



COMMONWEALTH of VIRGINIA

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The Honorable G. Glenn Oder
Post Office Box 6161
Newport News, Virginia 23606

Dear Delegate Oder:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a local governing body has the authority, under existing zoning enabling statutes, to classify payday loan businesses as a special exception or special permit use.

Response

It is my opinion that a local governing body has the authority, under existing zoning enabling statutes, to classify payday loan businesses as a special exception or special permit use.

Applicable Law and Discussion

The General Assembly has authorized the governing bodies of Virginia localities to adopt local zoning ordinances.¹ Along with zoning ordinances, local governing bodies have the prerogative to provide for special exceptions.² The action of a local governing body in enacting its zoning ordinance is presumed valid, and carries a presumption that the classification contained in the ordinance is reasonable and not arbitrary or capricious.³ Local governing bodies have "wide discretion in the enactment and amendment of zoning ordinances."⁴ Ordinances are upheld so long as they are not unreasonable or arbitrary.⁵

¹ VA. CODE ANN. § 15.2-2280 (2008).

² Section 15.2-2286(A)(3) (Supp. 2009). The terms "special exception" and "special permit" are interchangeable. *Bd. of Supvrs. of Fairfax County v. The Southland Corp.*, 224 Va. 514, 521, 297 S.E.2d 718, 721-21 (1982). "Both terms refer to the delegated power of the state to set aside certain categories of uses which are to be permitted only after being submitted to governmental scrutiny in each case, in order to insure compliance with standards designed to protect neighboring properties and the public." *Id.* at 521, 297 S.E.2d at 721-22.

³ 224 Va. at 522, 297 S.E.2d at 722.

⁴ *Turner v. Bd. of Supvs. of Prince William County*, 263 Va. 283, 288, 559 S.E.2d 683, 686 (2002) (citation omitted).

⁵ *Id.*

In *Board of Supervisors of Fairfax County v. The Southland Corporation*, the Virginia Supreme Court held that the power to grant or deny special exceptions or use permits is a legitimate exercise of legislative, rather than administrative, power.⁶ The Court further reasoned that, “the decision of the legislative body, when framing its zoning ordinance, to place certain uses in the special exception or conditional use category . . . involves the same balancing of the consequences of private conduct against the interests of public welfare, health, and safety as any other legislative decision.”⁷

You correctly note that the General Assembly has identified payday loan businesses as a separate class from banks, savings and loans, and credit unions when enacting the Payday Loan Act.⁸ A “payday loan” is defined by § 6.1-444 of the Payday Loan Act as “a small, short-maturity loan on the security of (i) a check, (ii) any form of assignment of an interest in the account of an individual or individuals at a depository institution, or (iii) any form of assignment of income payable to an individual or individuals, other than loans based on income tax refunds.” Given this statutory backdrop, there is no reason to believe that payday loan establishments are exempted from the locality’s broad authority to regulate land use through zoning,⁹ provided the ordinances are not unreasonable, arbitrary or capricious.¹⁰

Conclusion

Accordingly, it is my opinion that a local governing body has the authority, under existing zoning enabling statutes, to classify payday loan businesses as a special exception or special permit use.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

⁶ *Id.* at 521-22, 297 S.E.2d at 721-22.

⁷ *Id.* at 522, 297 S.E.2d at 722.

⁸ See VA. CODE ANN. §§ 6.1-444 to 6.1-471 (Supp. 2009).

⁹ Of course, if challenged, the locality would have to make the required showing to justify the classification. See *Southland Corp.*, 224 Va. at 522-24, 297 S.E.2d at 722-23.

¹⁰ See *Schefer v. City Council of Falls Church*, 279 Va. 588, 595, 691 S.E.2d 778, 782 (2010) (citation omitted).