions resulting in a violation. He recommended that a revocation occur only after notification and an opportunity was given to correct the violation.

Finding: The provisions in the Code and Rules constituting violations which can result in a suspension or revocation impose clear requirements upon a licensee. In addition, Rule R-3.515-H provides that a suspension or revocation can only occur upon a judicial or administrative determination that a violation has occurred. If the licensee feels that determination is in error, it may be appealed. I find that those procedures, along with the change made in response to the second comment, adequately address the commenter's concerns. Therefore, no changes are being made to Rule R-3.515-H as a result of this comment.

Comment 2: Mr. Peterson objected to the manner in which the civil penalties were constructed in R-3.552-J and set forth several examples of how a licensee could unknowingly or unintentionally violate the rules or code and become subject to excessive penalties. He recommended that R-3.552-J be revised to require notice to the licensee and the opportunity to correct the violation before a civil penalty is imposed, and that a cap be placed on the amount of civil penalties that can be imposed on a licensee in a calendar year.

Finding: Rule R-3.552-J sets forth the amount of civil penalty to be imposed for violations, not the manner in which a civil penalty is imposed. R-3.552-I provides that except as modified by that subsection or R-3.552-J, imposition of a civil penalty shall be in accordance with the procedures contained in Section 2.018 of the Eugene Code, 1971 (EC). EC 2.018(2) provides that except under emergency conditions, the City Manager shall pursue reasonable attempts to secure voluntary compliance, and allow not less than five calendar days for correction before imposing an administrative civil penalty. This is consistent with the City's goal of achieving compliance with its licensing provisions. The second paragraph under R-3.552-I-1 which provided no notice to correct would be issued prior to imposition of a civil penalty has been deleted. With this change, and a licensee's ability to appeal a civil penalty that is imposed, placing a cap on the amount of civil penalties that can be imposed in a calendar year would not be reflective of that goal. No other changes are being made to the Rules as a result of this comment.

Therefore, based upon the above findings, which are adopted herein, and the findings in Administrative Order No. 53-07-02, and pursuant to the authority of Sections 2.019 and 3.552 of the Eugene Code, 1971, I hereby repeal Administrative Order No. 53-06-05 as of the effective date of this Order, and amend and adopt the following Payday Loans Business License Emergency Administrative Rule R-3.552 as a permanent rule, to provide:

**Payday Loans Business License
Administrative Rule R-3.552**

R-3.552-A Definitions.

As used in these rules, words and phrases have the meanings ascribed to them in Section 3.005 of the Eugene Code, 1971, unless specifically defined otherwise herein.

R-3.552-B Administration and Enforcement.

The Division Manager of the City's Building & Permit Services Division of the Planning & Development Department shall administer and enforce the Payday Loans provisions of Sections 3.550 to 3.560 of the Eugene Code, 1971, these rules, and applicable fee orders. References in those Code provisions, these rules, or the Payday Loan Fee Schedule to actions or decisions to be performed or issued by the City Manager shall be deemed a reference to the Building & Permit Services Division Manager, or the Division Manager's designee.

R-3.552-C License Required.

1. Except as provided in subsection 4 of this section, no person shall operate a payday lending business or loan funds as a payday loan within the City without a current Payday Loans Business License from the City.

2. A license application shall be submitted to the City's Building & Permit Services Division on forms provided by the City, and may include, but is not limited to the following information:

2.1 The identity of the applicant. If the applicant is a corporation, partnership, or limited partnership, the name and address of its registered agent for service within the state of Oregon, together with the name(s) of the person(s) who exercise managerial control over the applicant's business, or is otherwise authorized to act on behalf of the applicant.

2.2 The applicant shall attach to, and submit with the completed application:

2.2.1 A copy of the payday lender's current fee schedule. No changes to the schedule shall be implemented without first giving the City 30 days prior written notice of the proposed change.

2.2.2 Copies of the current disclosure notices required to be submitted to borrowers under Sections 3.556, 3.558, and 3.560 of the Eugene Code, 1971

2.2.3 A copy of a Payday Lender Borrower's Rights poster, which shall be printed on a poster sized at least 8½ x 14 inches, with the caption a minimum of bold 36 point font with text a minimum 24 point font. The poster shall include the following:

2.2.3.1 The requirement that a borrower must pay at least 25% of the principal of the original payday loan prior to renewal of the loan, as required by EC 3.556;

2.2.3.2 A borrower's right to cancel a payday loan pursuant to EC 3.558;

2.2.3.3 A borrower's right to convert a payday loan to a payment plan after the maximum amount of renewals allowed by state law, pursuant to EC 3.560;

2.2.3.4 A borrower's right to file a complaint for failure of a Payday Lender to comply with the provisions of EC Sections 3.556, 3.558 or 3.560 by contacting the City's Building & Permit Services Division Manager at 99 West 10th Avenue, Eugene, Oregon 97401 (telephone (541) 682-5379).

2.3 Any additional information required or deemed necessary by the City in order to evaluate the application.

3. If the applicant owns or operates more than one payday lending business within the City, a separate application must be submitted and a license obtained for each location.

R-3.552-D Issuance of License.

1. The City may request such additional information as it finds necessary and may require modifications to the borrower disclosure notices or borrower's rights poster if they fail to meet the requirements of Sections 3.556, 3.558 and 3.560 of the Eugene Code, 1971. After any required additional information or corrections have been provided, the application shall be reviewed and the license shall be granted if the City finds that:

1.1 The applicant has submitted all information and documentation required under the Code provisions and these Rules.

1.2 The applicant has obtained any other permits or licenses required by city, state, or federal law related to its payday lending business, has paid all required fees, and has complied with any conditions precedent to the issuance of the license.

2. A separate license shall be issued for each location, at which the same applicant owns and operates a payday lending business.

3. A payday loans business license may not be assigned or transferred. In the event of the sale of a licensed payday loan business, the prospective purchaser shall submit a completed license application to the City at least 30 days prior to the sale closing date in order to enable the City to process and issue a new payday loan business license, to become effective upon the closing and transfer of the business.

4. An applicant shall not be issued a license during a period of suspension under R-3.552-I; if materially misleading information is provided in a license application; or if information that the applicant is lawfully required to provide is intentionally withheld. Notwithstanding this subsection 4., if all other requirements are met, the City may issue a license for one location to an owner whose license has been suspended at another location.

5. Licenses shall be valid for a term of one year commencing on the date of issuance. Licenses may be reissued for additional one-year periods upon the completion of a renewal application, subject to the following:

5.1 The licensee has paid all required fees and has complied with the terms of the license and with all applicable ordinances, rules and other laws;

5.2 The licensee submits an application for renewal, accompanied by the required fee, no later than 30 days prior to the expiration of the current term;

5.3 A licensee who submits an application for renewal less than 30 days prior to the expiration of the current term shall be required to pay a late fee in addition to the renewal fee;

5.4 The City may suspend or revoke a license during its one-year term for failure to pay required fees or for noncompliance with applicable Code provisions, ordinances, rules or other laws.

6. A licensee shall notify the City if there is any change in the owners, managers, or other persons authorized to act on behalf of the licensee, within ten days of the date of such change.

7. The licensee shall be provided information with the license about the penalty for violation of Sections 3.550 to 3.560 as set forth in Section 3.995 of the Eugene Code, 1971 and of the potential imposition of an administrative civil penalty pursuant to R-3.552-I and R-3.552-J of this Rule.

8. The license and Borrower's Rights Poster shall be posted in a prominent place at the licensed premises that is clearly visible to the public.

9. Appeals of denials, revocations and suspensions of licenses shall be governed by the procedures set forth in Section 2.021 of the Eugene Code, 1971.

R-3.552-E Records.

Upon 24 hour prior written notice by City, Licensees shall permit the City to review and/or copy any of its records for purposes of auditing or complaint resolution. The records shall be made available for inspection during Licensee's normal business hours.

R-3.552-F Compliance with Other Laws.

All licensees must comply with all City, County, State and Federal laws and regulations, applicable to payday loans. It is the responsibility of each licensee to determine what laws and regulations apply and to comply with them.

R-3.552-G Fees.

The annual license fee, renewal fee, late fee, appeal fee, and any other applicable fee shall be established by the City Manager in the manner provided in Section 2.020 of the Eugene Code, 1971.

R-3.515-H Suspension and Revocation.

1. In addition to suspension or revocation of a license under Sections 3.050 or 3.055 of the Eugene Code, 1971:

1.1 A licensee's payday loans business license may be suspended for a period of not more than 45 days upon a judicial or administrative determination that the licensee has violated Sections 3.552 to 3.560 of the Eugene Code, 1971 for a second time within a period of 24 months.

1.2 Upon failure of a licensee to pay a fine imposed for violation of Sections 3.552 to 3.560 of the Eugene Code, 1971 within 30 days of the date imposed a licensee's payday loans business license may be suspended until such time as the fine is fully paid.

1.3 A licensee's payday loans business license may be revoked upon a judicial or administrative determination that the licensee has violated Sections 3.552 to 3.560 for a third or subsequent time within a period of 24 months.

2. No payday loan business activity may occur on the licensee's premises for the duration of the suspension or revocation period.

3. A licensee whose license is revoked under Subsection 1.3 above may not reapply for a payday loans business license for a period of six months from the date of revocation.

4. A licensee may appeal the denial, revocation or suspension of a payday loans business license in the manner provided in Section 2.021 of the Eugene Code, 1971.

R-3.552-I Administrative Civil Penalty - Procedures.

1. **Imposition of Administrative Civil Penalty.** Except as modified in this Subsection or R-3.552-J, the City Manager may issue a notice of violation and impose an administrative civil penalty upon the licensee in the manner provided in Section 2.018 of the Eugene Code, 1971 for violation of the provisions of Sections 3.550 to 3.560, this Rule, or a condition of a payday loans business license.

In addition to any other enforcement mechanisms authorized by the Eugene Code, 1971, this rule, or federal or state law, the City Manager may withhold issuance of requested licenses

or revoke or suspend any issued licenses if the licensee fails or refuses to pay an administrative civil penalty imposed pursuant to this rule within the ten day period.

If the violation resulting in the imposition of the administrative civil penalty occurred on real property and the penalty remains unpaid for a period of 30 days or more after becoming final, the full amount of the unpaid penalty and/or fine shall be assessed against the real property upon which the violation occurred and entered as a lien in the docket of City liens. Notice of the assessment and docketing shall be given to the property owner at the time the assessment is made. Interest at the rate prescribed by Section 2.022 of the Eugene Code, 1971 shall commence on the date the lien is entered on the lien docket, and the lien shall be enforced in the same manner as liens for street improvements.

2. Service. All notices/orders shall be served by personal service or sent by certified mail and first class mail. Any notice/order served by mail shall be deemed received for purposes of any time computations hereunder, three days after the date mailed, if to an address within this state, and seven days after the date mailed, if to an address without this state.

3. Penalties Not Exclusive. Any administrative civil penalty imposed pursuant to this section shall be in addition to, and not in lieu of, any other penalty authorized by Section 3.995 of the Eugene Code, 1971, or any other action authorized by law.

R-3.552-J Determination of Amount of Civil Penalty.

The amount of the civil penalty to be imposed for violation of Sections 3.552 to 3.560 of the Eugene Code, 1971 and these Rules shall be determined as follows:

\$1,500	Failure to Obtain a License (EC 3.552 – R-3.552-C)
	Failure to Renew a License (EC 3.552 – R-3.552-C)
	Failure to Collect 25% of Principal Prior to Renewal (EC 3.556)
	Failure to Cancel a Payday Loan (EC 3.558)
	Failure to Provide a Payment Plan (EC 3.560)
	Failure to Investigate a Complaint (R-3.552-M)
	Failure to Report Complaint Resolution to Division Manager (R-3.552-M)
	Failure to Comply with Division Manager Order (R-3.552-M)

Failure to Post License, Post Borrower’s Rights Poster, or Provide Required Disclosures (EC 3.556, 3.558, 3.560, R-3.552-D):

Warning	1 st Violation
\$1,000	2 nd Violation
\$1,500	3 rd and Subsequent Violations

Each day a violation continues to exist shall constitute a separate violation.

R-3.552-K Appeal of Civil Penalty.

Any person required to pay an administrative civil penalty imposed under R-3.552-I and R-3.552-J may appeal the same to the City Manager in the manner provided in Section 2.021 of the Eugene Code, 1971.


R-3.552-M Complaint Procedure.

1. A borrower who alleges a licensee has failed to comply with a provision of Sections 3.556, 3.558 or 3.560 of the Eugene Code, 1971 or these Rules may file a written complaint with the Building & Permit Services Division Manager (“the Division Manager”) at 99 West 10th Avenue, Eugene, Oregon 97401. The complaint must clearly state the specific section(s) or subsection(s) with which the licensee has failed to comply, and the date the action occurred. The complaint must be filed within three business days of the date the borrower becomes aware of the violation that is the subject of the complaint.

2. No later than five business days from the date filed, the Division Manager shall forward a copy of the complaint to the licensee. The licensee shall investigate the complaint, and within two business days of its receipt shall forward the results of that investigation and a proposed resolution of the complaint to the Division Manager. After review of the report and proposed resolution, and within seven business days of its receipt, the Division Manager shall forward to the licensee and borrower a written Determination Order accepting the proposed resolution or setting forth an alternative resolution. Within five business days of its receipt the licensee shall provide the Division Manager with proof of compliance with the Determination Order. Failure of the licensee to comply with the Determination Order within the required time shall result in the imposition of an administrative civil penalty.

3. The provisions of this section are in addition to, and not in lieu of any other enforcement actions.

Dated this 6th day of February, 2007.



Dennis M. Taylor
City Manager