

AGENDA INFORMATION SHEET

AGENDA DATE: March 19, 2013

DEPARTMENT: Legal Department

CA: Anita Burgess, City Attorney

SUBJECT: Consider adoption of an ordinance of the City of Denton, Texas, requiring registration of credit access businesses; defining terms; establishing a registration fee; imposing restrictions on extensions of consumer credit made by credit access businesses; providing recordkeeping requirements; providing defenses; providing a penalty not to exceed \$500; providing a savings clause; providing a severability clause; and providing an effective date.

BACKGROUND: City Council has expressed interest in considering an ordinance regulating credit access businesses. Several cities throughout the state of Texas have done so in recent months, including the City of Dallas which has recently been successful in defending their ordinance against a challenge by the credit access industry at the District Court level.

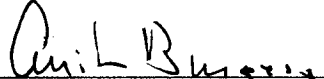
The attached ordinance closely follows the ordinance crafted by the City of Dallas. It requires registration of these businesses with the City and specifies the contents of such registration. It requires that the Certificate of Registration be prominently displayed in the credit access business establishment, and sets the date of expiration for the Certificate. The ordinance requires that certain records be maintained for a specified period of time, and that records be made available for inspection by the City upon request. The ordinance imposes certain restrictions on extensions of consumer credit, to include:

1. Cash advanced under an extension of consumer credit may not exceed 20% of the consumer's gross monthly income.
2. Cash advanced under an extension of consumer credit in the form of a motor vehicle title loan may not exceed the lesser of 3% of the consumer's gross annual income or 70% of the retail value of the motor vehicle, and a credit access business must use a paycheck or other evidence establishing a consumer's income in making such determination.
3. Repayment in installments may not be payable in more than 4 installments, and proceeds from each installment must be used to repay at least 25% of the principal amount extended.
4. An extension of consumer credit that provides for a single lump sum repayment may not be refinanced or renewed more than 3 times, and proceeds from each refinancing or renewal must be used to repay at least 25% of the principal amount of the original extended amount.

The offense under the ordinance is punishable by a fine of not more than \$500, and the ordinance is made effective immediately.

OPTIONS: Approve, deny, or postpone the action.

RECOMMENDATION: Staff recommends approval of this Ordinance.


Anita Burgess, City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REQUIRING REGISTRATION OF CREDIT ACCESS BUSINESSES; DEFINING TERMS; ESTABLISHING A REGISTRATION FEE; IMPOSING RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT MADE BY CREDIT ACCESS BUSINESSES; PROVIDING RECORDKEEPING REQUIREMENTS; PROVIDING DEFENSES; PROVIDING A PENALTY NOT TO EXCEED \$500; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

Credit Access Businesses

SECTION 1. Purpose of Ordinance.

The purpose of this ordinance is to protect the welfare of the citizens of the city of Denton by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this ordinance establishes a registration program for credit access businesses, and imposes recordkeeping requirements on credit access businesses.

SECTION 2. Definitions.

In this ordinance:

- 1) **Certificate of Registration** means a certificate of registration issued by the director under this ordinance to the owner or operator of a credit access business.
- 2) **Consumer** means an individual who is solicited to purchase or who purchases the services of a credit access business.
- 3) **Credit Access Business** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 4) **Deferred Presentment Transaction** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 5) **Director** means the director of the department designated by the City Manager to enforce and administer this ordinance and includes any representatives, agents, or department employees designated by the director.
- 6) **Extension of Consumer Credit** has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.
- 7) **Motor Vehicle Title Loan** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 8) **Person** means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.

- 9) **Registrant** means a person issued a certificate of registration for a credit access business under this ordinance and includes all owners and operators of the credit access business identified in the registration application filed under this ordinance.
- 10) **State License** means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

SECTION 3. Violations; Penalty.

- a) A person who knowingly violates a provision of this ordinance, or who fails to perform an act required of the person by this ordinance, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.
- b) An offense under this ordinance is punishable by a fine of not more than \$500.
- c) The penalties provided for in Subsection (b) are in addition to any other enforcement remedies that the city may have under city ordinances and state law.

SECTION 4. Defense.

It is a defense to prosecution under this ordinance that at the time of the alleged offense the person was not required to be licensed by the state as a credit access business under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

SECTION 5. Registration Required.

A person commits an offense if the person acts, operates, or conducts business as a credit access business without a valid certificate of registration. A certificate of registration is required for each physically separate credit access business.

SECTION 6. Registration Application.

- a) To obtain a certificate of registration for a credit access business, a person must submit an application on a form provided for that purpose to the director. The application must contain the following.
- 1) The name, street address, mailing address, facsimile number, and telephone number of the applicant.
 - 2) The business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business.
 - 3) The names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business and other persons with a financial interest in the credit access business, and the nature and extent of each person's interest in the credit access business.
 - 4) A copy of a current, valid state license held by the credit access business.

5) A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Denton Development Code.

6) A non-refundable application fee of \$50.

b) An application or registrant shall notify the director within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.

SECTION 7. Issuance and Display of Certificate of Registration; Presentment Upon Request.

a) The director shall issue to the applicant a certificate of registration upon receiving a completed application pursuant to Section 6 hereof.

b) A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business. The certificate of registration must be presented upon request to the director or any peace officer for examination.

SECTION 8. Expiration and Renewal of Certificate of Registration.

a) A certificate of registration expires on the earlier of:

1) one year after date of issuance; or

2) the date of expiration, revocation, or other termination of the registrant's state license.

b) A certificate of registration may be renewed by making application in accordance with Section 6. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

SECTION 9. Nontransferability.

A certificate of registration for a credit access business is not transferable.

SECTION 10. Maintenance of Records.

a) A credit access business shall maintain a complete set of records of all extensions of consumer credit made by the credit access business, which must include the following information:

1) The name and address of the consumer.

2) The principal amount of cash actually advanced.

3) The documentation used to establish a consumer's income under Section 11.

b) A credit access business shall maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code, as amended.

d) The records required to be maintained by a credit access business under this section must be retained for at least three years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business.

SECTION 11. Restrictions on Extensions of Consumer Credit.

a) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a deferred presentment transaction may not exceed 20 percent of the consumer's gross monthly income.

b) The cash advanced under an extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining in the form of a motor vehicle title loan may not exceed the lesser of:

- 1) three percent of the consumer's gross annual income; or
- 2) 70 percent of the retail value of the motor vehicle.

c) A credit access business shall use a paycheck or other documentation establishing income to determine a consumer's income.

d) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25 percent of the principal amount of the extension of consumer credit. An extension of consumer credit that provides for repayment in installments may not be refinanced or renewed.

e) An extension of consumer credit that a credit access business obtains for a consumer or assists a consumer in obtaining and that provides for a single lump sum repayment may not be refinanced or renewed more than three times. Proceeds from each refinancing or renewal must be used to repay at least 25 percent of the principal amount of the original extension of consumer credit.

f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

SECTION 12. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2013.

MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: Anita Burgess