

AGENDA
PUBLIC SAFETY & WELFARE COMMITTEE MEETING
Kenosha Municipal Building - Room 204
Monday, May 14, 2012 - 5:00 pm

Chairman:	Rocco J. LaMacchia, Sr	Vice Chairman:	Chris Schwartz
Aldersperson:	Anthony Kennedy	Aldersperson:	Michael J. Orth
Aldersperson:	Kevin E. Mathewson		

Call to Order
Roll Call

A. APPROVAL OF MINUTES

A-1 Approval of the minutes of the meeting held on April 30, 2012.

B. DEFERRED

B-1 Aldermanic Request for a 4-way Stop Sign at 39th Avenue and 18th Street. *(District 4)*
(Staff recommends approval 90 day trial) (Deferred from the 4/30/12 meeting)

C. REFERRED TO COMMITTEE

C-1 Approval of Agreement By And Between the City and Gateway Technical College
Regarding Transfer of Equipment and Fire Service Training.

C-2 Special Exception from the Sixteen-foot (16') High Accessory Structure Height
Restriction in Order to Construct a Twenty-foot (20') High Accessory Structure at 3818
5th Avenue *(Zoning Ordinance 3.03 F, 3.08 E). (District 1)*

C-3 Reschedule of May 28, 2012 Meeting.

DISCUSSION ITEM:

1. Payday Loan Stores - State Statute Amendment

CITIZEN COMMENTS/ALDERMEN COMMENTS/OTHER BUSINESS AS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4050 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.

PUBLIC SAFETY & WELFARE COMMITTEE
Minutes of Meeting held Monday, April 30, 2012

A meeting of the Public Safety & Welfare Committee was held on Monday, April 30, 2012 in Room 204 of the Kenosha Municipal Building. The meeting was called to order at 6:05 pm by Chairman LaMacchia.

At roll call, the following members were present: Alderpersons Schwartz, Orth, Kennedy, and Mathewson. Staff members in attendance were Chief John Morrissey; Clement Abongwa, Civi Engineer II; Attorney Ed Antaramian; and Brian Wilke, Community Development Specialist.

It was moved by Alderperson Kennedy, seconded by Alderperson Orth, to approve the minutes from the meeting held on Monday, April 9, 2012. Motion carried unanimously.

C-1. Aldermanic Request for a 4-way Stop Sign at 39th Avenue and 18th Street. (District 4) (Staff recommends approval 90 day trial)

Staff/Alderperson: Clement Abongwa & Chief Morrissey spoke.

It was moved by Alderperson Kennedy, seconded by Alderperson Mathewson, to approve. It was then moved by Alderperson Orth, seconded by Alderperson Schwartz to defer for two (2) weeks. Motion carried 3-2 (with Alderperson Kennedy and Mathewson voting nay).

C-2 Aldermanic Request to Remove a No Parking Sign (from 10:00 PM to 8:00 AM) on the West Side of 24th Avenue from 43rd Street. (District 7) (Staff recommends approval 90 day trial)

Staff/Alderperson: Clement Abongwa and Chief Morrissey spoke.

It was moved by Alderperson Orth, seconded by Alderperson Mathewson, to Approve with a 90 day trial. Motion carried 4-1 (with Alderperson Kennedy voting nay).

C-3 2012 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Intergovernmental Agreement by and between the City and the County of Kenosha. Staff/Alderperson: Chief Morrissey spoke.

It was moved by Alderperson Kennedy, seconded by Alderperson Mathewson, to approve. Motion carried unanimously.

C-4 Election of Vice Chairman of the Public Safety & Welfare Committee for 2012/2013.

It was moved by Mathewson, seconded by LaMacchia to nominate Chris Schwartz as Vice Chairman. Motion carried unanimously.

DISCUSSION ITEMS:

1. Information regarding the On-Premise Sign Ordinance – Attorney Ed Antaramian and Brian Wilke spoke.

ALDERPERSON COMMENTS: Alderperson Orth spoke regarding the Traffic Lights on 26th Ave and 85th Street and the Dispatch call at the Safety Building.

ADJOURNMENT - There being no further business to come before the Public Safety & Welfare Committee, it was moved, seconded and unanimously carried to adjourn at 6:57 pm.



Engineering Division
Shelly Billingsley, P.E.
Director/City Engineer
Fleet Maintenance
Mauro Lenci
Superintendent
Parks Division
Jeff Warnock
Superintendent

Street Division
John H. Prijic
Superintendent
Waste Division
Rocky Bednar
Superintendent

DEPARTMENT OF PUBLIC WORKS

Michael M. Lemens, P.E., Director

Municipal Building · 625 52nd ST · RM 305 · Kenosha, WI 53140
Telephone (262) 653-4050 · Fax (262) 653-4056

May 11, 2012

To: Rocco J. LaMacchia Sr., Chairman
Public Safety and Welfare Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Director of Engineering / City Engineer

cc: G. John Ruffolo
District 4

Subject: *Aldermanic Request for a 4-Way Stop Sign at 39th Avenue and 18th Street Intersection*
****Deferred from April 30, 2012 Meeting****

BACKGROUND INFORMATION

In 2011, the City constructed a new road along 39th Avenue between 24th Street and 18th Street. The intersection of 39th Avenue and 18th Street was converted from a T-intersection to a 4-way intersection. The new four leg intersection is controlled by stop signs on 39th Avenue in the northbound and southbound directions. 39th Avenue is posted 30 mile per hour while 18th Street is posted 40 mile per hour.

On April 2, 2012 the Common Council approved an intergovernmental agreement with Kenosha County transferring jurisdiction of this intersection to the City of Kenosha. By this agreement, the City is responsible for installing traffic control at this intersection by August, 2012.

Since construction of the intersection was completed, residents and motorists have expressed concerns regarding traffic safety at the intersection. The concerns include speeding on 18th Street, inadequate gaps for northbound and southbound traffic during peak hours and near miss accident potential.

A traffic engineering consultant was engaged to study the intersection. In the meantime, PW- Engineering Division staff monitored the traffic during AM and PM peaks etc. Based on these preliminary observations, staff is recommending a 4-Way Stop Sign be installed on a 90-day trial to mitigate some of the concerns raised by road users.

Staff also conducted traffic counts at the intersection and has submitted the data to the consultant for analysis. They are currently waiting for updated traffic projections using the new traffic count data from the Department of Transportation. However, our consultant reported that when comparing the recently completed traffic counts data to the projected volumes previously provided by WisDOT during the design of this intersection, the current traffic volumes exceed the 20-year projected traffic used for the design.

RECOMMENDATION

Staff recommends a 90-day trial for a 4-Way Stop Sign at 39th Avenue and 18th Street intersection.

TRAFFIC FORECAST REPORT

PROJECT ID(S): 3831-06-00

ROUTE(S): 39th Ave

SE Region/COUNTY(IES): Kenosha

LOCATION: 18th Street to 27th Street

COMPLETED: June 10, 2009

Traffic Forecasting Section; Southeast Region; Wisconsin DOT

Developed by: James Harris
 E-Mail ID: james.harris-jr@dot.wi.gov
 Phone: 262-521-5455
 FAX #: 262-521-4425

Design Values (%'s)

ROUTE(S):			
Design Volume(s):		--	--
K250	11.7	--	--
K100	13.1	--	--
K30	14.4	--	--
P(PHV)	18.4	--	--
T(DHV)	2.6	--	--
T(PHV)	2.5	--	--
D (Dsgn hr)	58/42	--	--
K8(ADT)	--	--	--
T(A8HV)	--	--	--

Truck Class %'s

Truck Class	Seg. 1	Seg. 2	Seg. 3
2D	1.3	--	--
3AX	1.4	--	--
2S1+2S2	0.2	--	--
3-S2	0.3	--	--
DBL-BTM	0.1	--	--
TOTAL	3.3%	--	--

Specify Last Count & Forecast Years:

{000} 2008 AADT
 {000} 2009 AADT
 -000- 2019 AADT
 000 2029 AADT

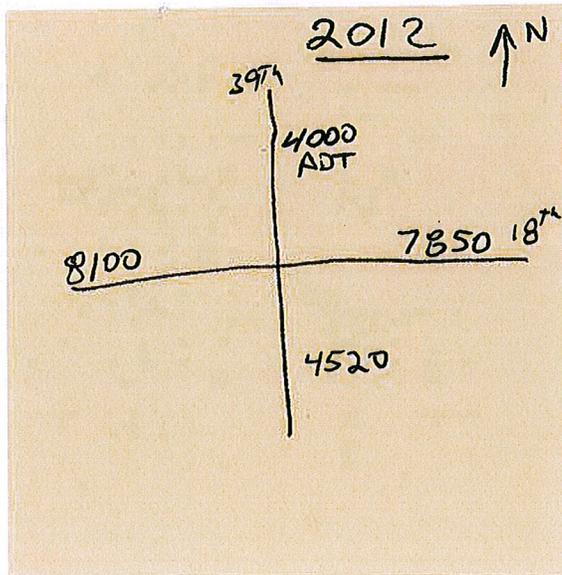
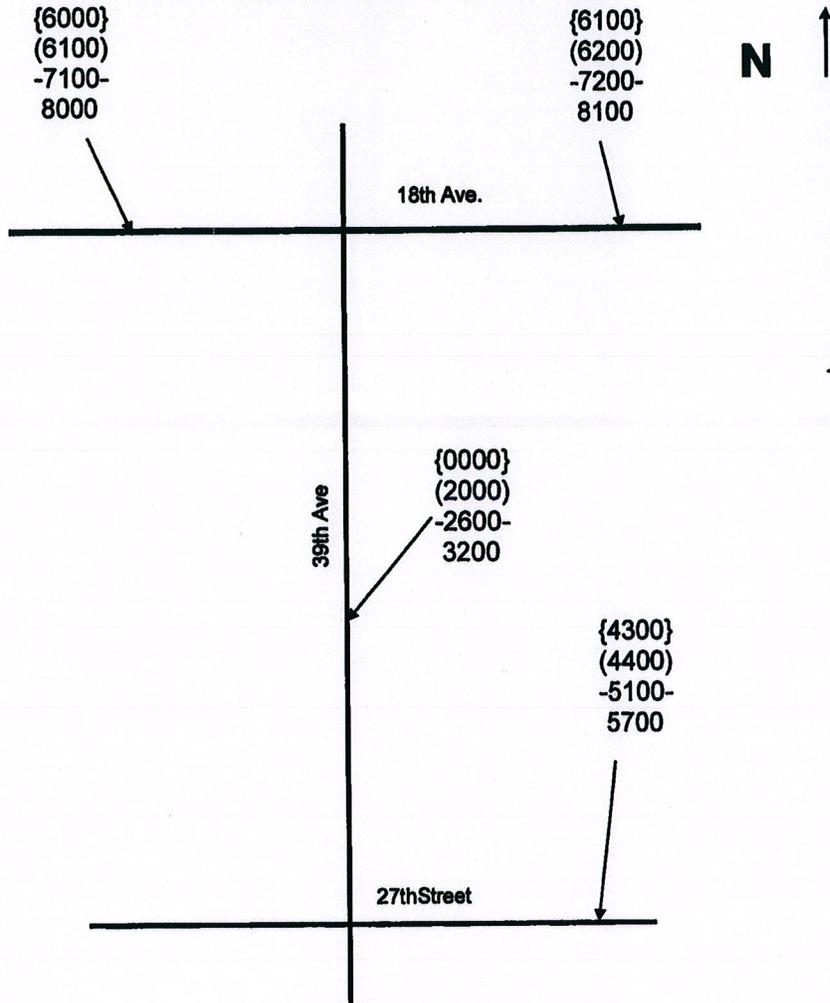
Notes on the Forecast:

1. The forecast is based on the traffic in the surrounding area and assumes new subdivisions on both sides of 39th Avenue will be developed in the area.

2. 39th Avenue is a factor group II highway indicating low to moderate fluctuation in traffic throughout the year. It is considered an urban collector highway for count purposes at this location.

3. Truck type percentages were obtained from formulas based upon similar type highways throughout the state.

4. 2008 was the most recent year traffic count data was collected in Kenosha County.





AGREEMENT**By And Between****THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,****And****GATEWAY TECHNICAL COLLEGE
3520 30th Avenue,
Kenosha, Wisconsin 53144**

This Agreement is entered into between the City of Kenosha, Wisconsin, a municipal corporation, duly organized and existing under the laws of the State of Wisconsin hereafter referred to as "CITY" and Gateway Technical College, a Wisconsin technical college duly organized and existing under the laws of the State of Wisconsin, hereafter referred to as "GATEWAY".

WITNESSETH

WHEREAS, the CITY is the owner of a 1991 Sutphen Fire Engine, Vehicle Identification Number 1S9AIHBD5P1003051 hereinafter referred to as the "Fire Engine" and attached and unattached equipment including but not limited to ground ladders, generator, cord reels, storz connector and spot lights hereinafter, referred to as "Equipment": and,

WHEREAS, the Fire Engine has previously been placed in reserve status and is now being decommissioned by the CITY; and,

WHEREAS, GATEWAY provides fire service related training to the Kenosha Fire Department; and,

WHEREAS, the CITY and GATEWAY wish to enter into this Agreement whereby the CITY will transfer title to the Fire Engine and Equipment to GATEWAY in exchange for fire service training hours and/or registration fees on the terms and conditions described below; and,

WHEREAS, it is to the mutual advantage of the CITY and GATEWAY to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings, understandings and agreements set forth below, the CITY and GATEWAY agree as follows:

1. The CITY shall transfer title to the Fire Engine together with attached/unattached loose Equipment to GATEWAY for consideration valued at Fifteen Thousand Five Hundred Dollars (\$15,500.00) as more particularly described in this Agreement.
2. GATEWAY acknowledges that the sale of the Fire Engine and Equipment is made by the CITY without representation or warranty, express or implied, arising by law or otherwise, including but not limited to, implied warranties of merchantability and fitness for a

particular purpose. GATEWAY and the CITY acknowledge that there are no oral or written promises, terms conditions, representations or warranties, expressed or implied, concerning the Fire Engine and the Equipment.

3. GATEWAY acknowledges that prior to signing this Agreement: (1) GATEWAY has fully inspected and examined the Fire Engine and Equipment; (2) the Fire Engine and Equipment are being purchased solely in reliance upon GATEWAY'S inspection; (3) there have not been and are no representations or warranties, expressed or implied, with respect to the condition of the Fire Engine and Equipment; and (4) the Fire Engine and Equipment are being sold "AS IS" and "WITH ALL FAULTS".
4. GATEWAY and the CITY acknowledge that this is an isolated sale by the CITY. GATEWAY and the CITY also acknowledge that the CITY is not engaged in the business of selling Fire Engines and Equipment as part of its principal business.
5. GATEWAY, on behalf of itself, its officers, directors, employees, agents, representatives, students, successors and assigns, agrees that it will never institute any action, suit, administrative or other proceeding at law, in equity, tort, contract or otherwise against the CITY, its officers, employees, agents, representatives, successors, and assigns nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action or cause of action for injunctive relief, damages, costs, expenses or compensation for or on account of any damage, loss, liability or injury to GATEWAY, its officers, directors, employees, agents, representatives, students or any third party resulting or to result, arising out of or relating to GATEWAY'S purchase or use of the Fire Engine and Equipment.
6. GATEWAY, on behalf of itself, its officers, directors, employees, agents, representatives, students, successors and assigns further agrees to release, indemnify, defend and hold harmless the CITY, its officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, debts, liabilities, accounts, obligations, costs, expenses, liens, actions, causes of action, whether at law, in equity, tort, contract or otherwise, including any claims for personal injury by any person or entity and to pay any damages whether consequential, compensatory or punitive and all costs and expenses including actual reasonable attorneys' fees and expenses incurred by the CITY relating to the Fire Engine and Equipment or arising out of the sale of the Fire Engine and Equipment which is the subject of this Agreement
7. In consideration for the transfer of title to the Fire Engine and Equipment, GATEWAY shall provide the Kenosha Fire Department fire service training hours and/or registration fees valued at Fifteen Thousand Five Hundred Dollars (\$15,500.00) based upon the rates charged by GATEWAY in effect upon execution of this Agreement.
8. The Kenosha Fire Department shall utilize the GATEWAY training hours for emergency medical training, suppression training, officer development training, company officer leadership training, Bluecard command training or other fire service related training provided by GATEWAY. GATEWAY agrees that the Kenosha Fire Department shall be solely responsible for determining the type and amount of training to be utilized pursuant

to this Agreement.

9. GATEWAY and the CITY agree that the training contemplated by this Agreement shall take place either at GATEWAY'S Kenosha campus or at the grounds of the Kenosha Fire Department including affiliate CITY locations.
10. GATEWAY and the CITY agree that all training hours contemplated by this Agreement shall be utilized within twenty-four (24) months of the approval of this Agreement by the CITY.
11. It is mutually agreed that in case any provision of this Agreement is determined by a Court of law to be illegal or unenforceable, then it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.
12. The parties agree that this Agreement is the full and complete agreement and understanding of the parties and shall supersede all oral or written statements or documents inconsistent the terms of this Agreement. This Agreement may not be modified without the prior written agreement of the parties.
13. This Agreement shall be construed as to both validity and performance and enforced exclusively in accordance with and governed by the laws of the State of Wisconsin.
14. Any notice required by or relevant to this Agreement shall be deemed given when mailed certified mail, return receipt requested, addressed to CITY and GATEWAY as follows:

If to CITY:

City Clerk/Treasurer
City of Kenosha Municipal Building
625 52nd Street, Room 105
Kenosha, Wisconsin 53140

With copies to:

Fire Chief
City of Kenosha Municipal Building
625 52nd Street, Room 109
Kenosha, Wisconsin 53140

Office of the City Attorney
City of Kenosha Municipal Building
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

If to GATEWAY:

Mark Zlevor
Chief Financial Officer/Vice President
Administration
Gateway Technical College
3520 30th Avenue
Kenosha, Wisconsin 53144

15. The CITY enters into this Agreement by action taken by the Common Council on the ____ day of _____, 2012. GATEWAY represents to the CITY that all acts which are a condition precedent to entering into this Agreement have timely taken place.

WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement on the dates below given.

**CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation**

BY: _____
KEITH G. BOSMAN, Mayor
Date: _____

BY: _____
DEBRA SALAS, CITY Clerk/Treasurer
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this ____ day of _____, 2012, KEITH G. BOSMAN, Mayor, and DEBRA SALAS, CITY Clerk/Treasurer, of the CITY OF KENOSHA, WISCONSIN, a municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said City, and acknowledged that they executed the foregoing instrument as such officers as the agreement of said City, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

GATEWAY TECHNICAL COLLEGE
a Wisconsin technical college

BY: _____
MARK ZLEVOR
Chief Financial Officer/Vice President
Administration

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2012, MARK ZLEVOR, Chief Financial Officer/Vice President Administration of GATEWAY TECHNICAL COLLEGE, to me known to be Chief Financial Officer and Vice President of said Technical College, and acknowledged that he executed the foregoing instrument as such officer as the agreement of said College, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

Drafted By:
JONATHAN A. MULLIGAN,
Assistant City Attorney

Planning & Zoning

Community Development

262.653.4030
262.653.4045 FAX
Room 308



Building Inspections

Property Maintenance

262.653.4263
262.653.4254 FAX
Room 100

DEPARTMENT OF COMMUNITY DEVELOPMENT & INSPECTIONS

Municipal Building · 625 52nd Street · Kenosha, WI 53140
www.kenosha.org

Jeffrey B. Labahn, Director

Richard Schroeder, Deputy Director

TO: Members of the City of Kenosha Public Safety and Welfare Committee
Members of the City of Kenosha Common Council

FROM: Paula A. Blise, Zoning Coordinator *P. Blise*

SUBJECT: Special Exception from the Sixteen-foot (16') High Accessory Structure Height Restriction in Order to Construct a Twenty-foot (20') High Accessory Structure at 3818 5th Avenue; Zoning Ordinance: 3.03 F, 3.08 E; Property Owner/Petitioner: Eric Haugaard; Zoning Designation: RG-1 [1st District]

DATE: May 1, 2012

The property owner is requesting a special exception from the residential accessory structure height limitation of sixteen feet (16'), in order to construct a twenty-foot high accessory structure. The existing accessory structure will be razed. (Exhibit A)

General provisions of the City of Kenosha Zoning Ordinance standards restrict accessory structures to a height no greater than sixteen feet (16'). However, Section 3.03 F (Exhibit B/B1) of the Zoning Ordinance does give property owners the capability to request a special exception from the sixteen-foot (16') height restriction. The Public Safety and Welfare Committee is to review and make a recommendation to the Common Council on the exception. The Common Council has the authority to grant a height exception for up to twenty-five feet (25') or a height no greater than the height of the principal building pursuant to the petitioner's adherence to the following criteria:

- a. The architectural appearance of the proposed structure shall be harmonious with the existing structure.
- b. Relief cannot be contrary to covenants associated with the subject property.
 - There are no covenant restrictions associated with the property.
- c. A maximum of two (2) accessory buildings and/or structures are allowed.
 - Construction of the proposed structure shall comply with the requirement, as there will only be one (1) accessory structure installed on the property.
- d. Accessory structures shall not exceed the height of the principal dwelling, or twenty-five feet (25') in height in residential districts.
 - The proposed twenty-foot (20') height will comply with exception criteria.

- e. The Zoning Ordinance allows the construction of residential accessory structures up to 653 s.f. on the subject parcel.
 - The petitioner is proposing to construct a 526 s.f. accessory building. Therefore, the overall size of the structure will be in conformance with ordinance standards.
- f. The doors shall not exceed the maximum height of nine feet (9').
 - The doors will be 7'6" in height, which complies with this requirement.
- g. The applicant will ensure that the drainage and/or stormwater runoff conforms with local and state standards.
- h. The owners of property within 100' are to be notified of the application.
 - Notices were sent to the owners, as required.

Supplemental Photographs

Front Street View of 3818 5th Avenue



Existing accessory structure (to be removed)



NW side of rear yard



View of rear lot area (west)



April 26, 2012

To whom it may concern:

I am applying for a special exception to the 16 ft. accessory building height limit for the RG-1 zoning district where my personal residence is located (3818 5th Ave). The additional height will allow for greater utilization of the attic space, for the purpose of general storage.

Sincerely,

Eric Haugaard

3818 5th Ave

Kenosha, WI 53140

[262-818-2628](tel:262-818-2628)

a. On a residential lot where an accessory building line is in existence, which provides an accessory yard less than required by this Ordinance, an addition to the accessory building or structure is permitted and the accessory building or structure may be reconstructed provided such addition or reconstruction is no closer to any lot line than the existing accessory building line, provided that a minimum two (2) foot accessory yard is maintained and provided that the accessory building or structure is in conformance with all other provisions of this Ordinance.

b. On residential lots providing less than ninety-six (96') feet in lot depth, an accessory building or structure may extend into the required accessory front yard, provided that the accessory front yard is not reduced to a dimension less than one-half (1/2) the lot depth or less than the required principal front yard, provided the other accessory yards are maintained and provided the building or structure does not exceed twenty-four (24') feet in depth.

c. Lot widths of less than forty (40') feet shall have a minimum street side yard setback of eighteen (18') feet, provided the two (2') foot minimum side yard setback is maintained for accessory buildings.

d. **Accessory Building Size Limitations for Residentially Zoned Properties.** The total ground area covered by all accessory buildings associated with one and two family residential properties shall not exceed fifteen (15%) percent of the lot area or eight hundred forty (840) square feet, whichever is less. In no case shall a detached covered accessory structure within the RS-3, RG-1 or RG-2 Districts have a larger footprint than the footprint of the principal building. Furthermore, an attached accessory structure within the RS-3, RG-1 or RG-2 Districts shall not have a larger footprint than the footprint of the living area of the principal building. The total ground area covered by all accessory buildings in multifamily residential developments shall not exceed fifteen (15%) percent of the lot area, unless approved under a Conditional Use Permit.

5. **Decks.** A deck shall not be closer than five (5') feet to an interior side property line, nor closer than fifteen (15') feet to a rear property line.

6. **Nonconforming Buildings and Structures.** Buildings or structures which were nonconforming as to yard requirements, and which continue to be nonconforming as to yard

requirements established by this Ordinance, shall continue to be considered nonconforming and shall not be entitled to the yard exceptions outlined in this Section. Repairs, alterations and additions are permitted to nonconforming buildings and structures as provided in Section 7.0 of this Ordinance.

E. Building Height Exceptions.

1. **Single Family Residences.** Single family residences in the RR-1, RR-2, RR-3, Rs-1, Rs-2, Rs-3 and Rg-1 Districts may be increased in height by not more than ten (10') feet above the district height limit when interior side yards are increased to a minimum fifteen (15') feet provided that such residences shall not exceed forty-five (45') feet in height.

2. **Antennas.** Television and radio receiving antennas, used exclusively for a residence, may be erected to a height which exceeds the height limit established for any residential district, but in no instance may exceed forty-five (45') feet in height.

3. **Secondary Religious Facilities.** Accessory secondary religious facilities servicing a religious institution located in a residential district may be erected to a height which exceeds the accessory building height limit established for the district, but shall not exceed the principal building height limit established for the district.

F. **Special Exceptions - Residential Accessory Building or Structures.** A Special Exception from the eight hundred forty square foot limitation of Subparagraph 3.03 D.4.d. or the height restrictions for an accessory building or structure may be granted where such Special Exception(s) will not be contrary to the spirit and purpose of this Ordinance.



1. **Exemption Criteria** - A Special Exception shall meet the following criteria:

a. The architectural appearance and functional design of the building or structure and site shall not be so dissimilar to the existing principal buildings and area so as to cause impairment of property values or a blighting influence. All sides of the principal and accessory buildings or structures are to have essentially the same or coordinated, harmonious exterior finish materials and treatment.

b. Relief cannot be contrary to covenants associated with the subject property.

c. For all residential districts, a maximum of two accessory buildings, structures or combination building and structure shall be permitted.

d. No accessory building or structure shall exceed the height of the principal building. However, in no case shall such accessory building or structure exceed twenty-five feet (25') in height in any residential district.

e. Accessory buildings or structures may be permitted as accessory uses in residential areas subject to the following: in residential districts, the maximum square footage of all accessory buildings or structures cannot exceed one thousand square feet (1,000 sq. ft.). In no case shall the total square footage of all detached covered accessory buildings and/or structures have a footprint larger than 80% of the footprint of the principal building's first floor livable space.

f. Doors shall not exceed nine feet (9') in height.

g. No negative impacts on stormwater runoff. A grading plan may be required.

h. Utilizing the list of surrounding property owners, within one hundred feet (100') of subject property, the Administrator shall mail to all such listed property owners, by regular mail, a copy of the public notice for the proposed appeal or application. It shall be sufficient that such written notice is addressed to such owner at the address stated on said roll. If no owner is stated on the tax roll, or no address appears thereon, the written notice to such property shall not be required. Failure of a property owner to receive said notice shall not invalidate any action taken by the Common Council.

2. Additionally, in consideration of a Special Exception request, the City may impose additional conditions to protect the best interests of the surrounding area or the City as a whole. Violation of any such condition is a violation of this Section and Ordinance. Additional conditions imposed

may include, but are not limited to the following:

a. Require the use of trim, lighting or other additional architectural detail to soften the impact of the bulk and height of the proposed structure(s) or building(s).

b. Require the visibility of the accessory building(s) or structure(s) be minimized as viewed from adjacent lots and rights of way through the use of topography, increased setbacks, fencing, or existing or proposed vegetative landscaping.

c. Require garage door openings are placed so as to reduce their visibility from adjacent lots and rights-of-way.

d. Require the accessory building(s) or structure(s) be reasonably compatible with the architectural detail of the principal structure. The applicant holds the burden of proving the proposed building(s) or structure(s) are reasonably compatible with the architectural detail of the principal structure.

e. Require the use of the same or similar window and exterior door proportion and type, as the principal building, to soften the impact of the bulk and height of the proposed structure(s).

f. Require general compatibility with adjacent and other property in the district.

3. **Application Procedure.** Any application for a Special Exception shall be submitted on forms provided by the Administrator. The application must be filed with the Administrator. In order to be accepted for filing, the application must be accompanied by a receipt from the Department of Community Development and Inspections indicating payment of the \$500.00 application fee. The Administrator or designee thereof, shall prepare a written report and make a recommendation to the Committee on Public Safety and Welfare, said report and recommendation shall be submitted within thirty (30) days of receipt of the application. At its next regularly scheduled meeting, the Committee shall recommend to the Common Council either the granting or denial of the application. The Common Council, within sixty (60) days of receipt of the application, shall grant or deny a Special Exception after conducting a public hearing.

G. Home Occupations.

1. **Purpose.** It is the intent of this Section to permit home occupations in any residential dwelling, provided such uses conform to the standards and conditions set forth in this Section.

RECEIPT NO. 096085

CITY OF KENOSHA
DEPARTMENT OF NEIGHBORHOOD SERVICES & INSPECTIONS
625-52ND STREET, ROOM 100 KENOSHA, WI 53140

RECEIVED FROM: HAUGAARD, ERIC
DATE RECEIVED: APRIL 13, 2012
AMOUNT RECEIVED: \$500.00
OPERATOR ID.: HTEMP3

RECEIPT TYPE: MISCELLANEOUS
PAYMENT METHOD: CHECK NO.: 1206

DESCRIPTION	AMOUNT
SPECIAL EXCEPTION APPLICATION FEE; ACCESSORY BLDG; 3818 5A	\$500.00

2

APPLICATION
SPECIAL EXCEPTION
FROM 840 SQ. FT. LIMITATION FOR
RESIDENTIAL ACCESSORY BUILDING OR STRUCTURES

3818 5th Ave, Kenosha, WI 53140
Location of Special Exception Request

I/We Eric Haugaard of 3818 5th Ave, Kenosha
(Property Owner / Applicant) (Address / parcel # of subject property)

hereby apply for a Special Exception pursuant to Section 3.03F of the City of Kenosha
Zoning Ordinance to allow Exception to 16' height restriction
(describe request)

I hereby authorize City of Kenosha staff and elected officials to inspect the premises of the
above-described property. I hereby affirm that all statements contained herein are true
and correct to the best of my knowledge and belief.

Applicant's signature: E. J. Haugaard

*If the applicant is other than the property owner, a notarized signature of the property
owner authorizing the applicant to act on his/her behalf is required.*

OWNER/APPLICANT Eric Haugaard ADDRESS _____

PHONE _____ E-MAIL _____

FOR OFFICE USE ONLY

Proposal filed: 4-13-12 Received by: COI

Fee Paid: \$500.00 Receipt #: 096085



City of Kenosha
Department of Community Development and Inspections
625 52nd Street, Room 100, Kenosha, WI 53140

By _____

**CRITERIA CHECKLIST
SPECIAL EXCEPTION
FROM 840 SQ. FT. LIMITATION FOR
RESIDENTIAL ACCESSORY BUILDING OR STRUCTURES**

381A 5th Ave, Kenosha, WI 53140

Location of Special Exception Request

Adherence to the following criteria shall be required to process the Special Exception request. A signifies that your project complies with the criteria, as indicated. If you cannot adhere to the following criteria, DO NOT PROCEED - please contact the Zoning Administrator to discuss this issue.

- The special exception request will not conflict with or be contrary to covenants associated with subject property.
- The architectural appearance and functional design of the building or structure and site shall not be so dissimilar to the existing principal buildings and area so as to cause impairment of property values or a blighting influence. All sides of the principal and accessory buildings or structures are to have essentially the same, or coordinated, harmonious exterior-finish materials and treatment.
- No more than two accessory buildings, structures, or combination building and structure shall be constructed.
- No accessory building or structure shall exceed the height of the principal building, or exceed twenty-five feet (25') in height, whichever is less.
- The maximum square footage of all accessory buildings or structures cannot exceed one thousand square feet (1,000 sq. ft.).
- The total square footage of all detached covered accessory buildings and/or structures shall not have a footprint larger than 80% of the footprint of the principal building's first floor livable space.
- Doors shall not exceed nine feet (9') in height.
- No negative impacts on stormwater runoff shall be created. A grading plan may be required.

SUPPLEMENTAL CONDITIONS

THE CITY MAY IMPOSE ADDITIONAL CONDITIONS, WHICH INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:

- **Require the use of trim, lighting or other additional architectural detail to soften the impact of the bulk and height of the proposed structure(s) or building(s).**
- **Require the visibility of the accessory building(s) or structure(s) be minimized as viewed from adjacent lots and rights-of-way through the use of topography, increased setbacks, fencing, or existing or proposed vegetative landscaping.**
- **Require garage door openings are placed so as to reduce their visibility from adjacent lots and rights-of-way.**
- **Require the accessory building(s) or structure(s) be reasonably compatible with the architectural detail of the principal structure. The applicant holds the burden of proving the proposed building(s) or structure(s) are reasonably compatible with the architectural detail of the principal structure.**
- **Require the use of the same or similar window and exterior door proportion and type, as the principal building, to soften the impact of the bulk and height of the proposed structure(s).**
- **Require general compatibility with adjacent and other properties in the district.**



City of Kenosha
Department of Community Development and Inspections
625 52nd Street, Room 100, Kenosha, WI 53140
Phone: 262.653.4264, Fax: 262.653.4254

**APPLICATION PACKET
FOR
ACCESSORY BUILDING PERMIT**

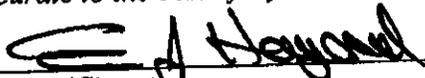
Project Address 3818 5th Avenue

The following items must be completed and submitted as a packet:

1. Accessory Building permit application
2. One (1) plat of survey prepared by a Professional Land Surveyor, licensed by the State of Wisconsin (see attachment). The survey must show all existing buildings, proposed accessory building, setbacks from property lines, distances from all accessory structures, proposed drainage patterns, and proposed changes to existing yard grade
3. One (1) full size set of plans ; AND
 One (1) additional set of plans (size 8 1/2" x 11" or 11" x 17")
4. Cautionary Statement (required if the property owner is listed as the contractor); OR State Licensing (required if a contractor is listed)
5. Community Development and Inspections authorization (required for commercial or multi-family properties: _____)

Note: Upon plan review or as a result of a field inspection, the Code Official may determine that an erosion control permit and/or installation of erosion control measures are required.

I hereby certify and acknowledge that all of the above required information provided is true and accurate to the best of my knowledge.


Signature

4-13-12
Date

Note: You will be notified when your permit is ready; please do not submit payment with permit application.

CITY OF KENOSHA
Department of Community Development and Inspections

CAUTIONARY STATEMENT TO OWNERS OBTAINING BUILDING PERMITS

101.65(lr) of the Wisconsin Statutes requires municipalities that enforce the Uniform Dwelling Code to provide an owner who applies for a building permit with a statement advising the owner that:

If the owner hires a contractor to perform work under the building permit, and the contractor is not bonded or insured as required under S.101.654(2)(a), the following consequences might occur:

- a) The owner may be held liable for any bodily injury to or death of others or for any damage to the property of others that arises out of the work performed under the building permit or that is caused by any negligence by the contractor that occurs in connection with the work performed under the building permit.
- b) The owner may not be able to collect from the contractor damages for any loss sustained by the owner because of a violation by the contractor of the one- and two-family dwelling code or an ordinance enacted under Sub.(1)(a) because of any bodily injury to or death of others or damage to the property of others that arises out of the work performed under the building permit or because of any bodily injury to or death of others or damage to the property of others that is caused by any negligence by the contractor that occurs in connection with the work performed under the building permit.

**CAUTIONARY STATEMENT TO CONTRACTORS FOR
PROJECTS INVOLVING BUILDING BUILT BEFORE 1978**

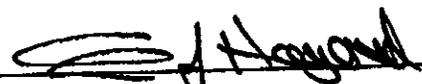
If this project is in a dwelling or child-occupied facility, built before 1978, and disturbs six (6) sq. ft. or more of paint per room, 20 sq. ft. or more of exterior paint, or involves windows, then the requirements of Ch. DHS 163 requiring Lead-Safe Renovation Training and Certification apply. Call 608.261.6876 or go to <http://dhs.wisconsin.gov/lead/WisconsinRRPRule.htm> for details of how to be in compliance.

WETLANDS NOTICE TO PERMIT APPLICANTS

You are responsible for complying with state and federal laws concerning the construction near or on wetlands, lakes, and streams. Wetlands that are not associated with open water can be difficult to identify. Failure to comply may result in removal or modification of construction that violates the law or other penalties or costs. For more information, visit the Department of Natural Resources wetlands identification web page or contact a Department of Natural Resources service center.

**ADDITIONAL RESPONSIBILITIES FOR
OWNERS OF PROJECTS DISTURBING ONE OR MORE ACRE(S) OF SOIL**

I understand that this project is subject to Ch. NR 151 regarding additional erosion control and stormwater management and will comply with those standards.

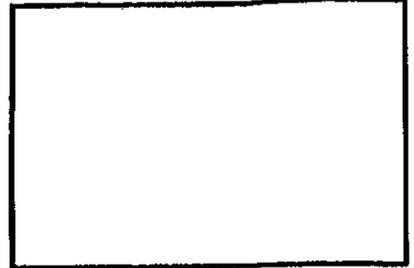
Owner's Signature: 

Date: 4-15-12



City of Kenosha
 Department of Community Development and Inspections
 625 52nd Street, Room 100, Kenosha, WI 53140
 Phone: 262.653.4264, Fax: 262.653.4254

Office Use Only:



**APPLICATION FOR
 ACCESSORY BUILDING PERMIT**

This document must be legible or will be returned.
 You will be notified when your permit is ready;
 please do not submit payment with permit application.

Project Address 3818 5th Ave, Kenosha

Owner Eric Haugaard

*Contractor Eric Haugaard or other TBO

Mailing Address 3818 5th Ave

Mailing Address _____

City Kenosha State WI Zip 53140

City _____ State _____ Zip _____

Phone (262) 818 2628

Phone (_____) _____

Contractor e-mail _____

*Note to Contractor: Please see attached "State Licensing Requirements."

Estimated Cost \$ 30,000.00

Project Name (if commercial or multi-family property): _____

Corner Lot: Yes _____ No X

Square Footage of Accessory Building 526

Accessory Building Size: see attached by see attached

Height 20 ft or less

Setbacks in feet from property lines: Front 106 Rear 2 Left 2 Right 2

CHECK ONE: One-family Two-family Multi-family Commercial

Indicate type of accessory building: Garage Shed Gazebo Greenhouse Pavilion

Other _____ Tent - (Specify dates for tent: From _____ To _____)

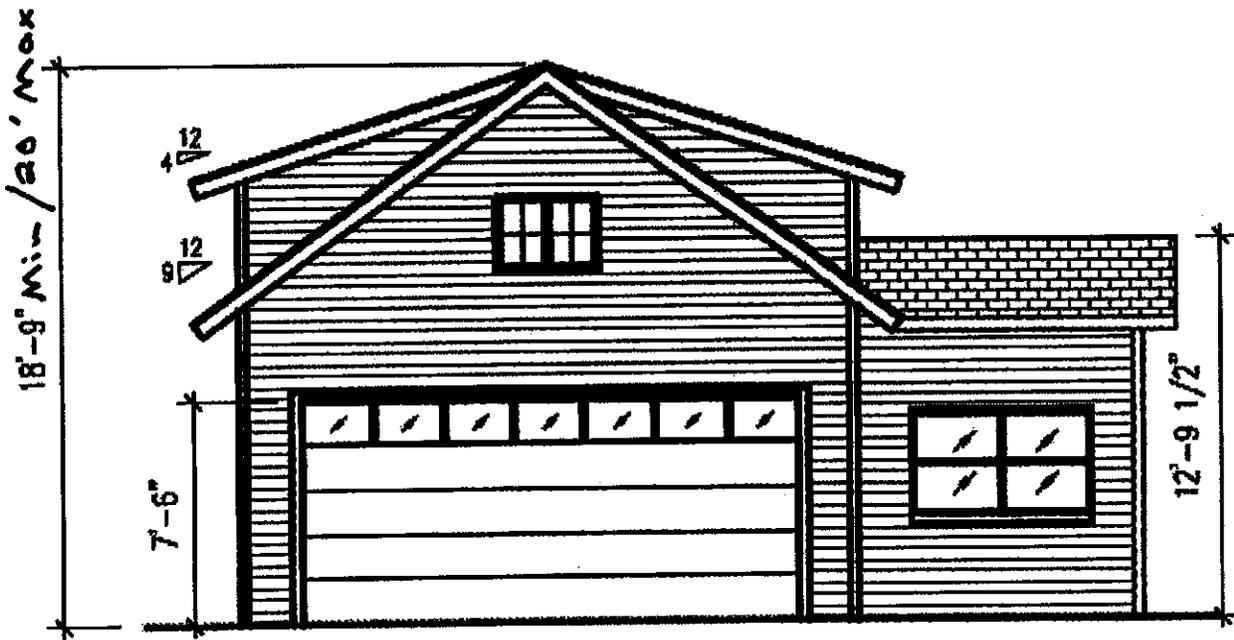
Is an existing garage or shed being torn down? Yes No (If garage or shed is 500 sq. ft. or greater, a raze permit application must be completed and submitted with this permit application)

Office Use Only: Zoning RC1 Zoning Review and Approval _____

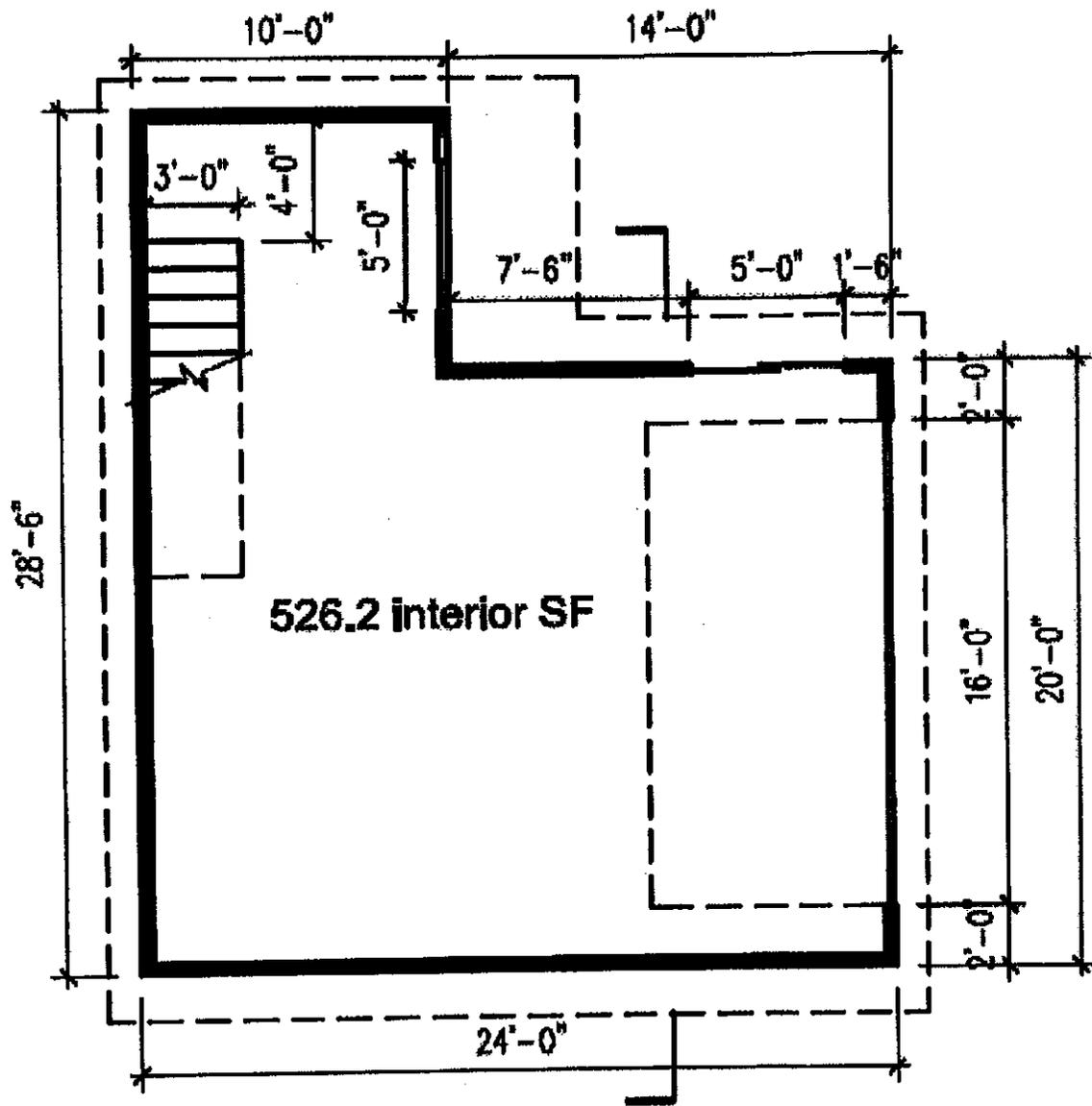
I agree to comply with all applicable codes, statutes, and ordinances, and with the conditions of this permit; understand that the issuance of the permit creates no legal liability, express or implied, on the state or municipality; and, certify that all of the permit information herein is accurate. I expressly grant the building inspector, or the inspector's authorized agent, permission to enter the premises for which this permit is sought at all reasonable hours and for any proper purpose to inspect the work which is being done.

Applicant Signature: [Signature]

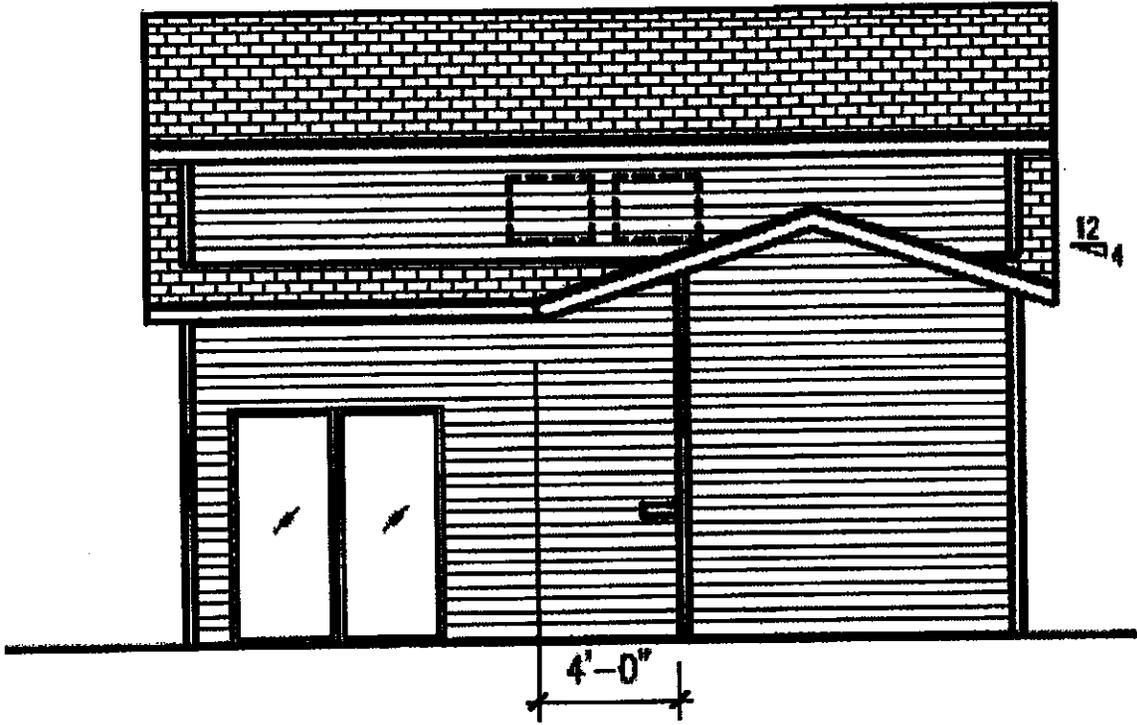
DESCRIPTION	PRICE PER UNIT	QUANTITY
ACCESSORY BUILDING MINIMUM	\$ 60.00 Ea.	_____
PLAN REVIEW	\$ 60.00 Ea.	_____
ZONING PLAN REVIEW	\$ 60.00 Ea.	_____



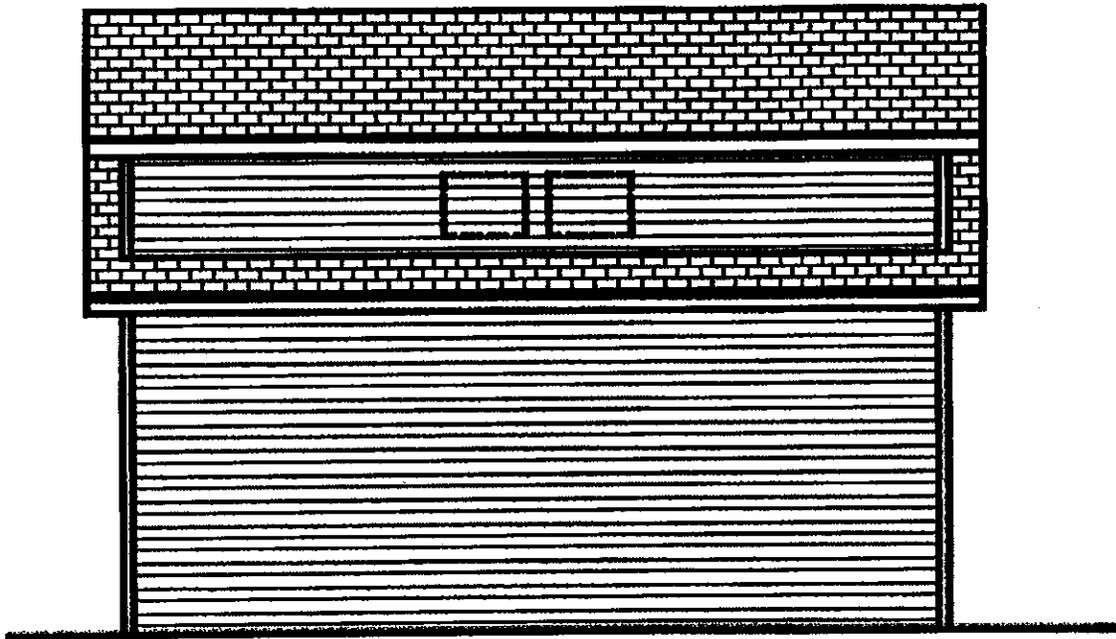
EAST ELEVATION



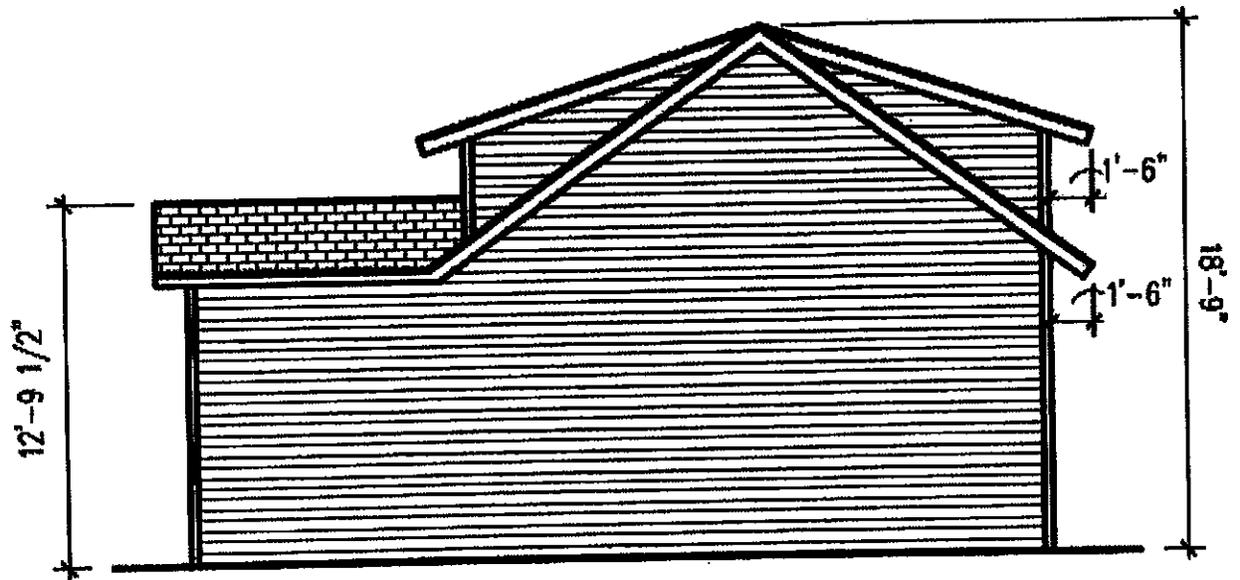
FLOOR PLAN 



NORTH ELEVATION

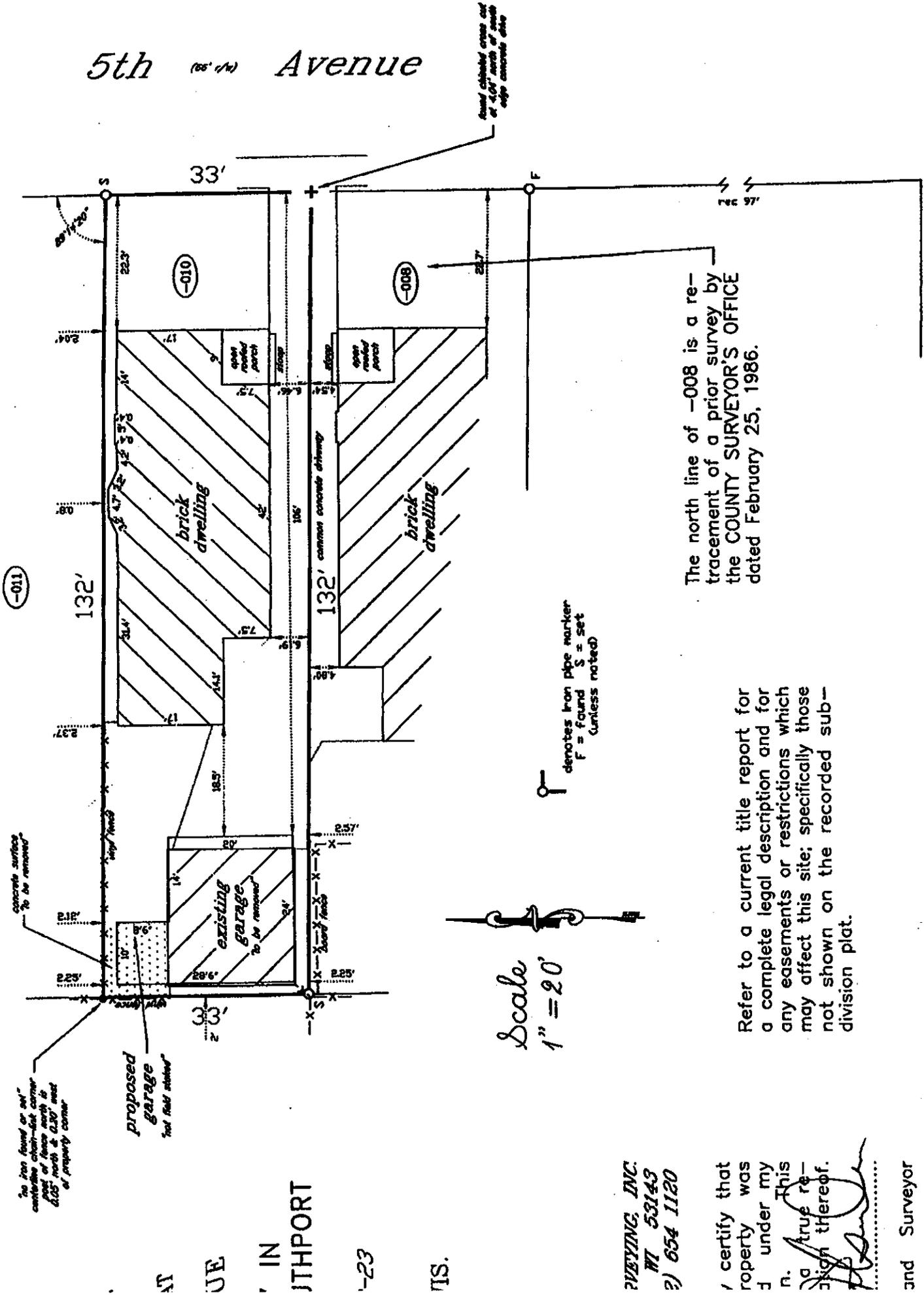


SOUTH ELEVATION



WEST ELEVATION

5th Avenue



Found checked cross of 4.07' north of north edge concrete drive

The north line of -008 is a re-tracement of a prior survey by the COUNTY SURVEYOR'S OFFICE dated February 25, 1986.

denotes iron pipe marker
 F = found S = Set
 (unless noted)

Scale
 1" = 20'

Refer to a current title report for a complete legal description and for any easements or restrictions which may affect this site; specifically those not shown on the recorded subdivision plat.

tax key parcel no.: 11-223-30-402-010

39th Street

No iron found or set
 concrete chain-link corner
 6.05' north & 0.30' west
 of property corner

proposed garage
 "not built shown"

existing garage
 "to be removed"

concrete surface
 "to be removed"

MEYING, INC.
 MI 53143
 654 1120

I certify that property was under my name. This is a true and correct copy thereof.

and Surveyor
 12, 2012

AT
 UE
 ' IN
 JTHPORT

-23

IS.

·Planning & Zoning

·Community Development

262.653.4030
262.653.4045 FAX
Room 308



·Building Inspections

·Property Maintenance

262.653.4263
262.653.4254 FAX
Room 100

DEPARTMENT OF COMMUNITY DEVELOPMENT & INSPECTIONS

Municipal Building · 625 52nd Street · Kenosha, WI 53140
www.kenosha.org

Jeffrey B. Labahn, Director

Richard Schroeder, Deputy Director

MEMO

TO: Members of the Public Safety & Welfare Committee

FROM: Brian Wilke, Department of Community Development & Inspections

RE: **Convenient Cash Businesses - Changes to Wisconsin State Statutes**

DATE: May 11, 2012

On October 2, 2006, the Common Council adopted standards in the Zoning Ordinance and Code of General Ordinances regarding *Convenient Cash Businesses*, often times referred to as *Payday Loan Stores* and *Check Cashing Stores*. The Ordinances made a *Convenient Cash Business* a Conditional Use in the B-2 Community Business District. The Conditional Use requires certain locational requirements so the use is not adjacent to residential district or too close to another *Convenient Cash Business*.

The definition of a Convenient Cash Business is:

"Also referred to as 'payday loan business', 'title for cash business', 'check cashing business', or similar enterprise, shall mean any business licensed pursuant to Sections 138.09 or 218.05, Wisconsin Statutes, which provides nontraditional, short-term consumer loans by accepting a check or title, holding the check or title for a period of time before negotiating or presenting the check or title for payment, and paying to the issuer an agreed upon amount of cash, or refinancing or consolidating such a transaction".

Staff became aware that the State has recently changed the Statutes in relation to these types of financial institutions. Payday Loan Stores that were previously licensed under Statutes 138.09 are now licensed under Statute 138.14. A Zoning Ordinance change is needed to amend the definition to reflect this new Statute.

Related to this change, the current Statute 138.09 refers to *Loan Companies* that differ from *Payday Loan Stores*. *Loan Companies* licensed under Statute 138.09 do not accept and hold a check until payday for a fee. Instead, *Loan Companies* provide traditional loans at pre-determined interest rates that are required to be paid back on a set timeline.

The City received a request to locate a *Loan Company* that is licensed under Statute 138.09 in an existing tenant space in the City. Given the definition listed above, Staff made a determination that the business falls under the *Convenient Cash Business* requirements and is subject to the locational requirements, which are not met at the intended tenant space. The applicant contends that while they are licensed under Statute 138.09, they do not make traditional *Payday Loans*. Therefore, they should be issued an Occupancy Permit.

Staff is presenting this item for discussion with the Public Safety & Welfare Committee before proceeding with the applicant's request.

A memo from Attorney Ed Heiser, representing World Acceptance Corporation (WAC), giving additional background on the Statute change and the operations of a Loan Company like WAC is attached. Mr. Heiser should be available at the meeting to answer any questions.

BRW:kas
Attachment

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

loading spaces provided per gross floor area.

(4) Traffic circulation and control patterns within the site.

g. Access and Traffic Control as reviewed and approved by the City Traffic Engineer shall meet the following requirements:

(1) Driveway approaches and access points shall meet the applicable provisions of **§5.085**, "Driveway Approaches", of the City Code of General Ordinances.

(2) There must be sufficient on-site storage to accommodate at least three (3) queued vehicles waiting to park or exit without using any portion of the street right-of-way.

(3) Driveway locations for loading and unloading activities shall not hinder vehicle ingress or egress.

(4) Provisions for internal circulation between adjacent parcels should be provided through coordinated or joint parking and traffic systems, or other methods approved by the City Traffic Engineer.

h. Off-street Parking Facilities as reviewed and approved by the City Traffic Engineer and Review Authority shall meet the requirements of **§6.01** of the Zoning Ordinance and the design standards of **§5.8**, "Parking Facilities", of the City Code of General Ordinances.

i. Off-street Loading Facilities as reviewed and approved by the Review Authority shall meet the requirements of **§6.02** of the Zoning Ordinance and applicable design standards of **§5.085**, "Driveway Approaches", of the City Code of General Ordinances, and in addition:

(1) The design of loading facilities shall not hinder any part of the internal traffic system for moving vehicular traffic.

(2) Loading facilities shall be clearly marked.

(3) The Review Authority may require loading facilities to be screened as outlined in **§4.05 E. 2.** of the Zoning Ordinance.

(4) Buildings less than 7,000 square feet do not have to provide a loading space.

j. Exterior Lighting shall be arranged, oriented or shielded in such a manner as to not directly radiate or glare onto residential lots in a residential district, or create a traffic hazard. No flashing lights within 150 feet of a residential district.

k. Hours of Operation. Applicant shall indicate the hours of operation for the development. The Review Authority may, at its discretion, establish limits on the hours of operation which are compatible with site location, adjacent uses and the overall impact of the development.

m. Other issues which may have an adverse social, economic, or environmental impact or affecting the health, safety or welfare of abutting or neighboring properties or the City as a whole.

23. Convenient Cash Business in the B-2 District.

a. Intent and Purpose. The City of Kenosha is experiencing a substantial increase in the number and location of Convenient Cash Businesses. The proliferation of these businesses may undermine the economic health and stability of the community due to their practice of targeting persons in vulnerable economic circumstances. Furthermore, the clustering of these businesses creates an undesirable image of the vitality of the commercial districts and the community as a whole. Finally, extensive hours of operation can result in negative impacts to the adjacent and surrounding residential areas where such business may be located.

b. Location. A Convenient Cash Business, as defined, shall only be located in compliance with the following criteria:

(1) No Convenient Cash Business shall be located within five hundred (500') feet of any residentially zoned property.

(2) No Convenient Cash Business shall be located within two thousand six hundred forty (2,640') feet of another Convenient Cash Business.

c. Standards of Measurement. The distances identified in this Section shall be measured in a straight line, without regard to intervening structures or objects from the closet point of the structure proposed for occupancy by the Convenient Cash Business to the nearest point of the parcel of property or zoning district boundary from which the proposed land is to be separated.

d. Hours of Operation. No Convenient Cash Business may be open between the hours

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

of 7:00 P.M. and 8:00 A.M.

e. **Other Issues** which may have adverse social, economic or environmental impact or affecting the health, safety or welfare of abutting or neighboring properties, or the City as a whole.

C. MANUFACTURING CONDITIONAL USES

1. **Manufacturing Uses (not including salvage dealers, shops or yards, or storage yards for a contractor, which have separate conditional use submittals).**

a. **Building Plan** as required by §4.05 B. of the Zoning Ordinance, plus:

(1) Layout of building(s) including size and layout of rooms.

(2) Design and architecture.

b. **Site Plan** as required by §4.05 C. of the Zoning Ordinance, plus:

(1) Legal description of property.

(2) Location and "footprint" of building(s) and structure(s).

(3) Locations of existing and proposed streets, drives, alleys, easements, right-of-ways, parking as required, vehicular and pedestrian access points and sidewalks.

(4) Outline of any development stages.

c. **Drainage Plan** as required by §4.05 D. of the Zoning Ordinance, plus:

(1) Existing topography, including spot elevations of existing buildings, structures, high points and wet areas, with any previous flood elevations.

(2) Floodplain boundaries, if applicable.

(3) Soil characteristics where applicable.

(4) Proposed topography of the site denoting elevations and natural drainage after construction and any proposed storm water retention areas.

d. **Landscape Plan** as required by §4.05 E. of the Zoning Ordinance, plus:

(1) Existing trees and landforms.

(2) Location, extent, and type of all proposed plantings.

(3) Location, height, opaque characteristics and type of any required screening.

e. **Utility Plan** as required by §4.05 E. of the Zoning Ordinance, plus:

(1) Location of all utilities, storm and sanitary sewers, water mains, electrical, natural gas and communication (cable television, telephone, etc.) lines.

(2) Exterior lighting for parking and other outdoor areas, outdoor signs and building exteriors.

(3) Location of waste and trash collection and indicate plans for snow removal.

f. **Operational Plan** which describes:

(1) General manufacturing or industrial process(es).

(2) Special handling procedures, including waste disposal.

(3) Outdoor storage.

(4) Hours of operation.

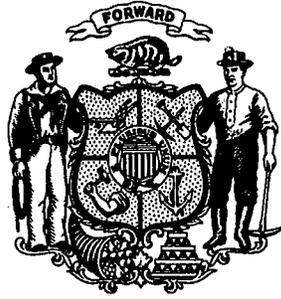
g. **Air Pollution.** No activity shall emit any fly ash, dust, fumes, vapors, smoke, mists or gases in such quantities as to cause soiling or danger to the health of person, animals, vegetation or other forms of property. No activity shall emit any liquid or solid particles in concentrations exceeding 0.3 grains per cubic foot of the conveying gas nor any color visible smoke equal to or darker than number two on the Ringleman Chart as measured and controlled by Chapter NR 400-494 "Air Pollution Control" of the Wisconsin Administrative Code.

h. **Fire and Explosive Hazards.** All activities involving the manufacturing, utilization, processing or storage of flammable and explosive materials shall be provided with adequate safety devices in conformance with Wisconsin Administrative Codes and standards of the National Fire Protection Association. All materials that range from active to intense burning shall be manufactured, utilized, processed and stored only in completely enclosed buildings which have incombustible exterior walls and an automatic fire extinguishing system. The above ground storage capacity of materials that produce flammable or explosive vapors shall not exceed the following:

Flash Point (Closed Cup)	Gallons
Over 187° F.	400,000
105° F. to 187° F.	200,000
Below 105° F.	100,000

i. The Kenosha Fire Department may inspect premises without delay, during reasonable

State of Wisconsin



2009 Senate Bill 530

Date of enactment: May 18, 2010

Date of publication*: June 1, 2010

2009 WISCONSIN ACT 405

(Vetoed in Part)

AN ACT to amend 20.144 (1) (g), 49.857 (1) (d) 12., 73.0301 (1) (d) 6., 138.04, 138.09 (1m) (a), 138.09 (3) (f), 138.10 (2m), 138.10 (15), 220.02 (2) (b), 220.04 (10), 220.285 (1), 321.60 (1) (a) 12., 403.414 (7), 422.201 (3) and 425.301 (4); and to create 20.144 (1) (j), 59.69 (4h), 62.23 (7) (hi), 138.09 (1a), 138.09 (3) (e) 1. g., 138.14, 138.16 and 812.35 (1a) of the statutes; relating to: regulating payday loans and motor vehicle title loans, limiting the areas in which a payday lender may operate, granting rule-making authority, making an appropriation, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.144 (1) (g) of the statutes is amended to read:

20.144 (1) (g) *General program operations.* The amounts in the schedule for the general program operations of the department of financial institutions. Except as provided in pars. (a), (h), (i), (j), and (u), all moneys received by the department, other than by the office of credit unions and the division of banking, and 88% of all moneys received by the department's division of banking shall be credited to this appropriation, but any balance at the close of a fiscal year under this appropriation shall lapse to the general fund. Annually, \$200,000 of the amounts received under this appropriation account shall be transferred to the appropriation account under s. 20.575 (1) (g).

SECTION 2. 20.144 (1) (j) of the statutes is created to read:

20.144 (1) (j) *Payday loan database and financial literacy.* All moneys received under s. 138.14 (14) (h), for developing, implementing, maintaining, or

contracting for operating, the database under s. 138.14 (14), and for promoting financial literacy.

SECTION 3. 49.857 (1) (d) 12. of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09, 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or subch. IV of ch. 551.

SECTION 4. 59.69 (4h) of the statutes is created to read:

59.69 (4h) **PAYDAY LENDERS.** (a) *Definitions.* In this subsection:

1. "Licensee" has the meaning given in s. 138.14 (1) (i).
2. "Payday lender" means a business, owned by a licensee, that makes payday loans.
3. "Payday loan" has the meaning given in s. 138.14 (1) (k).

(b) *Limits on locations of payday lenders.* Except as provided in par. (c), no payday lender may operate in a county unless it receives a permit to do so from the county zoning agency, and the county zoning agency may not

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

issue a permit to a payday lender if any of the following applies:

1. The payday lender would be located within 1,500 feet of another payday lender.

2. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.

(c) *Exceptions.* 1. Paragraph (b) only applies in the unincorporated parts of the county which have not adopted a zoning ordinance as authorized under s. 60.62 (1).

2. A county may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in par. (b).

3. If a county has enacted an ordinance regulating payday lenders that is in effect on the effective date of this subdivision [LRB inserts date], the ordinance may continue to apply and the county may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of par. (b).

4. Notwithstanding the provisions of subd. 3., if a payday lender that is doing business on the effective date of this subdivision [LRB inserts date], from a location that does not comply with the provisions of par. (b), the payday lender may continue to operate from that location notwithstanding the provisions of par. (b).

SECTION 5. 62.23 (7) (hi) of the statutes is created to read:

62.23 (7) (hi) *Payday lenders.* 1. In this paragraph:

a. "Licensee" has the meaning given in s. 138.14 (1) (i).

b. "Payday lender" means a business, owned by a licensee, that makes payday loans.

c. "Payday loan" has the meaning given in s. 138.14 (1) (k).

2. Except as provided in subsd. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:

a. The payday lender would be located within 1,500 feet of another payday lender.

b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.

3. A city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.

4. If a city has enacted an ordinance regulating payday lenders that is in effect on the effective date of this subdivision [LRB inserts date], the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.

5. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on the effective date

of this subdivision [LRB inserts date], from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.

SECTION 6. 73.0301 (1) (d) 6. of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

73.0301 (1) (d) 6. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, ~~138.14~~, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, 224.93 or under subch. IV of ch. 551.

SECTION 7. 138.04 of the statutes is amended to read:

138.04 Legal rate. The rate of interest upon the loan or forbearance of any money, goods or things in action shall be \$5 upon the \$100 for one year and according to that rate for a greater or less sum or for a longer or a shorter time; but parties may contract for the payment and receipt of a rate of interest not exceeding the rate allowed in ss. 138.041 to 138.056, 138.09 to ~~138.12~~ 138.14, 218.0101 to 218.0163, or 422.201, in which case such rate shall be clearly expressed in writing.

SECTION 8. 138.09 (1a) of the statutes is created to read:

138.09 (1a) This section does not apply to any of the following:

(a) Banks, savings banks, savings and loan associations, trust companies, credit unions, or any of their affiliates .

(b) Payday loans made under s. 138.14.

SECTION 9. 138.09 (1m) (a) of the statutes is amended to read:

138.09 (1m) (a) Before any person may do business under this section or charge the interest authorized by sub. (7) ~~and before any creditor other than a bank, savings bank, savings and loan association or credit union may,~~ or assess a finance charge on a consumer loan in excess of 18% per year, that person shall first obtain a license from the division. Applications for a license shall be in writing and upon forms provided for this purpose by the division. An applicant at the time of making an application shall pay to the division a nonrefundable \$300 fee for investigating the application and a \$500 annual license fee for the period terminating on the last day of the current calendar year. If the cost of the investigation exceeds \$300, the applicant shall upon demand of the division pay to the division the amount by which the cost of the investigation exceeds the nonrefundable fee.

SECTION 10. 138.09 (3) (e) 1. g. of the statutes is created to read:

138.09 (3) (e) 1. g. A payday loan licensee under s. 138.14.

SECTION 11. 138.09 (3) (f) of the statutes is amended to read:

138.09 (3) (f) Every licensee shall make an annual report to the division for each calendar year on or before March 15 of the following year. The report shall cover

Vetoed
In Part

~~include~~ business transacted by the licensee under the provisions of this section and shall give all reasonable and relevant information that the division may require. The reports shall be made ~~upon forms furnished in the form and manner prescribed~~ by the division and shall be signed and verified by the oath or affirmation of the licensee if an individual, one of the partners if a partnership, a member or manager if a limited liability company or an officer of the corporation or association if a corporation or association. Any licensee operating under this section shall keep the records affecting loans made pursuant to this section separate and distinct from the records of any other business of the licensee.

SECTION 12. 138.10 (2m) of the statutes is amended to read:

138.10 (2m) PAWNBROKING BY LICENSED LENDERS. The division of banking may promulgate rules regulating the conduct of pawnbroking by persons licensed under s. 138.09 or 138.14.

SECTION 13. 138.10 (15) of the statutes is amended to read:

138.10 (15) EXCEPTION. This section does not apply to any person that is licensed under s. 138.09 or 138.14.

SECTION 14. 138.14 of the statutes is created to read:

138.14 Payday loans. (1) DEFINITIONS. In this section:

(a) "Affiliate" means, with respect to a person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person. In this paragraph "control" means any of the following:

1. For a corporation, direct or indirect ownership of, or the right to control, 10 percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy.

2. For any entity other than a corporation, the ability to change the active or passive principals of the organization.

(b) "Check" has the meaning given in s. 403.104 (6).

(bm) "Customer" means an individual who enters into a payday loan with a licensee.

(c) "Database" means the statewide database described in sub. (14).

(d) "Database provider" means a 3rd-party provider with whom the department contracts to operate the database or, if the division elects to operate the database, the division.

(e) "Department" means the department of financial institutions.

(f) "Division" means the division of banking.

(g) "Financial establishment" means any organization that is authorized to do business under state or federal law and that holds a demand deposit, savings deposit, or other asset account belonging to an individual.

(h) "General order" means an order that is not a special order.

(i) "Licensee" means a person holding a license issued by the division under sub. (5).

(j) "Maturity date" means the date specified when originating a payday loan on which the loan is required to be paid in full.

(k) "Payday loan" means any of the following:

1. A transaction between an individual with an account at a financial establishment and another person, including a person who is not physically located in this state, in which the person agrees to accept from the individual one or more checks, to hold the check or checks for a period of time before negotiating or presenting the check or checks for payment, and to loan to the individual, for a term of 90 days or less, before negotiating or presenting the check or checks for payment, an amount that is agreed to by the individual.

2. A transaction between an individual with an account at a financial establishment and another person, including a person who is not physically located in this state, in which the person agrees to accept the individual's authorization to initiate one or more electronic fund transfers from the account, to wait a period of time before initiating the electronic fund transfer or transfers, and to loan to the individual, for a term of 90 days or less, before initiating the electronic fund transfer or transfers, an amount that is agreed to by the individual.

(L) "Special order" means an order against a person.

(2) LICENSE REQUIRED. A person may not originate or service a payday loan involving a Wisconsin resident without first having obtained from the division a license under sub. (5) for each place of business at which the person originates or services payday loans involving Wisconsin residents. Such a license is required for, and this section applies to, all payday loans made to a Wisconsin resident, regardless of whether the loan is made by face-to-face contact, mail, telephone, Internet, or any other means.

(3) EXEMPTIONS. This section does not apply to banks, savings banks, savings and loan associations, trust companies, credit unions, or any of their affiliates.

(4) APPLICATIONS; FEES; BOND. (a) 1. Application for licenses under sub. (5) shall be made to the division in writing in the form and manner prescribed by the division and shall include all of the following:

a. Except as provided in subd. 3., if the applicant is an individual, the applicant's social security number.

b. If the applicant is not an individual, the applicant's federal employer identification number.

c. A statement signed by or on behalf of the applicant that acknowledges that the applicant is subject to the debt collection requirements under ch. 427 with respect to payday loans.

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2. The division may not disclose any information received under subd. 1. a. or b. to any person except as follows:

a. The division may disclose information under subd. 1. a. or b. to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

b. The division may disclose information under subd. 1. a. to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

3. If an applicant who is an individual does not have a social security number, the applicant, as a condition of applying for a license, shall submit a statement made or subscribed under oath or affirmation to the division that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. Any license issued in reliance upon a false statement submitted by an applicant is invalid.

(b) At the time of making application, an applicant for a license shall pay to the division a nonrefundable \$300 fee for investigating the application and a \$500 annual license fee. If the cost of the investigation exceeds \$300, the applicant shall upon demand of the division pay to the division the amount by which the cost of the investigation exceeds the nonrefundable fee.

(c) The division shall require any applicant or licensee to file and maintain in force a bond in a sum not to exceed \$5,000 for each place of business at which the applicant or licensee makes payday loans to a Wisconsin resident. The bond shall be in a form prescribed by and acceptable to the division.

(5) LICENSES. (a) Upon the filing of an application under sub. (4) and the payment of the required fees, the division shall investigate the relevant facts. Except as provided in par. (b), if the division finds that the character and general fitness and the financial responsibility of the applicant, and the members thereof if the applicant is a partnership, limited liability company, or association, and the officers and directors thereof if the applicant is a corporation, warrant the belief that the business will be operated in compliance with this section, the division shall issue a license to the applicant. If the division does not make such finding, the division shall deny the application.

(b) The division may not issue a license to an applicant if any of the following applies:

1. The applicant fails to provide any information required under sub. (4) (a).

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes.

3. The applicant fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

4. The applicant is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

(c) A license shall remain in force and effect until suspended or revoked in accordance with this section or surrendered by the licensee, and a licensee shall, on or before each December 10, pay to the division the annual license fee for the next succeeding calendar year.

(d) A license is not assignable and permits operation under it only at or from the place of business specified in the license.

(e) A licensee shall conspicuously post a license at the place of business where the licensee makes payday loans, or if conducting business through the Internet, on the licensee's Web site so that the license is easily viewed by a consumer.

(6) RELOCATION; OTHER BUSINESS. (a) Whenever a licensee changes the address of its place of business to another location within the same city, village, or town, the licensee shall give written notice thereof, in a form and manner prescribed by the division, to the division within 10 business days of the relocation and the division shall replace the original license with an amended license showing the new address. No change in the place of business of a licensee to a different city, village, or town is permitted under the same license.

(b) 1. Except as provided in subd. 2., a licensee may conduct, and permit others to conduct, at the place of business specified in its license, one or more of the following businesses not subject to this section:

a. A currency exchange under s. 218.05.

b. A seller of checks business under ch. 217.

c. A loan business under s. 138.09.

d. A sales finance company under ss. 218.0101 to 218.0163.

2. A licensee may not sell merchandise or conduct other business at the place of business specified in the license unless written authorization is granted to the licensee by the division.

(7) RECORDS; REPORTS. (a) Except as provided in par. (b), a licensee shall keep such books and records in the licensee's place of business that, in the opinion of the division, will enable the division to determine compliance with this section. A licensee shall preserve the records of final entry used in such business for a period of at least 2 years after the making of any loan recorded therein.

(b) A licensee may keep the books and records specified in par. (a) at a single location inside or outside of this state if the books and records are kept at a place of business licensed under this section. A licensee shall organize the books and records by the place of business where the records originated.

(c) A licensee shall keep the books and records affecting loans made pursuant to this section separate and distinct from the records of any other business of the licensee.

(d) A licensee shall make an annual report to the division for each calendar year on or before March 15 of the following year. The report shall include business transacted by the licensee under this section and shall give all reasonable and relevant information that the division may require, including the information required for the division's reports under par. (e). The reports shall be made in the form and manner prescribed by the division.

(e) The division shall submit an annual report to the appropriate standing committees of the legislature in the manner provided under s. 13.172 (3) that includes all of the following:

1. The number of payday loans made by all licensees during the preceding year.

2. The average principal amount for all payday loans made during the preceding year.

3. The average interest, fees, and other charges for all payday loans made during the preceding year.

4. Based on subd. 3., the average annual percentage rate for all payday loans made during the preceding year.

5. The number of payday loans made during the preceding year that were paid in full on the maturity date.

6. The number of payday loans made during the preceding year that resulted in repayment under sub. (11g) (a).

7. The number of payday loans made during the preceding year that were repaid with the proceeds of a subsequent payday loan.

8. The number of payday loans made during the preceding year that resulted in default.

9. The number of payday loans made during the preceding year for which a customer's payment method was dishonored or denied due to insufficient funds.

(8) POWERS OF THE DIVISION. (a) The division may issue any general or special order in execution of or supplementary to this section.

(b) The division may promulgate such rules as it considers necessary for the administration of this section, including rules establishing database transaction fees under sub. (14) (h) and other fees considered reasonable and necessary by the division.

(c) The division shall have the same power to conduct hearings, take testimony, and secure evidence as is provided in ss. 217.17 and 217.18.

(d) The division for the purpose of discovering violations of this section may investigate the business of a licensee transacted under this section, and shall investigate convictions reported to the division by any district attorney for violation by a licensee of this section. The place of business, books of account, papers, records, safes, and vaults of a licensee shall be open to inspection and examination by the division for the purpose of such

investigation and the division may examine under oath all persons whose testimony the division may require relative to such investigation.

(e) The cost of any investigation, examination, or hearing, including witness fees or any other expenses, conducted by the division under this section involving a licensee shall be paid by the licensee within 30 days after demand therefore by the division, and the state may maintain an action for the recovery of such costs and expenses.

(f) Actual costs incurred by the division to examine books and records maintained outside of this state shall be paid by the licensee.

(9) REVOCATION AND SUSPENSION OF LICENSES. (a) The division may suspend or revoke any license issued under this section if the division finds any of the following:

1. That the licensee has violated any provision of this section, any rule promulgated thereunder, or any lawful order of the division made thereunder.

2. That the licensee has violated any of the provisions of chs. 421 to 427.

3. That any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the division in refusing to issue such license.

4. That the licensee made a material misstatement in an application for a license or in information furnished to the division.

5. That the licensee has failed to pay the annual license fee or to maintain in effect the bond required under sub. (4) (c).

(b) The division shall restrict or suspend a license issued under this section if the division finds that the licensee is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A licensee whose license is restricted or suspended under this paragraph is entitled to a notice and hearing only as provided in a memorandum of understanding entered into under s. 49.857 and is not entitled to any other notice or hearing under this section.

(c) The division shall revoke a license issued under this section if the department of revenue certifies under s. 73.0301 that the licensee is liable for delinquent taxes. A licensee whose license is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this section.

Vetoed
In Part

(d) Except as provided in pars. (b) and (c), no license shall be revoked or suspended except after a hearing under this section. A complaint stating the grounds for suspension or revocation together with a notice of hearing shall be delivered to the licensee at least 5 days in advance of the hearing. In the event the licensee cannot be found, complaint and notice of hearing may be left at the place of business stated in the license, which shall be considered the equivalent of delivering the notice of hearing and complaint to the licensee.

(9g) DISCLOSURE REQUIREMENTS. (a) Before any licensee enters into a payday loan with an applicant, the licensee shall do all of the following:

1. Disclose to the applicant the total amount of all fees and costs, in dollars, to be paid by the applicant for the loan assuming that the loan is paid in full at the end of the loan term.

2. Disclose to the applicant the annual percentage rate to be paid by the applicant on the loan assuming that the loan is paid in full at the end of the loan term.

3. Provide to the applicant a copy of the written informational materials specified in sub. (9r).

4. Disclose to the applicant that he or she has the right to rescind the loan transaction as provided in sub. (11r).

5. Disclose to the applicant the service charge that may apply under sub. (10) (b) 2.

6. Disclose to the applicant the payment requirements that may apply under sub. (11g) (a) if the loan is not paid in full at the end of the loan term.

(b) A licensee shall retain, for at least 3 years after the origination date of any payday loan, a record of compliance with par. (a) with respect to the loan.

(9r) INFORMATIONAL MATERIALS. (a) The division shall develop written informational materials on payday loans and the payday loan industries. These informational materials shall be designed to educate individuals regarding the operation and potential costs of payday loans and of other options for borrowing funds that may be available.

(b) The informational materials under par. (a) shall include a clear and conspicuous notice that a payday loan is not intended to meet long-term financial needs and that a payday loan applicant should use a payday loan only to provide funds in a financial emergency.

(c) The informational materials under par. (a) shall include all of the following information, based upon aggregated information from reports submitted under sub. (7) (d) for the most recent reporting period:

1. The average annual percentage rate for payday loans.

2. The percentage of customers originating payday loans who defaulted on the loan.

3. The percentage of customers originating payday loans whose payment method was dishonored or denied for insufficient funds.

4. The percentage of customers originating payday loans that resulted in repayment under sub. (11g) (a).

(d) The informational materials under par. (a) shall include a summary of all actions that the licensee may take against a payday loan customer if the customer defaults on the payday loan or if the customer's check or electronic fund transfer is dishonored or denied for insufficient funds.

(e) The division shall annually update the informational materials under par. (a), based upon the division's analysis of reports received under sub. (7) (d).

(f) The division shall make copies of the informational materials under par. (a) available, upon request, to licensees and to the public, including making these informational materials available on the Internet site of the department of financial institutions. The division may charge licensees a reasonable fee for printed copies of informational materials supplied under this paragraph.

(10) INTEREST, PENALTIES, AND FEES. (a) *Interest.* 1. Except as provided in sub. (12) (b), this section imposes no limit on the interest that a licensee may charge before the maturity date of a payday loan.

2. If a payday loan is not paid in full on or before the maturity date, a licensee may charge, after the maturity date, interest at a rate not exceeding 2.75 percent per month, except that if a licensee makes a subsequent payday loan to the customer under sub. (12) (a), and the customer does not pay the subsequent loan in full on or before the maturity date of the subsequent loan, the licensee may charge, after the maturity date of the subsequent loan, interest at a rate not exceeding 2.75 percent per month on the subsequent loan and the licensee may not charge any interest under this subdivision on the prior loan. Interest earned under this subdivision shall be calculated at the rate of one-thirtieth of the monthly rate charged for each calendar day that the balance of the loan is outstanding. Interest may not be assessed on any interest earned under this subdivision.

(am) *Penalties.* Except as provided in par. (b) 2., no licensee may impose any penalty on a customer arising from the customer's prepayment of or default or late payment on a payday loan, including any payment under sub. (11g) (a).

(b) *Fees.* 1. A licensee may not assess a customer any fee or charge for database access or usage.

2. A licensee may present a customer's check for payment no more than once. For each customer authorization to initiate an electronic fund transfer from the customer's account, a licensee may initiate an electronic fund transfer no more than once. The only charge that a licensee may impose for dishonor of a customer's check or denial of the licensee's instruction to execute an electronic fund transfer is a service charge that does not exceed \$15.

**Vetoed
In Part**

(11) PREPAYMENT. (a) A customer may pay a payday loan in whole or in part prior to the maturity date of the loan.

(b) Upon prepayment in full, a refund of the unearned portion of any interest assessed by the licensee must be allowed. The amount of such refund shall not be less than the difference between the interest charged and the interest earned at the agreed rate computed upon the unpaid principal balance of the loan from time to time outstanding prior to repayment in full.

Vetoed
In Part

(11g) REPAYMENT AFTER TERM OF LOAN. (a) Except as provided in par. (b), if a customer fails to repay a payday loan in full at the end of the loan term, the licensee that made the loan shall offer the customer the opportunity to repay the outstanding balance of the loan in 4 equal installments with due dates coinciding with the customer's pay period schedule.

Vetoed
In Part

(b) If a licensee offers a customer the opportunity to make repayment under par. (a), then, during the 12-month period following the offer, no licensee, including the licensee making the offer, is required to offer the customer another opportunity to repay a payday loan under par. (a).

(11r) RESCISSION. A customer may rescind a payday loan, before the close of business on the next day of business after the loan is made, or, if the place of business where the loan is made is open 24 hours, before 5 p.m. on the next day of business after the loan is made, by returning to the licensee the proceeds of the payday loan. The licensee may not charge the customer any fee for rescinding the payday loan as provided in this subsection.

(12) PROHIBITIONS. (a) A customer may repay a payday loan with the proceeds of a subsequent payday loan made by the same or another licensee or an affiliate of the same or another licensee, but if the customer does so, the customer may not repay the subsequent payday loan with the proceeds of another payday loan made by the same or another licensee or an affiliate of the same or another licensee. A repayment of a subsequent payday loan and the origination of a new payday loan from the same or another licensee or an affiliate of the same or another licensee within a 24-hour period shall be considered proof of violation of the prohibition under this paragraph.

(b) No licensee may make a payday loan to a customer that results in the customer having an outstanding aggregate liability in principal, interest, and all other fees and charges, to all licensees who have made payday loans to the customer of more than \$1,500 or 35 percent of the customer's gross monthly income, whichever is less.

(c) No licensee may make a payday loan to a customer if the licensee determines, knows, or should have known, that the customer identification number of the customer is invalid.

(d) No licensee may take a note, promise to pay, or any other instrument, in which blanks are left to be filled in after the payday loan has been made.

(e) No licensee may advertise, print, display, publish, distribute, or broadcast, or cause to be printed, displayed, published, distributed, or broadcast, in any manner, any statement with regard to the rates, terms, or conditions of a payday loan that is false or calculated to deceive. With respect to matters specifically governed by s. 423.301, compliance with such section satisfies the requirements of this paragraph.

(f) If a check held by a licensee as a result of a payday loan is dishonored, or an instruction to execute an electronic funds transfer authorized as the result of a payday loan is denied, the licensee may bring an action to collect the amount of the check or electronic funds transfer, but may not threaten or pursue criminal action against a debtor as a result of the debtor's dishonored check or denied electronic funds transfer or the debtor's payday loan not being paid.

(13) OTHER PROVISIONS. (a) All payday loans shall be governed by chs. 421 to 426, but to the extent that chs. 421 to 426 are inconsistent with this section, this section shall govern. All payday loans shall be governed by ch. 427.

(b) A licensee shall deliver to the customer, at the time a payday loan is made, a statement in the English and Spanish languages including all the disclosures required by the federal Consumer Credit Protection Act. The statement shall disclose that the customer may prepay the customer's loan in whole or in part and that if the loan is prepaid in full the customer will receive a refund of interest as provided by this section. The statement shall also clearly and conspicuously indicate the percentage per year of interest charged for the payday loan.

(c) A licensee shall give to the customer a plain and complete receipt for all cash payments made on account of any payday loan at the time such payments are made.

(d) No payday loan, wherever made, for which a greater rate or amount of interest than is allowed under sub. (10) (a) 2. has been contracted for or received, may be enforced in this state, and every person in any way participating therein in this state shall be subject to this section. If a licensee makes an excessive charge of such interest as the result of an unintentional mistake, but upon demand makes correction of such mistake, the loan shall be enforceable and treated as if no violation occurred at the agreed rate. Nothing in this paragraph shall limit any greater rights or remedies afforded in chs. 421 to 427 to a customer in a consumer credit transaction.

(14) DATABASE. (a) The division or a database provider shall develop, implement, and maintain a single statewide database that has real-time access through an Internet connection, is accessible at all times to licensees

and the division, and otherwise meets the requirements of this section.

(b) The division may operate the database or may contract with a single 3rd-party provider to operate the database. If the division contracts with a 3rd-party provider for the operation of the database, the division shall do all the following:

1. Ensure that the 3rd-party provider operates the database according to the provisions of this section.

2. In selecting a 3rd-party provider, consider the cost of providing the service and the 3rd-party provider's ability to meet all the requirements of this section.

3. In selecting a 3rd-party provider, give strong consideration to all of the following:

a. The 3rd-party provider's ability to prevent fraud, abuse, and other unlawful activity associated with payday loan transactions, and to provide additional tools for the administration and enforcement of this section.

b. Whether the provider is currently providing a similar service for another state.

(c) The database shall do all of the following:

1. Allow a licensee accessing the database to check a customer's unique identification number that is assigned to the customer in a manner specified by the division. A customer's unique identification number may not be based on the customer's social security number.

2. Allow a licensee accessing the database to determine if making a new payday loan would cause a violation of this section.

3. Provide information necessary to aid a licensee in complying with any requirements imposed under federal law by the office of foreign assets control of U.S. department of the treasury.

4. Provide any other information that the division determines is necessary and requires by rule or contract with the database provider.

(d) The database provider shall do all the following:

1. Use the data collected under this section only as prescribed in this section and, in the case of a 3rd-party provider, as prescribed in the contract with the division, and for no other purpose.

2. Establish and maintain an alternate process for responding to transaction authorization requests necessary because of technical difficulties occurring with the database that prevent a licensee from accessing the database through the Internet.

3. Upon receiving notification that a payday loan is paid, designate the transaction as closed in the database no later than 11:59 p.m. on the day that such notification is received.

4. Automatically designate a payday loan as paid in the database 5 days after the maturity date of the loan unless a licensee reports to the database provider before that time that the loan remains open because of the customer's failure to make payment; that the loan is open

because the customer's check or an electronic redeposit is in the process of clearing the banking system; that the loan remains open because the customer's check is being returned to the licensee for insufficient funds, a closed account, or a stop payment order; or that any other factors determined by the division are applicable. If a licensee makes such a report, the database provider shall designate the payday loan as an open transaction until the database provider is notified that the transaction is closed.

5. If a licensee stops making payday loans, designate all open transactions with that licensee as closed in the database 60 days after the date on which the licensee stops making payday loans, unless the licensee reports to the database provider before the expiration of the 60-day period which of its transactions remain open and the specific reason each transaction remains open.

6. In response to an inquiry from a licensee, state only that a person is eligible or ineligible for a new payday loan and describe the reason for that determination. Only the person seeking the loan may make a direct inquiry to the database provider to request a more detailed explanation of an ineligibility determination.

(e) If at any time the division determines that a licensee that has stopped making payday loans is not updating the database in accordance with a plan approved under par. (o), the division shall immediately close or instruct the database provider to immediately close all remaining open transactions of that licensee.

(f) The division may, without cost, access the database for the purposes of enforcing this section.

(g) The division shall, by order or rule, stipulate the period for which data is to be retained in the database only as required to ensure licensee compliance with this act or for enforcement or compliance purposes. The division may require that any identifying customer information be deleted from the database when data is archived. The division may maintain access to archived data for future legislative or policy review.

(h) The division shall, by order or rule, specify a database transaction fee of no more than \$1 that the database provider shall charge to licensees to cover the costs of developing and implementing the database, and accessing the database to verify that a customer does not have any payday loans with the licensee or others that in combination with a new transaction will create a violation of this section. The database fee is payable directly to the division in a manner prescribed by the division and, if the department has contracted with a 3rd-party provider to operate the database, the division shall remit the fee to the 3rd-party provider as specified in the contract.

(i) A licensee shall verify a customer's eligibility to enter into a payday loan by doing one of the following, as applicable:

**Vetoed
In Part**

**Vetoed
In Part**

**Vetoed
In Part**

1. If the database, as determined by the division, is not implemented or is not fully operational, verifying that the customer does not have an open payday loan with the licensee that in conjunction with a new payday loan would cause a violation of this section. The licensee shall maintain a database of all of the licensee's payday loans at all of its places of business and search that database to meet its obligation under this subdivision.

2. If the database, as determined by the division, is implemented and fully operational, accessing the database and verifying that the customer does not have an outstanding payday loan with the licensee and does not have open payday loans with other licensees that in conjunction with a new payday loan would cause a violation of this section.

**Vetoed
In Part**

(j) If the database, as determined by the division, is not fully operational, or the licensee is unable to access the database and, as determined under rules promulgated by the division, the alternate process established under par. (d) 2. is also unavailable, a licensee may rely upon the written verification of the customer in a statement provided in substantially the following form in at least 12-point type:

"I DO NOT HAVE ANY OUTSTANDING PAYDAY LOANS WITH THIS LICENSEE AND I DO NOT HAVE MORE PAYDAY LOANS WITH ANY OTHER LICENSED PAYDAY LOAN PROVIDER IN THIS STATE."

(k) If, as determined by the division, a licensee is unable to access the database due to technical difficulties occurring with the database, the licensee shall utilize the alternate process established under par. (d) 2.

(L) A licensee may rely on the information contained in the database as accurate and is not subject to any administrative forfeiture as a result of relying on inaccurate information contained in the database.

(m) Before entering into a payday loan, a licensee shall submit to the database provider the customer's name; unique identification number that is assigned in a manner specified by the division; address; driver license number or other method of state identification; the amount of the transaction; the customer's check number, if applicable; the date of the transaction; the maturity date of the loan; and any other information reasonably required by the division, in a format approved by the division.

(n) When a payday loan is closed, the licensee shall designate the transaction as closed and notify the database provider no later than 11:59 p.m. on the day on which the transaction is closed. The division shall assess an administrative forfeiture of \$100 for each day that the licensee fails to notify the database provider that the payday loan has been closed. It is a defense to the assessment of an administrative forfeiture that notifying the database provider was not possible due to temporary

technical problems with the database or to circumstances beyond the licensee's control.

(o) If the licensee stops making payday loans, the licensee shall provide to the division a plan acceptable to the division that outlines how the licensee will continue to update the database after it stops making payday loans. The division shall approve or disapprove the plan and within 5 business days notify the licensee of the decision. If a plan is disapproved, the licensee may submit a new or modified plan for the division to approve or disapprove.

(p) Any information in the database regarding any person's transactional history is confidential and is not subject to public copying or inspection under s. 19.35 (1).

(14m) CUSTOMER INFORMATION. No licensee or person with whom the division contracts for operation of the database under sub. (14) (b) may sell to another person any information regarding a customer or a payday loan made to a customer.

(15) PENALTIES. (a) Any person, partnership, or corporation, or the officers or employees thereof, who violates this section is guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than 6 months or both.

(b) If a person who is not licensed under this section makes a payday loan to a customer, the loan is void, the customer is not obligated to pay any amounts owed on the loan, and the customer may recover from the person all amounts the customer has paid to the person. An action to recover such amounts shall be commenced within one year after the date of the last scheduled payment on the loan or shall be barred.

(16) PRIVATE CAUSE OF ACTION. If a person makes a payday loan to a customer in violation of this section, the customer may bring an action against the person for damages of \$250 or the amount of the payday loan, whichever is greater, plus costs, and, notwithstanding s. 814.04 (1), reasonable attorney fees.

SECTION 14m. 138.16 of the statutes is created to read:

138.16 Title loans. (1) DEFINITIONS. In this section:

(a) "Division" means the division of banking attached to the department of financial institutions.

(b) "Licensed lender" means a person licensed under s. 138.09.

(c) "Title loan" means a loan of \$25,000 or less to a borrower, who obtains or seeks to obtain the loan for personal, family, or household purposes, that is, or is to be, secured by an interest, other than a purchase money security interest, in the borrower's motor vehicle, and that has an original term of not more than 6 months.

(2) LOAN PRINCIPAL AND INTEREST. (a) No licensed lender may make a title loan to a borrower that results in the borrower having liability for the loan, in principal, of more than 50 percent of the value of the motor vehicle

**Vetoed
In Part**

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In Part**

used as security for the loan. The division shall promulgate rules for determining the value of a motor vehicle for purposes of this paragraph, including rules specifying pricing guides that may be used for determining value.

**Vetoed
In Part**

(b) 1. This section imposes no limit on the interest that a licensed lender may charge before the maturity date of a title loan.

2. If a title loan is not paid in full on or before the maturity date, a licensed lender may charge, after the maturity date, interest at a rate not exceeding 2.75 percent per month. Interest earned under this subdivision shall be calculated at the rate of one-thirtieth of the monthly rate charged for each calendar day that the balance of the loan is outstanding. Interest may not be assessed on any interest earned under this subdivision.

(3) RESCISSION. A borrower may rescind a title loan, before the close of business on the next day of business after the loan is made, or, if the place of business where the loan is made is open 24 hours, before 5 p.m. on the next day of business after the loan is made, by returning to the licensed lender the proceeds of the loan. The licensed lender may not charge the borrower any fee for rescinding the title loan as provided in this subsection.

(4) OTHER REQUIREMENTS. (a) A licensed lender may not make a title loan to a borrower that is secured by an interest in a motor vehicle if the motor vehicle is subject to another security interest under another title loan made by the licensed lender or another licensed lender and the borrower is liable for repayment on the other title loan.

(b) A licensed lender may not require a borrower to provide the licensed lender with a key or copy of a key to a motor vehicle used as security for a title loan as a condition for making the title loan to the borrower.

(c) A licensed lender or person acting on behalf of a licensed lender may not take possession of a motor vehicle used as security for a title loan to a borrower without serving notice on the borrower at least 15 days prior to taking possession. The notice shall state the intent to take possession and describe the basis for the right to take possession. This paragraph does not apply to possession that is obtained by a borrower's voluntary surrender of a motor vehicle.

(d) A licensed lender or other person may charge a borrower a reasonable storage fee for a motor vehicle of the borrower of which the licensed lender or person acting on behalf of the licensed lender has obtained possession, including possession that is obtained by voluntary surrender.

(e) A licensed lender shall return to a borrower the amount of any proceeds from the disposition of a motor vehicle used as security for a title loan to the borrower that exceed the borrower's liability to the licensed lender for the loan.

(f) A borrower is not liable to a licensed lender for any deficiency resulting from the licensed lender's

disposition of a motor vehicle used as security for a title loan, unless the borrower has done any of the following:

1. Impaired the licensed lender's security interest by intentionally damaging or destroying the motor vehicle.

2. Intentionally concealed the motor vehicle.

3. Pledged to the licensed lender a motor vehicle that is already encumbered by an undisclosed prior lien.

4. Subsequent to obtaining the title loan, pledged or sold to a third party a motor vehicle used as security for a title loan without the licensed lender's written consent.

SECTION 15. 220.02 (2) (b) of the statutes is amended to read:

220.02 (2) (b) The lending of money under s. 138.09 or 138.14, or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges and collection agencies under ch. 218.

SECTION 16. 220.04 (10) of the statutes is amended to read:

220.04 (10) If it appears to the division that a person has engaged or is about to engage in an act or practice constituting a violation of the laws of this state relating to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and ss. 138.09 and 138.12, and 138.14, or a rule promulgated or order issued under those laws, the division may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with the laws, rules or orders, or the division may refer the matter to the district attorney of the appropriate county or, if the alleged violation may be enforced by the attorney general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature, to the attorney general. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, appoint a receiver for the defendant or the defendant's assets or order rescission of any acts determined to be unlawful. The court may not require the division to post a bond.

SECTION 17. 220.285 (1) of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09, 138.12, 138.14, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.725 or ch. 217 may cause any or all records kept by such bank, licensee, or registered person to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. A bank, licensee, or registered person may thereafter dispose of the original record after first obtaining the written consent of the division. This section, excepting that part of it which requires written

**Vetoed
In Part**

consent of the division, is applicable to national banking associations insofar as it does not contravene federal law.

SECTION 18. 321.60 (1) (a) 12. of the statutes, as affected by 2009 Wisconsin Act 2, is amended to read:

321.60 (1) (a) 12. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 138.14, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.725, or 224.93 or subch. IV of ch. 551.

SECTION 19. 403.414 (7) of the statutes is amended to read:

403.414 (7) A person who issues a check or other draft that is not honored upon presentment, because the drawer does not have an account with the drawee or because the drawer does not have sufficient funds in his or her account or sufficient credit with the drawee, is liable for all reasonable costs and expenses in connection with the collection of the amount for which the check or draft was written, except recovery is not permitted under this section if a person licensed under s. 138.09 or 138.14 or any other person collected or could have collected a charge for that check or other draft under s. 422.202 (1) (d) or (2m).

SECTION 20. 422.201 (3) of the statutes is amended to read:

422.201 (3) For licensees under s. 138.09 and or 138.14 or under ss. 218.0101 to 218.0163, the finance charge, calculated according to those sections, may not exceed the maximums permitted in ss. 138.09, 138.14, and 218.0101 to 218.0163, respectively.

SECTION 21. 425.301 (4) of the statutes is amended to read:

425.301 (4) The liability of a merchant under chs. 421 to 427 is in lieu of and not in addition to any liability

under the federal consumer credit protection act and ss. 138.09, 138.14, or 218.0101 to 218.0163. An action by a person alleging a violation under chs. 421 to 427 may not be maintained if a final judgment has been rendered for or against that person with respect to the same violation under the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163. If a final judgment is entered against any merchant under chs. 421 to 427 and the federal consumer credit protection act or ss. 138.09, 138.14, or 218.0101 to 218.0163 for the same violation, the merchant has a cause of action for appropriate relief to the extent necessary to avoid double liability.

SECTION 22. 812.35 (1a) of the statutes is created to read:

812.35 (1a) No earnings garnishment action may be brought to recover the amount owed by a debtor for the payment of a payday loan, as defined in s. 138.14 (1) (k).

SECTION 23. Initial applicability.

(1) The treatment of section 812.35 (1a) of the statutes first applies to payday loans, as defined in section 138.14 (1) (k) of the statutes, as created by this act, made on the effective date of this subsection.

(2m) The treatment of section 138.14 of the statutes first applies to payday loans, as defined in section 138.14 (1) (k) of the statutes, as created by this act, made on the effective date of this subsection.

(3m) The treatment of section 138.16 of the statutes first applies to title loans, as defined in section 138.16 (1) (c) of the statutes, as created by this act, made on the effective date of this subsection.

SECTION 24. Effective date.

(1) This act takes effect on the first day of the 7th month beginning after publication.

**Vetoed
In Part**

TO: The Members of the Public Welfare and Safety Committee

SUBJECT: Convenient Cash Business Ordinance – World Acceptance Corporation of Wisconsin

DATE: May 7, 2012

I. Background

World Acceptance made application for an Occupancy Permit to move into a Kenosha location. The application was not processed because it was believed that the company's business may fall under the parameters of a "convenient cash business" as described in 13.04 of the Code of General Ordinances, and therefore would be prohibited from the location because it is too close to another convenient cash business.

II. World Acceptance is not a "convenient cash business"

World Acceptance does not fall within the definition of a "convenient cash business" as contained in the current Kenosha Ordinance, and is not the type of "convenient cash business" the Ordinance was intended to regulate. The definition in 13.04 of the Code of General Ordinances is as follows:

1. **Definition.** "Convenient Cash Business(es)", also referred to as a "payday loan business", "title for cash business," "check cashing business," or any similar enterprise, shall mean any business licensed pursuant to Section 138.09 or 218.05, Wisconsin Statutes, which provides nontraditional, short term consumer loans by accepting a check or title, holding the check or title for a period of time before negotiating or presenting the check or title for payment, and paying to the issuer an agreed upon amount of cash, or refinancing or consolidating such a transaction.

There are several reasons why World Acceptance does not fall under the above definition.

First, the city ordinance, by its terms, is intended to govern "*nontraditional, short term consumer loans*" made by business "referred to as "payday loan business" or "title for cash business...". As discussed below, World Acceptance is a *traditional installment lender*, not a nontraditional short term lender.

Second, the Ordinance carefully spells out the types of short term loans it covers, namely where the consumer receives cash in exchange for one of two items, either:

1. For giving the lender a post-dated check, or
2. For giving the lender a title to a motor vehicle.

As explained below, World Acceptance does not fall under any of these elements of the definition because it does not take either of the enumerated items.

Finally, once the lender receives the post-dated check or motor vehicle title, the Ordinance requires that the lender must hold "the check or title for a period of time before negotiating or presenting the check or title for payment." Because World Acceptance does not accept any of the items identified, it does hold such item "for a period of time."

Instead, World Acceptance only offers traditional consumer finance company installment loans. It does not provide "non-traditional short term consumer loans" that typify short term lenders such as payday or title loan lenders.

III. Short Term Lenders.

The type of lenders that Kenosha's and other similar city ordinances are intended to cover are lenders making so called payday loans and title loans.

A. "*Payday lenders*" obtained their name from the fact that the repayment of a single payment loan is coordinated with the date on which a borrower receives his or her wages on their payday. Thus, payday loans are normally for a period of two weeks or less, and the loan is required to be paid in full at the end of the loan term.

When the "payday loan" is made, the lender takes a postdated check for the full amount of the loan due on the maturity date (i.e. the borrower's payday), and holds the check until the maturity date. No installment payments are permitted; the loan must be paid in full.

Often, payday lenders will offer a new loan to pay off the principal of the matured loan if the customer pays the interest, but that only occurs where both the lender and customer agree. If the borrower obtains another two week loan, the borrower must deliver a new post-dated check for the full amount of the new loan. (This type of loan is now regulated by Wis. Stat. §138.14.)

World Acceptance does not offer or make this type of loan.

B. "*Title loan lenders*" have a similar business model and also lend money on a single payment basis, usually a loan for one month (instead of two weeks), and the loan is secured by an automobile. The term "title loan" gets its name from some states, where a security interest is obtained and perfected simply by holding on to the certificate of title during the term of the loan.. (Although Wisconsin does not permit lender to hold the certificate of title, the name has been applied generically to this type of one month loan). (This type of loan is now regulated by Wis. Stat. § 138.16.)

Again, World Acceptance does not make or offer this type of loan.

IV. World Acceptance is a Traditional Installment Lender.

The above described non-traditional "short- term lenders" can be contrasted with what may be termed "traditional license lenders" or "traditional installment lenders." Section 138.09

of the Wisconsin Statutes is a licensing statute that has been around since the mid 1930s. Lenders, such as the old Household Finance and Beneficial Finance, provided installment loans to the public, many of whom did not desire to deal with banks (or might not have otherwise qualified for bank loans). These lenders were household words, and are the type of lender that has been a fixture in many cities, including Kenosha, for decades.

Although Household and Beneficial are no longer in business, and other installment lenders such as World Acceptance have taken their place, traditional licensed lenders are considered important assets to the community because they offer traditional household installment loans to consumers. By its terms, the Ordinance is not intended to cover such "traditional lenders."

V. Why the Confusion in the Ordinance concerning Licensing References?

Up until January 1, 2011, Wisconsin only had one licensing statute, Wis. Stat. § 138.09, for all lenders that had to be licensed. The Department of Financial Institutions ("DFI") issued such licenses, and although all lenders were licensed under § 138.09, DFI distinguished between "traditional" installment lenders and the newer "short term lenders" using a definition similar to the one used in the Kenosha Ordinance quoted above.

Because of these differences in the nature of a traditional installment lender and a short term lender, the Ordinance specifies that a Convenient Cash Business are only those lenders that are both licensed under Wis. Stat. § 138.09 AND that make loans by "accepting a check or title, holding the check or title for a period of time before negotiating or presenting the check or title for payment."

So, while all payday lenders and title loan lenders had to be § 138.09 license lenders, NOT all lenders holding § 138.09 licenses were considered payday lenders or title loan lenders. The Ordinance recognizes this difference in its definition.

This confusion is now eliminated because payday lenders must be separately licensed under § 138.14 and title loan lenders separately authorized by DFI under § 138.16 respectively, while traditional installment lenders only need a license under § 138.09.

VI. Intended Application of the "Convenient Cash Business" Ordinance.

As indicated above, although World Acceptance is licensed under § 138.09, it does not offer loans that fall under any of the two legs of the "convenient cash business" definition:

- (i) It does not take post-dated checks;
- (ii) It does not take a security interest in a motor vehicle.

No post dated checks. World Acceptance does not extend cash in exchange for a post-dated check in the amount of cash loaned. In fact, it does not take post-dated checks in payment at all for any of its installment loans.

In that regard, it should be noted that the definition in the Ordinance is similar to the definition of a payday loan in new Wis. Stat. § 138.14. That definition contained in Section 138.14(1)(k)a defines a "payday loan" as follows:

A transaction between an individual with an account at a financial establishment and another person . . . in which the person agrees to accept from the individual one or more checks, to hold the check or checks for a period of time before negotiating or presenting the check or checks for payment, and to loan to the individual, for a term of 90 days or less, . . . an amount that is agreed to by the individual.

World Acceptance does not have such a license and is not a payday lender as defined in the state statute. Because the Kenosha Ordinance has similar wording, clearly it is not intended to extend to traditional installment lenders.

No auto secured loans. Similarly, World Acceptance does not offer loans secured by automobiles, or take motor vehicle titles at all, let alone in exchange for a cash loan. Title loans are now governed by new Wis. Stat. § 138.16. A title loan under that section is defined as:

A loan of \$25,000 or less to a borrower . . . that is, or is to be, secured by an interest, other than a purchase money security interest, in the borrower's motor vehicle, and the loan has an original term of not more than six months.

A special certificate of authority is required to make title loans. World Acceptance does not have such a certificate of authority. It does not make loans secured by motor vehicles, and it does not have the separate certification required to make loans under § 138.16. As a result, the Ordinance cannot be applied to World Acceptance under this element of the definition.

Conclusion.

Based on the above analysis, on behalf of World Acceptance, the company should not be classified as a "Cash Convenient Business," and its application for occupancy should be processed. The company would be happy to supply you with further information regarding the business model if more information would be helpful.

Edward J. Heiser, Jr.
Whyte Hirschboeck Dudek S.C.