

ALTERNATIVE FINANCIAL SERVICES

City Council Workshop
Main Assembly Room, City-County Building
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PRESENTATION OVERVIEW

- Background
- MPC Report
- Proposed Ordinance
- Case Law and Analysis
- Policy Considerations
- Questions



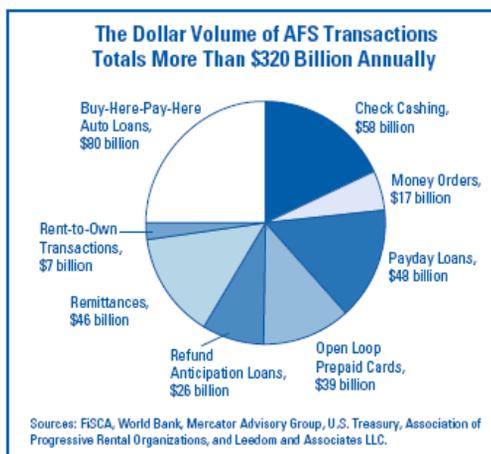
BACKGROUND

- Broadly, Alternative Financial Services (AFS) are providers of financial services choosing to operate outside the established realm of traditional, federally insured financial services providers such as banks
- Examples include check-cashing outlets, money transmitters, car title lenders, payday loan stores, pawnshops, quick loan companies.



BACKGROUND

Data on the volume of AFS transactions are incomplete because of the lack of a universal definition of the term AFS and because this sector is highly fractured among many different providers that are often small or privately held.



CITY OF KNOXVILLE

- December 2014: City Council asks MPC to draft zoning regulations
- MPC undertakes study to understand current situation in Knoxville
- August 2015: MPC publishes [Analysis and Recommendations](#)



REGULATORY LANDSCAPE

- Lack of Federal Regulations (but rules were proposed June 2)
- Permissive TN Regulations
- Zoning and Public Welfare
- Rapid Technological Advances, such as Mobile Phones and P2P



OTHER JURISDICTIONS

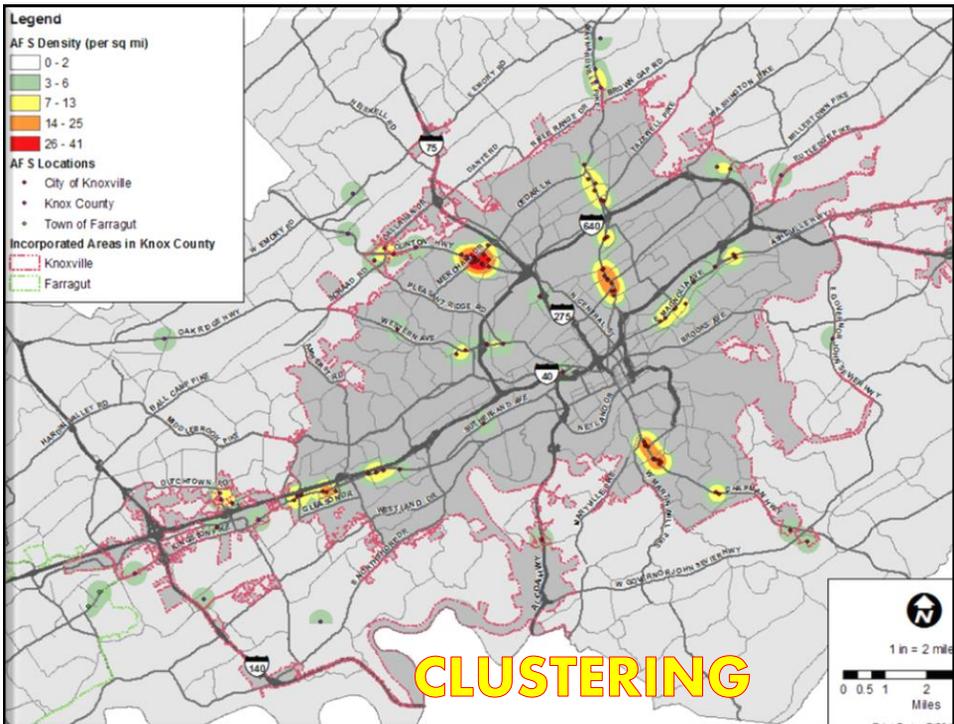
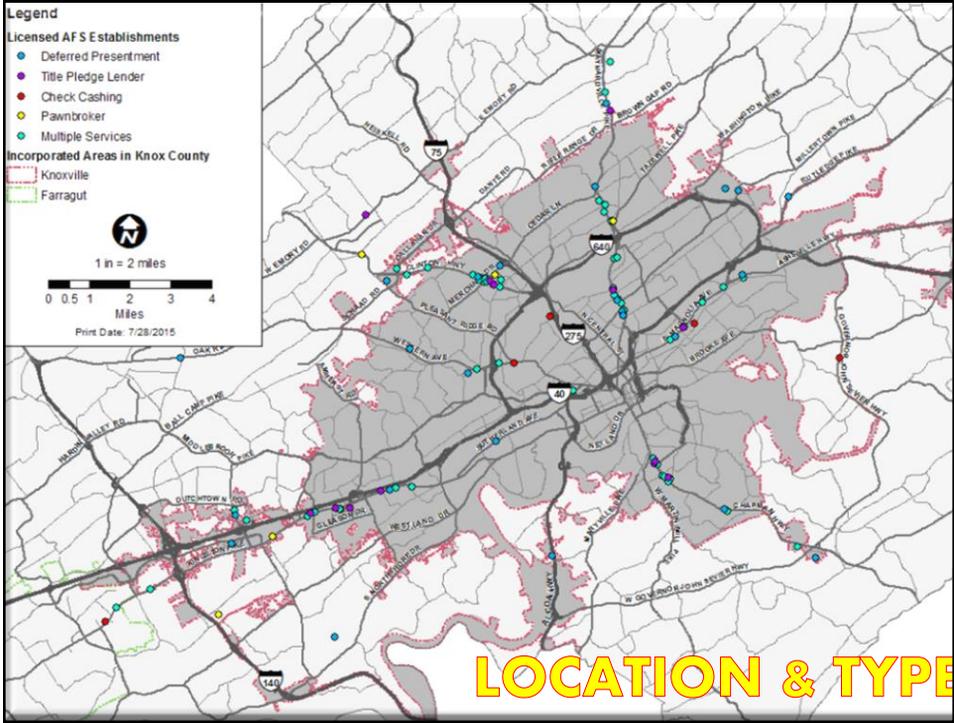
- Nashville
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- Chattanooga

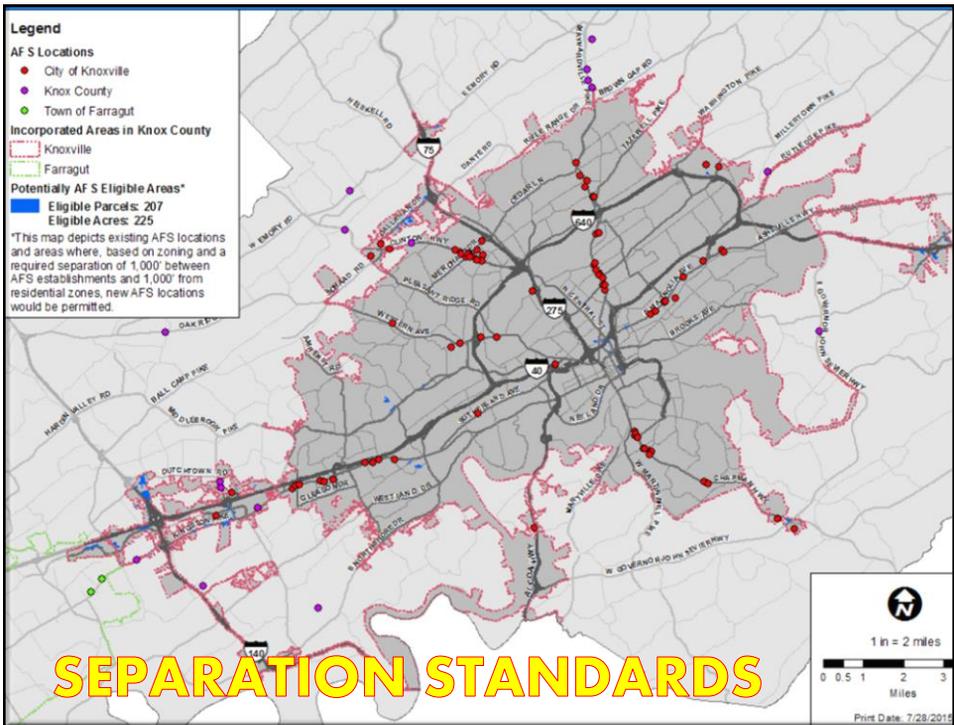
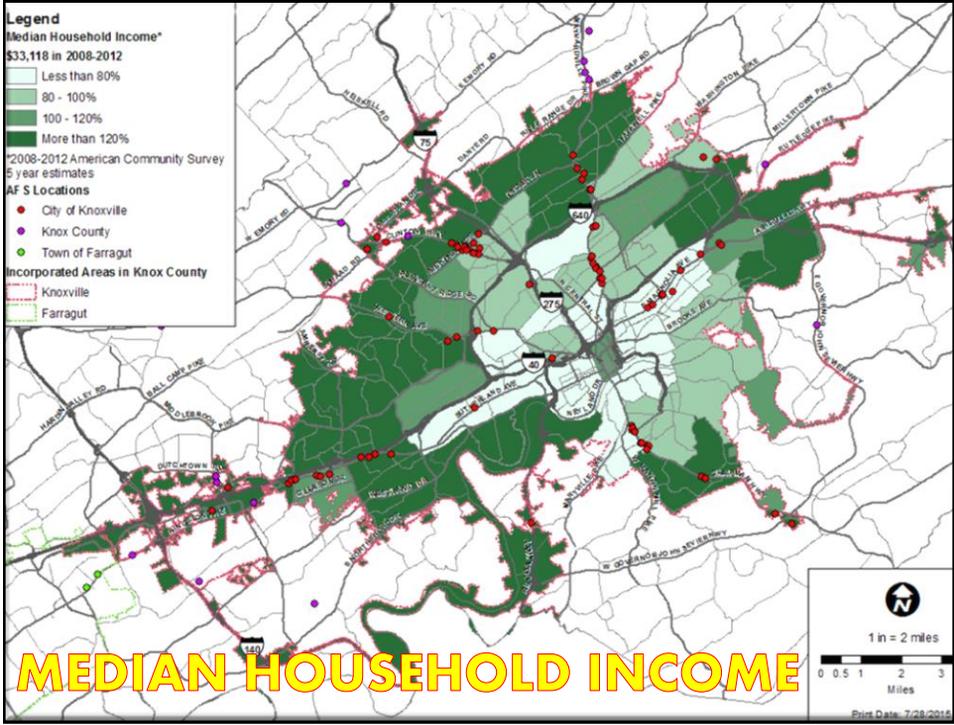


MPC DATA IN MAPS

- Location & Type
- Clustering
- Location Compared to Median Household Income
- 1000' Separation Standard
- Eligible Areas







MPC RECOMMENDATIONS

1. Add a Definition for AFS to the Zoning Ordinance
2. Add a New section in Supplementary Regulations for Spacing Provisions (1000')
3. Add AFS as "Use on Review" to C-3, C-4, and C-6. AFS would also be allowed in the following planned districts: SC-2, SC-3, and PC-1. AFS establishments would not be permitted as a use in any other zoning district.



LEGAL FRAMEWORK

- Preemption
- Tennessee Statutes
- Federal Regulations



PREEMPTION

In law, the term “preemption” refers to situations in which a law passed by a higher authority takes precedence over a law passed by a lower one. Preemption can be express or implied.

The most common challenges to AFS ordinances are on the basis of preemption. These arguments take a variety of forms and tend to occur where a local government attempts to impose licensing requirements or create parameters such as interest rate caps. To name a few, ordinances have been overturned on the basis of preemption in Oakland, CA; St. Ann, MO; Cleveland and Dayton, OH; and Hempstead, NY.



PREEMPTION

Sunrise Check Cashing v. Town of Hempstead, NY

Hempstead limited cash checking businesses to certain districts—the ordinance essentially prohibited the use in most districts. The Court examined state law provisions on check cashing businesses, which related to the licensing and application requirements for the businesses. The rules promulgated by the State required a “business plan containing such information as shall permit the [State] superintendent to make a finding that the granting of the license will promote the convenience and advantage of the area in which the business is to be conducted including a determination that there is a community need for a new licensee in the proposed area to be served.”

The Court found this to be clear evidence that the State superintendent—and not the local government—was responsible for determining the appropriate location for check cashing businesses. Consequently, the zoning regulation in Hempstead was found to be preempted. Upon appeal by the Town to NY’s intermediate court, that Court upheld the lower court and emphasized that this was an abuse of Hempstead’s zoning power.



IN CONTEXT: TENNESSEE STATUTES

- Deferred Presentment: Title 45, Chapter 17
- Title Pledges: Title 45, Chapter 15
 - “No incorporated municipality, city or taxing district in this state shall enact an ordinance or resolution or promulgate any rules or regulations relating to this chapter. The provisions of any ordinance or resolution or rules or regulations of any municipality, city or taxing district relative to title pledge lending are superseded by the provisions of this chapter.”
- Pawn Brokers: Title 45, Chapter 6
- Check Cashing: Title 45, Chapter 18



OTHER ISSUES & CASES

***Missouri Title Loans, Inc. v. St. Louis Bd. Of Adjustment,*
62 S.W.3d 408 (Mo. Ct. App. 2001)**

This case is relevant because it suggests a distinction can be made between AFS and traditional financial services. Additionally, the case suggests certain factors that may be used to deny AFS upon a use on review consideration.

***Roman Check Cashing, Inc. v. NJ Dept. of Banking and Insurance,*
777 A.2d 1 (N.J. 2001)**

This case is relevant because it upheld a distance restriction on check cashing offices and held that the NJ Check Casher Regulatory Act did not improperly differentiate between check cashing business and other types of businesses. It is important to note that this case challenged action by the New Jersey Legislature, rather than action by a local government.



FEDERAL REGULATIONS: BACKGROUND

1990s: Payday lending became more prevalent due to deregulation at state and federal levels. States began to roll back usury caps, and changes in federal laws helped lenders structure their loans so as to avoid the caps.

By 2008, payday-loan stores nationwide outnumbered McDonald's restaurants and Starbucks coffee shops combined.

The Consumer Financial Protection Bureau (CFPB), a federal agency created in the wake of the 2008 financial crisis, is now proposing new rules for short-term, small-dollar lenders.

The CFPB found that 67 percent went to borrowers with seven or more transactions a year, and the majority of borrowers paid more in fees than the amount of their initial loan.



FEDERAL REGULATIONS: PROPOSED RULES

- Published for Comment on June 2
- Comment Period Ends September 14
- Proposed Rules Online [Here](#)
- Acting under authority of the Dodd-Frank Act



FEDERAL REGULATIONS: PROPOSED RULES

“The Bureau is concerned that lenders that make covered loans have developed business models that deviate substantially from the practices in other credit markets by failing to assess consumers’ ability to repay their loans and by engaging in harmful practices in the course of seeking to withdraw payments from consumers’ accounts.”



FEDERAL REGULATIONS: PROPOSED RULES

The rules address 2 categories of loans based on the term:

Short-term loans: terms of 45 days or less, including typical 14-day and 30-day payday loans, as well as short-term vehicle title loans that are usually made for 30-day terms

Longer-term loans: terms of more than 45 days where (i) the fee-inclusive APR is greater than 36 percent; and (ii) the lender has access within 72 hours to a “leveraged payment mechanism”



FEDERAL REGULATIONS: PROPOSED RULES

The rules impose certain Ability To Repay (ATR) protections:

Full payment test: upfront determination of the consumer's ability to repay the loan, meet other major financial obligations, and still pay basic living expenses like food and utilities during the term and 30 days afterwards.

It would be more difficult for lenders to push distressed borrowers into borrowing or refinancing the same debt. Lenders cannot offer the same type of loan within 30 days of a consumer's pay off of a previous loan, unless financial situation has materially improved.



FEDERAL REGULATIONS: PROPOSED RULES

Principal Pay Off Option (Alternative to Full Payment Test):

This option is available on loans of \$500 or less. It would require the debt to be repaid either in a single payment or with up to two extensions where the principal is paid down at each step.

- Lenders would be barred from taking auto title as collateral and from structuring the loan as open-end credit.
- The proposal would require a lender to provide notices before making a loan under the principal payoff option. These notices must use plain language to inform consumers about elements of the option.



FEDERAL REGULATIONS: PROPOSED RULES

Additional Provisions for Protection in Proposed Rules

- Lenders must use credit reporting systems to report and obtain information about loans made under the full payment test or the principal pay off option.
- Longer-term loan options would be available under tight parameters to reduce riskiness.
 - National Credit Union Administration standards
 - Stable Repayment with Low Default Penalty
- Penalty Fee Prevention



POLICY CONSIDERATIONS

- State and Federal Preemption
- Broad Definitions (i.e., pawnbrokers)
- Use of Zoning to Address
 - Appropriate use of zoning authority
 - Limiting payday lending services may hurt the consumer by limiting competition



ADDITIONAL RESOURCES

- [FDIC Primer on AFS](#)
- [Zoning Out Payday Lenders](#)
- [Anti-Agglomeration Zoning and Consumer Welfare](#)
- CFPB publications [here](#) (summary of rules) and [here](#) (analysis and report on industry)



QUESTIONS?

