



## ***Environmental Planning Commission***

***Agenda Number: 8  
Project Number: 1001620  
Case Number: 14EPC-40070  
November 13, 2014***

### ***Staff Report***

***Agent*** City of Albuquerque Planning Department

***Applicant*** City of Albuquerque Planning City Council Services

***Adding a new §14-16-3-24 to the Zoning Code, and associated text amendments to: §14-16-1-5, Definitions; §14-16-2-15, the O-1 Office and Institution Zone; §14-16-2-16, the C-1 Neighborhood Commercial Zone; §14-16-2-17, the C-2 Community Commercial Zone, and §14-16-2-19, the IP Industrial Park Zone to regulate Small Loan Businesses (SLBs).***

***Location*** City-wide

### ***Staff Recommendation***

***That a recommendation of CONDITIONAL APPROVAL of 14EPC-40064 be forwarded to the City Council based on the Findings beginning on Page 15, and subject to the Conditions for Recommendation of Approval beginning on Page 17.***

***Staff Planner  
Catalina Lehner, AICP-Senior Planner***

### ***Summary of Analysis***

This request is for a recommendation to City Council regarding the addition of a new section to the Zoning Code §14-16-3-24 ROA 1994, and a text amendment to §14-16-1-5(B) ROA 1994, Definitions, to regulate Small Loan Businesses (SLBs). Bill No. O-14-22 was introduced at City Council on September 3, 2014 and referred to the Planning Department. The EPC is a recommending body; the City Council will make the final decision.

The proposed text amendments would regulate SLBs, also sometimes known as payday or title loans (or predatory lending), by establishing a required horizontal separation distance of at least 1,500 feet between them as measured from property lines. The term "Small Loan Business" would be defined to mean those businesses licensed under the New Mexico Small Loan Business Act of 1955 [58-15-31 NMSA 1978]. Such businesses are not identified with FDIC-insured banking institutions.

The overarching intent of the proposed legislation is to try to mitigate the negative effects that SLBs can have on communities over time. Spatial analysis shows that SLBs are clustered in low to moderate income areas. Some payday lenders and title loan lenders charge up to 1000% interest. Though 175% (and higher) interest is more common, consumers in New Mexico were charged \$99 million dollars in interest and fees on small loans- the majority of which was collected by out-of-state companies (see also Bill No. R-14-102).

Staff finds that the proposed text amendments, as written, raise concerns about enforcement in the field and administration at the office (see Section V of this report). Revisions are needed to improve enforceability and administration, create internal consistency in the Zoning Code and clarify certain items. This can be done while supporting the overall legislative intent. Staff recommends that a recommendation of conditional approval be forwarded to the City Council.

City Departments and other interested agencies reviewed this application from 9/29/2014 to 10/10/2014. Agency comments used in the preparation of this report begin on Page 21.

## ***I. INTRODUCTION***

### ***Request***

This request is for a recommendation to City Council regarding the following text amendments to the City's Comprehensive Zoning Code: adding a new section, §14-16-3-24 ROA 1994, and amending §14-16-1-5(B) ROA 1994, Definitions, to regulate Small Loan Businesses (SLBs). Staff recommends that certain individual zones be correspondingly amended (see Sections III and VI of this report).

The proposed text amendments are found in draft legislation authored by Council Services, known as Bill No. O-14-22 (see attachment). O-14-22 was introduced at City Council on September 3, 2014 and subsequently referred to the Planning Department for review.

### ***Intent & Purpose***

The intent of the proposed text amendments is to regulate Small Loan Businesses (SLBs) by establishing a required horizontal separation distance of at least 1,500 linear feet between them, as measured from property line to property line of the parcels that the SLBs are located on. (Note: one-quarter mile is 1,320 feet and a half-mile is 2,640 feet).

The term "Small Loan Business (SLB)" would be defined to mean lending businesses licensed (or should be licensed) under the New Mexico Small Loan Business Act of 1955 [58-15-31 NMSA 1978]. Such businesses, sometimes known as payday/title loans or "predatory lending" due to the very high (over 175%) interest rates they charge consumers, are not identified with FDIC-insured banking institutions such as banks and credit unions.

The purpose of the proposed legislation (O-14-22) is to begin to mitigate the negative effects that Small Loan Businesses can have on communities over time. Resolution R-14-102, which addresses interest rates, is related (see Section II of this report).

### ***Scope***

The proposed text amendments would create a new section of the Zoning Code, amend certain zones and amend the Definitions section of the Zoning Code, which are ordinances of general application. The proposed text amendments would apply City-wide. This request is considered legislative in nature.

### ***Environmental Planning Commission (EPC) Role***

The task of the Environmental Planning Commission (EPC) is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision. The EPC is a recommending body with review authority.

## ***II. OVERVIEW***

### ***Background & Importance***

Over time, the presence of high-interest lending made available by small lending businesses has increased. So has public awareness of such businesses. It's become apparent that small lending

businesses tend to cluster in areas of the City where low-income people reside, such as near the intersections of Central Ave./San Mateo Blvd., San Mateo and Menaul Blvds., and Coors Blvd. just north of I-40 (see attachments).

High interest rates are considered to be 175% or above. Because several small loan businesses routinely charge between 300% to 600% interest and borrowers are not screened for ability to repay, borrowers are extremely likely to become trapped in an unending cycle of debt that they can't get out of- especially since they were poor to begin with. Many of these people are single-parents, veterans and military personnel (Ref: Bill No. R-14-102, see below).

But it's not just a personal problem. It's a larger, social problem because low-income areas of the City are targeted and many lower-income residents get caught up in a cycle of poverty they can't break out of. Also, many of the City's lower-income areas are designated Metropolitan Redevelopment Areas (MRAs) where improvement is desired, and perpetuating poverty will not help to bring about positive changes.

*(Note: Research conducted by Council Services Staff).*

### ***Local Efforts***

The proposed text amendments (Bill No. O-14-22) can be considered a companion bill to Bill No. R-14-102 (see attachment). R-14-102 urges the New Mexico Legislature and the Governor to stop the high-cost lending epidemic by enacting inflation-indexed interest and fee caps of 36% or less across all small loan products. This resolution has gone through the legislative process and, as of this writing, is in the Mayor's office awaiting signature.

Between 2011 and 2013, the number of high-interest small loan businesses has grown from 582 to 656 (ref: R-14-102). This is an increase of  $\approx 13\%$  in two years. It may not seem like a lot. However, cumulatively the amount of small lending businesses is steadily increasing and continues to be concentrated in lower-income areas of the City. If an interest cap is enacted, over time and when combined with the separation distance requirement proposed here, it could make a positive difference in the community.

### ***State Regulation***

Small Loan Businesses are regulated at the State level by the Small Loan Act of 1955 (ref: 58-15-31 NMSA 1978). Article 15, Sections 1-39, explains the Act, licensing and other requirements, recordkeeping and penalties (see attachment, Table of Contents). Definitions are found in 58-15-2 (see attachment). The Act, enacted nearly 50 years ago, has several purposes, as elaborated in 58-15-1:

- ensure public regulation of businesses making small loans
- allow licensees to meet their expenses of servicing small loans
- provide loan credit to a large class of borrowers who cannot otherwise obtain it
- eliminate charges that are exorbitant in relation to the cost of running a loan business
- lessen abuse of borrowers

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It appears that 58-15-1, Object & Purposes of Act, has not been updated since then. However, the 2007 revision date at the end of the Definitions Section indicates that some changes have occurred (though it is unclear what they were). “Payday Loan” and “Payday Loan Product” are defined terms, and Small Loan Business is the title of the Article though it is not defined.

Among the most important things the Act does are to establish requirements that small loan businesses be licensed annually (a \$500 fee) and that their records/books are inspected annually (a \$200 fee). The Act also establishes that no small loan can exceed 25% of the borrower’s monthly gross income (58-15-32) and that the loans range from 14 to 35 day terms. Also, there is no penalty for pre-paying a small loan (58-15-15.1). Permitted charges for payday loan products (ex. max \$15.50 administrative fee for each \$100 borrowed) are found in 58-15-33. Prohibitions (ex. making another loan to someone who has a payment plan already) are found in 58-15-35 (see attachment).

Staff was not able to find any regulations pertaining to interest rates. Since small business loans are regulated by the State as described above, it appears that regulation of interest rates would need to occur at the State level. However, Albuquerque is a home-rule municipality and it’s not clear to Staff if regulating interest rates (see Council Bill No. R-14-102) could be done independently. Regardless, perhaps the first step is establishing a separation distance requirement, as proposed in the text amendments considered here.

### **III. ZONING**

#### ***Definitions***

The term “Small Loan Business (SLB)” does not exist in the Zoning Code and needs to be defined for the sake of clarity and consistency, as well as for enforcement purposes. The following definitions in §14-16-1-5 are relevant to the subject matter of the proposed text amendments:

**BUSINESS.** A legal entity operating an enterprise in a space separate from any other enterprise.

#### ***LOT.***

- (1) A tract or parcel of land platted and placed on the County Clerk's record in accordance with laws and ordinances; or
- (2) A tract or parcel of land described by metes and bounds held in separate ownership, as shown on the records of the County Assessor, prior to June 20, 1950, date of passage of Commission Ordinance No. 686, or October 2, 1950, effective date of passage of a County Resolution (both covering Subdivision); or
- (3) A portion of one or more platted lots, which portion was placed on the records of the County Assessor prior to November 16, 1973, effective date of Commission Ordinance No. 97-1973, the city's Subdivision Regulations, provided such portion met all requirements of area and dimension of the zone in which it was located when created.

**MEASUREMENT.** In all instances where the Zoning Code requires a separation of uses, use districts, lots, or buildings, such distance shall be measured in a geometrically straight line using a scaled map, or a survey if necessary, unless otherwise specifically provided for in the Zoning

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Code. This line shall be measured to run from the nearest point on the nearest lot line or the lot or lots upon which the regulated use is located to either the nearest point on the nearest lot line of the lot or lots upon which a use is located from which the regulated use is required to be separated or the nearest point on the nearest boundary of the zoning district from which the regulated use is required to be separated, whichever terminal point is applicable. Such measurement shall be made without regard to any intervening structures, objects, uses, the street grid, landforms, waterways, or any other topographical features.

### ***Zones***

Small Loan Businesses (SLBs) are a type of office use and are allowed in most non-residential zones, including the O-1 Office & Institution Zone (§14-16-2-15), C-1 Neighborhood Commercial Zone (§14-16-2-16), C-2 Community Commercial Zone (§14-16-2-17), C-3 Heavy Commercial Zone (§14-16-2-18), IP Industrial Park Zone (§14-16-2-19), M-1 Light Manufacturing Zone (§14-16-2-20), and M-2 Heavy Manufacturing Zone (§14-16-2-21).

The C-2 zone, which the C-3, M-1 and M-2 zones reference, calls out “banking, loaning money, including pawn” as a use. Office uses could be allowed in an SU-1 zone (§14-16-2-22) as part of a site development plan reviewed by the EPC or administratively (if thresholds for administrative approval are met- see §14-16-2-22(A)(6). Offices are allowed permissively in the RC Residential/Commercial Zone (§14-16-2-13).

Office uses are not allowed in most residential zones, including the RO-1 Rural and Open Zone (§14-16-2-2), R-1 Residential Zone (§14-16-2-6), R-LT Residential Zone (§14-16-2-28), R-T Residential Zone (§14-16-2-9), R-G Residential Zone (§14-16-2-22), R-2 Residential Zone (§14-16-2-22) and R-3 Residential Zone (§14-16-2-22) zones. Offices are allowed conditionally in the MH Residential Zone (§14-16-2-22), if they serve the residents of the contiguous MH area.

### ***Organization***

The Zoning Enforcement Officer pointed out that Small Loan Businesses (SLBs) are a use, and that regulating them pertains to the General Regulations portion of the Zoning Code. The General Regulations include, for example, Community Residential Program (CRP) Regulations, which are applied City-wide and also contain a separation distance requirement. A CRP is also a defined use.

Therefore, Staff suggests that Small Loan Businesses (SLBs) be added as a use to sections of the Zoning Code where they are already allowed and grouped loosely under “banking, loaning money, including pawn”. Calling SLBs out as a distinct use would differentiate them from banking that is FDIC insured (see also definition).

## ***IV. ANALYSIS OF APPLICABLE LAWS, ORDINANCES & PLANS***

Applicable ordinances, plans, and policies are in regular text followed by Staff analysis in ***bold italics***.

### ***Charter of the City of Albuquerque***

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

“The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. *The purpose of this Charter is to provide for maximum local self government.* A liberal construction shall be given to the powers granted by this Charter.” (emphasis added)

Article IX, Environmental Protection

“The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area.”

***Adding provisions to the ROA 1994 to establish a definition for Small Lending Businesses (SLBs) and a required separation distance between them is an exercise in local self government (City Charter, Article I). Amending the Comprehensive Zoning Code to define and separate new SLBs generally expresses the Council’s desire to ensure the proper use and development of land, and to generally promote and maintain a humane urban environment (City Charter, Article IX).***

***Comprehensive City Zoning Code***

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City’s general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Role of Land Use Boards (aka Amendment Procedure, summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

***The application for proposed text amendments to Zoning Code §14-16-1-5 ROA 1994, Definitions and addition of a new section, §14-16-3-24, and correspondingly amending certain associated zones, was filed in accordance with Zoning Code requirements. The proposed text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Defining Small Lending Businesses (SLBs) and establishing a separation distance would positively impact the built environment and the***

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*overall health and welfare of the City. However, as the zoning authority for the City of Albuquerque, the City Council will make the final determination.*

***Albuquerque/Bernalillo County Comprehensive Plan***

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan's goals and policies serve as a means to evaluate development proposals and text amendments requests. Applicable goals and policies include:

***B. Land Use Policies-Developing & Established Urban Areas***

Section II.B.5- Developing and Established Urban Areas Goal: The Goal is "to create a quality urban environment, which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment."

*The proposed text amendments would establish a separation distance between Small Loan Businesses (SLBs) and an administrative process to address them. Doing so would generally help create a quality urban environment in which such business are not as clustered as they could be otherwise, thereby allowing communities within the metropolitan area to be defined by a greater variety of services and choices and to not be disproportionately affected by SLB lending practices. The request generally furthers the Developing and Established Urban Areas Goal.*

Policy II.B.5d: The location, intensity, and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural, recreational concern.

*To the extent that a SLB is a new development (rather than occupying an existing building), the proposed separation distance between SLBs would help so they are not all located together and not adversely impacting any one neighborhood. Staff has not received any comments from the public. Environmental and recreational resources aren't really a factor here. The request partially furthers Policy II.B.5d-neighborhood/ environmental conditions/resources.*

***D. Community Resource Management-***

D.6. Economic Development Goal: The Goal is to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

*In general, the proposed text amendments would not adversely affect economic development because SLBs would continue to be allowed permissively in many zones. The distance requirement would help balance the development of such businesses with the important*

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*social goals of improving low-income neighborhoods working towards disaggregating poverty. The request generally furthers the Economic Development Goal.*

Human Services Policy II.D.8c: Development's negative effects upon individuals and neighborhoods shall be minimized.

*The proposed text amendments would help to minimize development's negative effects upon individuals because they would require a separation distance between SLBs, which presumably may make high-interest lending less readily available. Though arguably SLBs could still be located throughout the City, they would not be concentrated in lower income neighborhoods to the degree that they are near Central Ave./San Mateo Blvd. and San Mateo/Menaul Blvds. The request generally furtheres Human Services Policy II.D.8c-negative effects of development.*

## V. IMPLEMENTATION

Implementation issues warrant further discussion and can be divided into Enforcement Concerns and Unintended Consequences. When Staff met with the Code Compliance Manager (CCM, often also referred to as the Zoning Enforcement Official or ZEO), several practical concerns became apparent. So that the proposed legislation does not create lack of enforceability and/or misaligned expectations by the public, it is critical to explore these concerns at this juncture. The legislation needs to be manageable for it to be effective.

### ***Enforcement Concerns***

As written, the proposed text amendments would create difficulty for Code Enforcement Staff both in the field and in the office.

In the field, it may be difficult to determine which businesses are actually the Small Loan Businesses (SLBs) the proposed legislation intends to address. When applying for a business license, the licensee may not be forthcoming about the type of lending business they want to operate. Therefore, it could be difficult for Code Enforcement field Staff to prove that the business is engaging in this type of lending in cases when the business registration, a City document, states otherwise.

In the office, the proposed text amendments do not establish an administrative review process for SLBs, which means they could be difficult to track. The CRP regulations (Zoning Code §14-16-3-12, see attachment), which also have a separation distance requirement of 1,500 feet between CRPs, include subsections E) Review Process and G) Fees. The review process requires that CRP operators submit a report annually to the Zoning Enforcement Officer (ZEO). If a CRP has been problematic, the ZEO may refer consideration of the program's renewal to the Zoning Hearing Examiner (ZHE) for a public hearing. In addition, an internal system would need to be established to track SLBs and actions related to them.

*Fees:* The proposed text amendments are an unfunded mandate for which the Code Enforcement Division of the Planning Department would be solely responsible. As written, the proposed text



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amendments would create additional work load without establishing any fees to off-set administrative costs. Uses such as Community Residential Programs (CRPs) and sex-oriented businesses are required, in addition to the business registration, to pay an initial fee and an annual operating fee.

The fees for CRPs are \$55 for an initial review and \$35 for an annual review. Though minimal, any fees would be better than none. Sexually oriented businesses pay \$2,000 for initial review and \$1,000 for annual review. Perhaps the fees for SLBs could be somewhere in between. Further consultation with the ZEO is needed.

*Review:* Code Enforcement Staff will need to review the application for any new SLBs, in addition to what's required by the State (which State Staff will review). The CRP regulations establish a review process that can also be applied to SLBs, and would establish a review procedure so that Staff can review pertinent documentation such as the SLB's license and business information to determine if it complies with the new SLB regulations.

Also, Code Enforcement Staff can consult with those who want to open a new SLB to determine if the zoning allows the use and if the separation distance requirement can be met. If it's found that the business violates the original terms of its approval, enforcement action may be taken.

### ***Unintended Consequences***

*Internal:* The proposed legislation would create an expectation that the Code Enforcement Division would administer and enforce the new regulations, but without any additional funding or Staff to do so. As mentioned, the new SLB regulations would be another unfunded mandate- and in addition to other unfunded mandates resulting from other recent text amendments (ex. secondary dwelling units). A potential, unfortunate outcome is that enforcement could become inconsistent and reactive, though Staff would do the best they can with limited resources.

*External:* The idea of a horizontal separation distance between SLBs could result in, over time, a spreading out of such businesses throughout the City. If a new SLB is established, the next one would have to be at least 1,500 feet from it (as measured from the property lines), and so on. Though certainly other factors are involved, such as product demand, trends in banking/lending practices and the overall state of the economy, the proposed text amendments may not contribute to unclustering SLBs in low income neighborhoods where they exist already, but could have the unintended effect of encouraging new SLBs in neighborhoods where they were not a presence before.

## ***VI. ANALYSIS- PROPOSED TEXT AMENDMENTS & DISCUSSION***

The proposed legislation would add a new section, §14-16-3-24 ROA 1994 and amend §14-16-1-5(B), Definitions, of the Zoning Code. The following zones will need to be correspondingly amended for internal consistency: the O-1 Office and Institution Zone (§14-16-2-15); the C-1 Neighborhood Commercial Zone (§14-16-2-16); the C-2 Community Commercial Zone (§14-16-2-17), and the IP Industrial Park Zone (§14-16-2-19).

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New language is [underlined and bracketed]. Deleted language is ~~[underlined, bracketed and struck through]~~. Planning Staff's suggested additions to the originally drafted legislation are in grey highlighting (deletions and re-wording are not greyed). Explanations are in ***bold italics***. Page references are to the proposed legislation (see attachment).

**A) Definitions:**

***Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 1-5(B), DEFINITIONS***

1. Insert on Page 2, at Line 10:

[Section 1. Section 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to add the following definition:]

SMALL LOAN BUSINESS. A loan in which the licensee accepts a personal check or debit authorization tendered by the consumer and agrees in writing to defer presentment of that check or use of the debit authorization until the consumer's next payday or another date agreed to by the licensee and the consumer, and

- 1) Includes any advance of money or arrangement or extension of credit whereby the licensee, for a fee, finance charge or other consideration:

A) Accepts a dated personal check or debit authorization from a consumer for the specific purpose of repaying a payday loan;

B) Agrees to hold a dated personal check or debit authorization from a consumer for a period of time prior to negotiating or depositing the personal check or debit authorization; or

C) Pays to the consumer, credits to the consumer's account or pays another person on behalf of the consumer the amount of an instrument actually paid or to be paid pursuant to the New Mexico Small Loan Act of 1955; but

- 2) Does not include:

A) An overdraft product or service offered by a banking corporation, savings and loan association or credit union; and

B) Installment loans.]

***It is important to make "Small Loan Business" a defined term in the Zoning Code, just as it is a defined term in the State statutes though the definitions don't have to be exactly the same. The greyed and/or struck out language is Staff's suggested differences from the State's definition of "payday loan."***

***Having defined terms at the front of the Zoning Code is important for enforcement purposes and for clarity, especially in the event of an appeal.***

**B) Zoning Code Cross-Referencing:**

Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code:

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***Section 2-15(A)(17), the O-1 Office and Institution Zone***

***Section 2-16(A)(10)(q), the C-1 Neighborhood Commercial Zone***

***Section 2-17(A)(13)(r), the C-2 Community Commercial Zone, and***

***Section 2-19(A)(24)(k), the IP Industrial Park Zone.***

C-3 Heavy Commercial Zone (§14-16-2-18)- refers to C-2 zone (so no need to specify in C-3).

M-1 Light Manufacturing Zone (§14-16-2-20)- refers to C-3 zone (so no need to specify in M-1).

M-2 Heavy Manufacturing Zone (§14-16-2-21)-refers to M-1 zone (so no need to specify in M-2).

*Note: The same proposed language applies to all four zones listed and is intended to be inserted in the locations in the Zoning Code as specified above. Subsequent re-lettering of the sections will be needed.*

2. Insert in the Zoning Code at the locations specified above in B:

[Small Loan Businesses, provided they are licensed under the New Mexico Small Loan Business Act.]

*The C-2 zone, which the C-3, M-1 and M-2 zones reference, calls out “banking, loaning money, including pawn” as a use. Small Loan Businesses (SLBs) are different from standard, insured banking institutions and should be recognized as a separate use. This is important for internal consistency in the Zoning Code and for enforcement purposes, and especially since (like Community Residential Programs, or CRPs) SLBs will have their own Section in the General Regulations.*

**C) Text Changes to the Proposed Legislation:**

3. Insert at Page 1, Line 23:

[WHEREAS, the City Council passed Resolution R-14-102, which supports interest and fee caps on non-banking lending institutions (small loan businesses) in New Mexico; and]

*Staff believes it’s a good idea, for awareness of the topic and tracking purposes, to refer to this resolution.*

4. Page 1, Line 21:

WHEREAS, the clustering of [~~small loan establishments~~] [Small Loan Businesses] tend[s] to not only serve

*For consistency, Staff recommends use of the term “Small Loan Businesses” and capitalization since it will be a defined term.*

5. Page 2, Line 12:

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“[§14-16-3-24 SMALL ~~LENDERS~~] ~~[LOAN BUSINESSES]~~.”

*For consistency, Staff recommends use of the term “Small Loan Businesses”.*

6. Page 2, Line 13:

(A) In addition to any other requirements of the ~~zoning code~~ [Zoning Code],

*The term Zoning Code is usually capitalized and should be here.*

7. Page 2, Line 14:

Where they are permitted, ~~[small lending businesses]~~ [Small Loan Businesses]

*For consistency, Staff recommends use of the term “Small Loan Businesses”.*

8. Page 2, Lines 15 & 16:

one another by at least 1,500 feet ~~[,]~~ as measured from property line to property line ~~[,]~~ for the ~~[parcels]~~ [lots] on which the ~~[small lending business is]~~ [Small Loan Businesses are] located.

*The suggested revisions are for clarification and consistency.*

9. Page 2, Line 17:

(B) For purposes of this section, a ~~[small lending business]~~ [Small Loan Businesses] is

*For consistency, Staff recommends use of the term “Small Loan Businesses”.*

**D) New Text Additions to the Proposed Legislation:**

10. Page 2, insert new text at Line 20 (renumber subsequent lines):

[(C) Review Process.

(1) Operators of Small Loan Businesses (SLBs) shall annually submit to the Zoning Enforcement Officer (ZEO) copies of complaints received, efforts to resolve complaints, and the result of such efforts; their current license; updated program description; updated listing of board members and/or proprietors; and up-dated neighborhood relations plan if determined applicable by the ZEO. When there are no changes since the previously filed documents, a statement to this effect is sufficient.

The ZEO shall review this documentation, along with records of any complaints, to ensure that the SLB continues to function in accordance with City regulations and the original terms of the City's approval. This review will occur at the time of application to the State of New Mexico for license renewal.

(2) If evidence indicates changes in the program that result in violation of the original terms of approval and/or major unresolved complaints from neighbors or neighborhood organizations, the ZEO may refer the matter to the Zoning Hearing Examiner (ZHE) for a

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public hearing to determine if the approval should be terminated or its terms amended. The decision of the ZHE is subject to appeal to the Environmental Planning Commission (EPC) within 15 days of decision.]

*The suggested language is very similar to the language regarding Review Process in the Community Residential Program (CRP) regulations (Zoning Code §14-16-3-12). It's important to establish a process so that expectations are clear and SLB owners know what is expected.*

11. Page 2, insert after new text in C, above (renumber subsequent lines):

[(D) Notwithstanding division (C) above, if the ZEO finds clear and convincing evidence that the SLB is violating the original terms of its approval, he may take action to enforce the terms of approval at any time; normally after written warning, the ZEO will initiate criminal enforcement action or seek an injunction.]

*This language is also from the CRP regulations and is needed to ensure enforcement of the proposed text amendments.*

12. Page 2, insert after new text in D, above (renumber subsequent lines):

[(E) Fees.]

(1) The ZEO shall charge a fee of \$200 for review of standards specified in this section for a SLB hereafter established, which has not been approved for the previous year.

(2) The above fee shall reserve the location as to distance and separation criteria for 90 days, to the degree that the site met the location requirements of this section when the fee and application were tendered. After the expiration of 90 days, upon showing of significant improvements since the previous extension or application, up to three 90-day extensions shall be granted, which will maintain the location as to distance and separation. No application can be extended beyond 360 days from the date of original application. This provision does not exclude the applicant from reapplying for the same location and meeting all other appropriate requirements; however, other applications which have been filed shall take priority over the reapplication as to distance and separation.

(3) The ZEO shall charge a fee of \$150 for the annual review specified in division (E) of this section.]

*The suggested language is very similar to the language regarding Fees in the CRP regulations. A fee is needed to cover (or partially cover) the administrative costs (ex. tracking and enforcement) of implementing the new regulations.*

## ***VII. COMMENTS***

### ***CONCERNS OF REVIEWING AGENCIES***

Long Range Planning Staff points out that other jurisdictions have adopted similar legislation with stricter permitting and location criteria, requiring up to one mile of separation between such businesses and over 200 feet separation distance from residential uses. This text amendment should consider also amending §14-16-1-5, Definitions, to define the title “Small Lenders” and/or “Small lending business.”

Code Enforcement Staff expressed concern about how they will be able to enforce on such uses, and note that there is no tracking system proposed for existing and new small loan facilities. How would this information get into the AGIS system? What about a new form for Zoning counter Staff to review? Small loan facilities are an office use and are allowed in almost all zone categories.

Staff also interviewed the Code Compliance Manager about the proposed text amendments. His concerns are primarily that this would be another unfunded mandate and that a tracking system would be needed. A fee for administrative review should be charged, like it is for Community Residential Programs (CRPs) (see also Section V of this report).

Office of Neighborhood Coordination (ONC) Staff stated that an article regarding the proposed text amendments was published in the October/November 2014 issue of the Neighborhood News.

The pre-hearing discussion meeting was held on October 15, 2014. Agency comments begin on p. 21 of this report.

### ***NEIGHBORHOOD & OTHER CONCERNS***

The proposed text amendments were posted on the Planning Department’s main web page and announced in the October/November 2014 issue of the Neighborhood News (NN) (see attachments). Staff sent a brief article to Office of Neighborhood Coordination (ONC) Staff for inclusion in the NN. As of this writing, Staff has not received any comments.

## ***VIII. CONCLUSION***

The request is for a recommendation to City Council regarding text amendments to the City’s Comprehensive Zoning Code to regulate Small Loan Businesses (SLBs) by establishing a required horizontal separation distance of at least 1,500 feet between them, as measured from the property lines. The overarching intent is to begin to mitigate the negative effects that SLBs can have on communities over time. Bill No. O-14-22 was introduced at City Council on September 3, 2014 and subsequently referred to the Planning Department for review.

The proposed text amendments would add a new section, §14-16-3-24 ROA 1994, and to amend §14-16-1-5(B), Definitions. The following zones should be correspondingly amended for internal consistency: the O-1 Office and Institution Zone (§14-16-2-15); the C-1 Neighborhood Commercial Zone (§14-16-2-16); the C-2 Community Commercial Zone (§14-16-2-17), and the IP Industrial Park Zone (§14-16-2-19). “Small Loan Business” would be defined to mean those

businesses licensed under the New Mexico Small Loan Business Act that are not identified with FDIC-insured banking institutions.

The proposed text amendments were announced in the Neighborhood News and posted to the Planning Department's web page. Staff has not received any comments as of this writing.

Staff finds that the proposed text amendments generally further applicable Goals and policies. However, as written, the legislation is likely to be problematic to enforce and could create unintended consequences. Revisions are needed to add language to improve enforceability and administration, and to create internal consistency in the Zoning Code. Staff recommends that an approval recommendation, with conditions, be forwarded to the City Council.

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***RECOMMENDED FINDINGS- 14EPC-40070, November 13, 2014- Zoning Code Text Amendments***

1. The request is for a recommendation to City Council regarding text amendments to the City's Comprehensive Zoning Code to add a new section, §14-16-3-24 ROA 1994, and to amend §14-16-1-5(B), Definitions. The following zones should be correspondingly amended for internal consistency: the O-1 Office and Institution Zone (§14-16-2-15); the C-1 Neighborhood Commercial Zone (§14-16-2-16); the C-2 Community Commercial Zone (§14-16-2-17), and the IP Industrial Park Zone (§14-16-2-19).
2. The overarching intent of the proposed text amendments is to begin to mitigate the negative effects that Small Loan Businesses (SLBs) can have on communities over time. The purpose of the proposed text amendments is to regulate SLBs by establishing a required horizontal separation distance of at least 1,500 feet between them, as measured from the property lines. The term "Small Loan Business" would be defined to mean those businesses licensed under the New Mexico Small Loan Business Act that are not identified with FDIC-insured banking institutions.
3. The proposed text amendments are found in legislation authored by Council Services Staff and known as Bill No. O-14-22. O-14-22 was introduced at City Council on September 3, 2014 and subsequently referred to the Planning Department for review. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision.
4. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. Intent of the City Charter:

Adding provisions to the ROA 1994 to allow and define secondary dwelling units is an exercise in local self-government (City Charter, Article 1). Amending the Comprehensive Zoning Code to allow secondary dwelling units and associated regulations generally expresses the Council's desire to ensure the proper use and development of land, and to generally promote and maintain an aesthetic and humane urban environment (City Charter, Article IX).
6. Intent of the Zoning Code (§14-16-1-3):

The application for text amendments to the Zoning Code (the RO-1 Rural and Open Zone, R-1 Residential Zone, R-G Residential Garden Apartment Zone, R-2 Residential Zone, and Definitions), was filed in accordance with Zoning Code requirements. The text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Allowing and defining secondary dwelling units would positively impact the built and



natural environment and the overall health and welfare of the City. However, as the zoning authority for the City of Albuquerque, the City Council will make the final determination.

7. The request generally furthers the following, applicable Comprehensive Plan Goals and policy:
  - A. Developing & Established Urban Goal: The proposed text amendments would establish a separation distance between Small Loan Businesses (SLBs) and an administrative process to address them. Doing so would generally help create a quality urban environment in which such business are not as clustered as they could be otherwise, thereby allowing communities within the metropolitan area to be defined by a greater variety of services and choices and to not be disproportionately affected by SLB lending practices.
  - B. Economic Development Goal: With the proposed text amendments, SLBs would continue to be allowed permissively in many zones. The distance requirement would help balance the development of such businesses with the important social goals of improving low-income neighborhoods working towards disaggregating poverty.
  - C. Human Services Policy II.D.8c- negative effects of development: The proposed text amendments would help minimize development's negative effects upon individuals because they would require a separation distance between SLBs, which would presumably make high-interest lending less readily available. Though SLBs could still be located throughout the City, they would not be as concentrated in lower income neighborhoods.
8. The request partially furthers Policy II.B.5d- neighborhood/environmental conditions/resources. To the extent that a SLB is a new development (rather than occupying an existing building), the proposed separation distance between SLBs would help so they are not all located together and not adversely impacting any one neighborhood. Staff has not received any comments from the public.
9. Small Loan Businesses (SLBs) are regulated at the State level by the Small Loan Act of 1955 (ref: 58-15-31 NMSA 1978). The Act establishes requirements that SLBs are licensed annually (a \$500 fee) and that their records/books are inspected annually (a \$200 fee). The Act also establishes that no small loan can exceed 25% of the borrower's monthly gross income and that the loans range from 14 to 35 day terms.
10. As written, the legislation is likely to be problematic to enforce in the field and administer in the office. Code Enforcement Staff has expressed concern about this and recommends the addition of a Fees section and a Review section in order to implement the proposed legislation.
11. The proposed legislation could result in two unintended consequences. It would create an expectation for the Code Enforcement Division to administer and enforce the new regulations, but without additional funding or Staff. Inconsistent and reactive enforcement could result. The

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horizontal separation distance between SLBs could result in a spreading out of such businesses throughout the City over time, with the unintended effect of new SLBs in neighborhoods where they were not a presence before.

12. Conditions for Recommendation of Approval are needed to add language to improve enforceability and administration, and to create internal consistency in the Zoning Code, thereby making the legislation less ambiguous and more possible to implement.
13. The proposed text amendments were posted on the Planning Department's main web page and were announced in the October/November 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). As of this writing, Staff has not received any comments.

#### **RECOMMENDATION**

**That a recommendation of APPROVAL of Text Amendments to add a new section to the Zoning Code, §14-16-3-24 ROA 1994; amend §14-16-1-5(B), Definitions; and correspondingly amend the O-1 Office and Institution Zone (§14-16-2-15); the C-1 Neighborhood Commercial Zone (§14-16-2-16); the C-2 Community Commercial Zone (§14-16-2-17), and the IP Industrial Park Zone (§14-16-2-19), be forwarded to the City Council based on the preceding Findings and subject to the following Conditions for Recommendation of Approval.**

#### **CONDITIONS FOR RECOMMENDATION OF APPROVAL- 14EPC-40070, November 13, 2014- Zoning Code Text Amendments**

Note: New language is [+underlined and bracketed+]. Deleted language is [underlined, bracketed and struck through]. Planning Staff's suggested additions and deletions are indicated by grey highlighting.

#### **Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 1-5(B), DEFINITIONS**

1. Insert on Page 2, at Line 10:

[Section 1. Section 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to add the following definition:]

SMALL LOAN BUSINESS. A loan in which the licensee accepts a personal check or debit authorization tendered by the consumer and agrees in writing to defer presentment of that check or use of the debit authorization until the consumer's next payday or another date agreed to by the licensee and the consumer, and

3) Includes any advance of money or arrangement or extension of credit whereby the licensee, for a fee, finance charge or other consideration:

D) Accepts a dated personal check or debit authorization from a consumer for the specific purpose of repaying a payday loan:

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- E) Agrees to hold a dated personal check or debit authorization from a consumer for a period of time prior to negotiating or depositing the personal check or debit authorization; or
  - F) Pays to the consumer, credits to the consumer's account or pays another person on behalf of the consumer the amount of an instrument actually paid or to be paid pursuant to the New Mexico Small Loan Act of 1955; but
  - 4) Does not include:
    - C) An overdraft product or service offered by a banking corporation, savings and loan association or credit union; and
    - D) Installment loans.]

**Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 2-15(A)(17) of the O-1 Office and Institution Zone; Section 2-16(A)(10)(q) of the C-1 Neighborhood Commercial Zone; Section 2-17(A)(13)(r) of the C-2 Community Commercial Zone, and Section 2-19(A)(24)(k) of the IP Industrial Park Zone.**

*Note: The same language applies to all four zones listed and is intended to be inserted in the locations in the Zoning Code as specified above. Subsequent re-lettering of the sections will be needed.*

2. Insert in the Zoning Code at the locations specified above:

[Small Loan Businesses, provided they are licensed under the New Mexico Small Loan Business Act.]

**Text Changes to the Proposed Legislation:**

3. Insert at Page 1, Line 23:

[WHEREAS, the City Council passed Resolution R-14-102, which supports interest and fee caps on non-banking lending institutions (small loan businesses) in New Mexico; and]

4. Page 1, Line 21:

WHEREAS, the clustering of [~~small loan establishments~~] [Small Loan Businesses] tend[s] to not only serve

5. Page 2, Line 12:

“[§14-16-3-24 SMALL [LENDERS] [LOAN BUSINESSES]].

6. Page 2, Line 13:

(A) In addition to any other requirements of the ~~zoning code~~ [Zoning Code],

7. Page 2, Line 14:

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Where they are permitted, ~~[small lending businesses]~~ [Small Loan Businesses]

8. Page 2, Lines 15 & 16:

one another by at least 1,500 feet [,] as measured from property line [,] for the  
~~[parcels]~~ [lots] on which the ~~[small lending business is]~~ [Small Loan Businesses are] located.

9. Page 2, Line 17:

(B) For purposes of this section, a ~~[small lending business]~~ [Small Loan Businesses] is

**New Text Additions to the Proposed Legislation:**

10. Page 2, insert new text at Line 20 (renumber subsequent lines):

[(C) Review Process.]

(1) Operators of Small Loan Businesses (SLBs) shall annually submit to the Zoning Enforcement Officer (ZEO) copies of complaints received, efforts to resolve complaints, and the result of such efforts; their current license; updated program description; updated listing of board members and/or proprietors; and up-dated neighborhood relations plan if determined applicable by the ZEO. When there are no changes since the previously filed documents, a statement to this effect is sufficient.

The ZEO shall review this documentation, along with records of any complaints, to ensure that the SLB continues to function in accordance with City regulations and the original terms of the City's approval. This review will occur at the time of application to the State of New Mexico for license renewal.

(2) If evidence indicates changes in the program that result in violation of the original terms of approval and/or major unresolved complaints from neighbors or neighborhood organizations, the ZEO may refer the matter to the Zoning Hearing Examiner (ZHE) for a public hearing to determine if the approval should be terminated or its terms amended. The decision of the ZHE is subject to appeal to the Environmental Planning Commission (EPC) within 15 days of decision.]

11. Page 2, insert after new text in C, above (renumber subsequent lines):

[(D) Notwithstanding division (C) above, if the ZEO finds clear and convincing evidence that the SLB is violating the original terms of its approval, he may take action to enforce the terms of approval at any time; normally after written warning, the ZEO will initiate criminal enforcement action or seek an injunction.]

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12. Page 2, insert after new text in D, above (renumber subsequent lines):

**[(E) Fees.]**

(1) The ZEO shall charge a fee of \$200 for review of standards specified in this section for a SLB hereafter established, which has not been approved for the previous year.

(2) The above fee shall reserve the location as to distance and separation criteria for 90 days, to the degree that the site met the location requirements of this section when the fee and application were tendered. After the expiration of 90 days, upon showing of significant improvements since the previous extension or application, up to three 90-day extensions shall be granted, which will maintain the location as to distance and separation. No application can be extended beyond 360 days from the date of original application. This provision does not exclude the applicant from reapplying for the same location and meeting all other appropriate requirements; however, other applications which have been filed shall take priority over the reapplication as to distance and separation.

(3) The ZEO shall charge a fee of \$150 for the annual review specified in division (E) of this section.]

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***Catalina Lehner, AICP  
Senior Planner***

cc: City of Albuquerque, City Council, Attn: Andrew Webb, P.O. Box 1293, Abq. NM 87102  
City of Albuquerque, Planning Department, P.O. Box 1293, Abq. NM 87102

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## ***CITY OF ALBUQUERQUE AGENCY COMMENTS***

### ***PLANNING DEPARTMENT***

#### **Code Enforcement**

My concerns are only with the amendment to the zoning code to impose distance separation requirements upon small loan business.

1. Concerns on how Code Enforcement will be able to enforce on such uses.
2. Concerns with how to track existing and proposed new small loan facilities. (AGIS map overlay/layer?) (requirement of new form for zoning counter to review?)
3. Concerns on legalities on use of land ( is this a state regulation/small loans...) this is an office use and is allowed in almost all zone categories.

#### **Office of Neighborhood Coordination (ONC)**

Citywide. 9/30/14 – Newsletter article in the October/November 2014 issue of the “Neighborhood News” newsletter - siw

#### **Long Range Planning**

The request is to amend the general zoning regulations to add a new section to regulate “small lending businesses.” Other local jurisdictions have adopted similar legislation that also had more strict permitting and location criteria, and require up to one mile of separation between other and over 200 feet separation distance from residential uses. Other jurisdictions have defined this business class as “payday or title loan businesses” or “installment loan businesses.”

This text amendment should consider also amending §14-16-1-5, Definitions, to define the title “Small Lenders” and/or “Small lending business.”

### ***CITY ENGINEER***

#### **Transportation Development Services**

- No objection to the request.

#### **Hydrology**

- No adverse comments.

### ***DEPARTMENT of MUNICIPAL DEVELOPMENT***

#### **Transportation Planning**

- No objection to the request.

### **Traffic Engineering Operations (Department of Municipal Development):**

- No comments received.

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**Street Maintenance (Department of Municipal Development):**

- No comments received.

**New Mexico Department of Transportation (NMDOT):**

- The NMDOT has no objections to the building permit.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT  
and NMDOT:**

Conditions of approval for the proposed Text Amendments shall include: None.

***WATER UTILITY AUTHORITY***

**Utility Services-** No comment or objection.

***ENVIRONMENTAL HEALTH DEPARTMENT***

**Air Quality Division-** No comments received.

**Environmental Services Division-** No comments received.

***PARKS AND RECREATION***

**Planning and Design-** No Comment.

**Open Space Division-** Reviewed, no comment.

**City Forester-** No comments received.

***POLICE DEPARTMENT/Planning-***

This is a City-wide issue. No Crime Prevention or CPTED comments concerning the proposed Amendment to Comprehensive Zoning Code request at this time.

***SOLID WASTE MANAGEMENT DEPARTMENT***

**Refuse Division**

Approved. Must comply with SWMD Ordinance.

***FIRE DEPARTMENT/Planning-*** No comments received.

***TRANSIT DEPARTMENT***

<b>Project # 1001620 14EPC-40070 AMEND TO ZONING CODE</b>	Adjacent and nearby routes	None
	Adjacent bus stops	None
	Site plan requirements	None

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CITYWIDE	Large site TDM suggestions	None.
	Other information	None.

## ***COMMENTS FROM OTHER AGENCIES***

***BERNALILLO COUNTY-*** No comments received.

***ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY-***

Reviewed, no comment.

***ALBUQUERQUE PUBLIC SCHOOLS-***

<b>Project #1001620</b> 14EPC-40070 AMEND ZONING CODE	The City of Albuquerque proposes an amendment to the comprehensive zoning code to regulate small loan businesses with the Albuquerque metro area. APS does not oppose this proposal.
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***MID-REGION COUNCIL OF GOVERNMENTS-*** MRMPPO has no adverse comments.

***MIDDLE RIO GRANDE CONSERVANCY DISTRICT-*** No comments received.

***PUBLIC SERVICE COMPANY OF NEW MEXICO-*** No comments received.