

ORDINANCE NO. 2015-4739

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, CREATING CHAPTER 41, "CREDIT ACCESS BUSINESSES" OF THE CODE OF ORDINANCES OF THE CITY OF TEMPLE, TEXAS; PROVIDING A REPEALER; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the creation of Chapter 41 of the Code of Ordinances of the City of Temple, Texas would regulate certain business practices of "Credit Access Businesses," also commonly referred to as "payday lenders" or "auto title loan lenders;"

Whereas, a Credit Access Business ("CAB") is defined in the Texas Finance Code, § 393.601 as a "credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of credit in the form of a deferred presentment transaction or a motor vehicle title loan;"

Whereas, there are currently 15 CAB's operating within the Temple city limits and this proposed ordinance would regulate the business practices of existing and future CAB's in Temple;

Whereas, the proposed ordinance is based off of a model ordinance that was drafted by the Texas Municipal League and that has been adopted by more than 25 cities in Texas - the ordinance would place the following requirements and restrictions on CAB's:

- a CAB must apply for and receive a certificate of registration from the City;
- a CAB must maintain complete records of all loans made by the business for at least 3 years and make the records available to the City for inspection upon request;
- the amount of a payday loan may not exceed 20% of the consumer's gross monthly income;
- the amount of an auto 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;
- any loan that provides for repayment in installments may not be payable in more than 4 installments, and the proceeds from each installment must be used to repay at least 25% of the principal amount of the loan;
- no renewals or refinancing of installment-payment loans would be permitted;
- any loan that provides for a single lump sum repayment may not be refinanced or renewed more than 3 times and the proceeds from each refinancing or renewal must be used to repay at least 25% of the principal amount of the loan;
- any loan made to a consumer within 7 days of a previous loan paid by the consumer constitutes a refinancing or renewal;
- every agreement must be written in the consumer's language of preference and if a consumer is unable to read, it must be read to them in their language of preference prior to signature;
- referral to non-profit credit counseling/financial education providers is required; and
- CAB's would be required to submit the State mandated quarterly reports to the Director of Finance, along with any other information requested by the City and required by the ordinance;

Whereas, CAB's would be required to register with the City Secretary's Office and pay a \$50 annual registration fee and the General Services Department would track registrations to be sure that all CAB's are current;

Whereas, Staff recommends the creation of Chapter 41 of the Code of Ordinances which will be titled "Credit Access Businesses;" and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

Part 1: The City Council creates Chapter 41, "Credit Access Businesses" of the Code of Ordinances of the City of Temple, Texas, as outlined in Exhibit 'A,' attached hereto and incorporated herein for all purposes.

Part 2: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Part 3: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

Part 4: This ordinance shall take effect 90 days after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 5: It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 3rd day of **December**, 2015.

PASSED AND APPROVED on Second Reading on the 17th day of **December**, 2015.

THE CITY OF TEMPLE, TEXAS



DANIEL A. DUNN, MAYOR

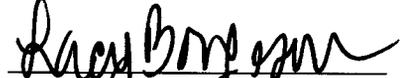
APPROVED AS TO FORM:



Kayla Landeros
City Attorney



ATTEST:



Lacy Borgeson
City Secretary



Chapter 41 - CREDIT ACCESS BUSINESSES

41-1- Short Title and Purpose.

(a) This article may be known and cited as "Credit Access Businesses Regulation."

(b) The purpose of this article is to protect the welfare of the citizens of the City of Temple by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this article establishes a registration program for credit access businesses, imposes restrictions on extensions of consumer credit made by credit access businesses, and imposes recordkeeping requirements on credit access businesses.

41-2- Definitions.

As used in this chapter:

- (1) CERTIFICATE OF REGISTRATION means a certificate of registration issued by the Director under this article 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) CONSUMER'S LANGUAGE OF PREFERENCE is the language the consumer understands best.
- (4) CREDIT ACCESS BUSINESS has the meaning given that term in Section 393.601 of the Texas Finance Code.
- (5) DEFERRED PRESENTMENT TRANSACTION has the meaning given that term in Section 393.601 of the Texas Finance Code.
- (6) DIRECTOR means the Director of the department designated by the City Council, City Manager, or City Councilor City Manager's Designee, to enforce and administer this chapter.
- (7) EXTENSION OF CONSUMER CREDIT has the meaning given that term in Section 393.001 of the Texas Finance Code.
- (8) MOTOR VEHICLE TITLE LOAN has the meaning given that term in Section 393.601 of the Texas Finance Code.
- (9) PERSON means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.

(10) REGISTRANT means a person issued a certificate of registration for a credit access business under this chapter and includes all owners and operators of the credit access business identified in the registration application filed under this chapter.

(11) 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.

41-3- Violations; Penalty

(a) A person who violates a provision of this chapter, or who fails to perform an act required of the person by this chapter, commits an offense. A person commits a separate offense for each and every violation relating to an extension of consumer credit, and for each day during which a violation is committed, permitted, or continued.

(b) An offense under this chapter is a class C misdemeanor, punishable by a fine of not more than \$500.

(c) A culpable mental state is not required for the commission of an offense under this article and need not be proved.

(d) The penalties provided for in Subsection (b) are in addition to any other remedies that the city may have under city ordinances and state law.

41-4- Defenses

It is a defense to prosecution under this article 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.

41-5- 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.

41-6- 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 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 pursuant to Chapter 393, Subchapter G of the Texas Finance Code.

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

(6) A \$50 non-refundable application fee for the amount established.

(b) An applicant 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.

41-7- 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 under Section 41-6.

(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.

41-8- Expiration and Renewal of Certificate of Registration.

(a) A certificate of registration expires on the earliest of:

(1) One year after the date of issuance; or

(2) The date of revocation, suspension, surrender, expiration without renewal, or other termination of the registrant's state license.

(b) A certificate of registration may be renewed by making application in accordance with Section 41-6. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

41-9- Non-transferability.

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

41-10- Maintenance of Records.

(a) A credit access business shall maintain a complete set of records of all extensions of consumer credit arranged or obtained 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 length of the extension of consumer credit, including the number of installments and renewals.
- (4) The fees charged by the credit access business to arrange or obtain an extension of consumer credit; and

(5) The documentation used to establish a consumer's income under Section 41-12 of this ordinance.

(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 a 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.

(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.

41-11- Submission of Quarterly Report.

(a) Each credit access business holding or possessing a current certificate of registration shall be required to submit a quarterly report to the Director of Finance for the City of Temple, which must contain at a minimum the information required for the quarterly reports submitted to the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code.

(b) Failure of a credit access business to submit a quarterly report to the Director of Finance may result in revocation or suspension of the business's certificate of registration in addition to any other penalties allowed under this chapter, other city ordinance or state law.

41-12- Restriction on Extension 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.

41-13- Requirement of Consumer Understanding of Agreement.

(a) Every 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), must be written in the consumer's language of preference. Every credit access business location must maintain on its premises, to be available for use by consumers, agreements in the English and Spanish languages.

(b) For every consumer who cannot read, every 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) must be read to the consumer in its entirety in the consumer's language of preference, prior to the consumer's signature.

(c) For every consumer who cannot read, every disclosure and notice required by law must be read to the consumer in its entirety in the consumer's language of preference, prior to the consumer's signature.

41-14- Referral to Consumer Credit Counseling.

A credit access business shall provide a form, to be prescribed by the Director, to each consumer seeking assistance in obtaining an extension of consumer credit which references non-profit agencies that provide financial education and training programs and agencies with cash assistance programs. The form will also contain information regarding extensions of consumer credit, and must include the information required by 41-10(a)(1)-(5) of this ordinance specific to the loan agreement with the consumer. If the Director has prescribed a form in the consumer's language of preference, the form must be provided in the consumer's language of preference.