

ORDINANCE NO. 7486

AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE OF ORDINANCES TO ADD CHAPTER 14-10, "CREDIT ACCESS BUSINESS", PROVIDING FOR DEFINITIONS, REGISTRATION REQUIREMENTS, CREDIT EXTENSION GUIDELINES, INSPECTION OF RECORDS, AND OTHER REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

WHEREAS, certain credit access businesses engage in abusive and predatory lending practices, offering easy money to those members of our community who are in a tight spot with onerous terms and fees; and

WHEREAS, the practices of certain access businesses cause members of our community to become trapped in a cycle of short term, high interest loans resulting in large debt and huge payments; and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why*, (July 2012), wrote that "payday loans are sold as two-week credit products that provide fast cash, but borrowers are actually indebted for an average of five months per year." The report further noted that "on average, a borrower takes out eight loans of \$375 each per year and spends \$520 on interest;" and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why*, (July 2012), also noted: "How much borrowers spend on loans depends heavily on the fees permitted by their state. The same \$500 storefront loan would generally cost about \$55 in Florida, \$75 in Nebraska, \$87.50 in Alabama, and \$100 in Texas, even if it were provided by the same national company in all those states. Previous research has found that lenders tend to charge the maximum permitted in a state;" and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why*, (July 2012), also stated that "the vast majority of borrowers use the loans on a long-term basis, not temporary one. Thus it seems that the payday loan industry is selling a product few people use as designed and that imposes debt that is consistently more costly and longer lasting than advertised;" and

WHEREAS, the Community Financial Services Association of America (CFSA), the national trade association for companies that offer small dollar, short-term loans or payday advances includes the following in the "Member Best Practices" as listed on its internet site (<http://cfsaa.com/cfsa-member-best-practices.aspx>): "Members shall not allow customers to rollover a payday advance (the extension of an outstanding advance by payment of only a fee) unless expressly authorized by state law, but in such cases where authorized will limit rollovers to four or the state limit, whichever is less." The need for consumer understanding was also outlined on this website: "A contract between a member and the customer must fully outline the terms of the payday advance transaction. Members agree to disclose the cost of the service fee both as a dollar amount and as an annual percentage rate ("APR");" and

WHEREAS, the Center for Responsible Lending, a non-profit, non-partisan organization, states on its internet site (<http://www.responsiblelending.org/other-consumer-loans/tools-resources/fast-facts.html>) that: "car title loans are based on the value of a borrower's car - the ability to repay the loans is not factor in the lending decision..."; "loan rates for a car title are typically 20-30 times that of rates charged by credit card issuers..."; "the average car title customer renews their loan 8 times..."; and, "on a \$500 title loan, this average customer will pay back \$650 in interest over eight months; the principal borrowed will be in addition;" and

WHEREAS, lenders hold onto the motor vehicle title and when borrowers cannot continue to pay the fees, they can lose their vehicles, which can drastically affect the borrower's means of transportation for work and other essential household functions; and

WHEREAS, the City Council finds that the terms of this ordinance strike a reasonable balance between the rights of the loan industry to operate and prosper versus some minimal consumer protections; NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS:

SECTION 1. The Amarillo Municipal Code, Title XIV be and hereby is amended to add chapter 14-10 to read as follows:

Chapter 14-10
CREDIT ACCESS BUSINESSES

Sec. 14-10-1. Short Title and Purpose.

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

(b) The purpose of this article is to protect the welfare of the citizens of the City of Amarillo 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.

Sec. 14-10-2. 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 Manager 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.

Sec. 14-10-3. 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 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, charter, or state law.

Sec. 14-10-4. Applicability; Defenses.

(a) This article applies only to those persons and transactions required to be licensed by the state as a credit access business under Chapter 393, Subchapter G, of the Texas Finance Code. 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.

(b) This article does not apply to those persons and transactions described in Texas Finance Code section 393.002 (as amended) or the Texas Pawnshop Act.

Sec. 14-10-5. Registration Required; Offense.

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

Sec. 14-10-6. 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 this Code of Ordinances.

(6) A non-refundable application fee of \$ 40.00. This fee is due for both an original application and a renewal.

(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.

Sec. 14-10-7. Issuance and Display of Certificate of Registration; Presentment.

(a) The director shall issue to the applicant a certificate of registration upon receiving a completed application under Section 14-10-6.

(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.

Sec. 14-10-8. 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 and paying the fee in accordance with Section 14-10-6. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

Sec. 14-10-9. Non-transferability.

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

Sec. 14-10-10. 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, whether an original transaction or refinancing or renewal of an extension of consumer credit, 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 14-10-11(c).

(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 after date of an extension of credit (whether in the form of an original, refinance, or renewal transaction) expires, terminates, or is cancelled. Such records at each registered

location shall be made available for inspection by the Director or his designee, agent, contractor, at that location, upon request during the usual and customary business hours of the credit access business.

Sec. 14-10-11. 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 twenty percent (20%) 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 (3%) of the consumer's gross annual income; or

(2) 70 percent (70%) of the retail value of the motor vehicle.

(c) A credit access business shall retain a copy of one or more of the following documents used to establish or determine a consumer's income: a paycheck issued to the consumer and dated within the same month as the consumer applies for extension of consumer credit; an IRS Form W-2 issued to the consumer for the preceding tax year; the consumer's personal income tax return for the preceding tax year; or, a signed letter from the consumer's employer signed and dated within the month in which an extension of consumer credit is sought, which states the length of the employer's payroll period and the total wages that the employer pays or expects to pay to the consumer per payroll period.

(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.

Sec. 14-10-12. 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, an original transaction and any refinancing or renewal) and each required notice, disclosure, and other forms must be written in and available for use in English and Spanish at that location. The consumer shall select which of those language versions shall be used for the transaction. This section does not restrict or prevent a credit access business from having and using agreements and other documents that are written in other languages that are commonly encountered at that location, for use by consumers who choose to use forms in such other language(s), if available.

(b) For a consumer who cannot read, every agreement between the credit access business and that consumer evidencing an extension of consumer credit (including but not limited to, an original transaction,

any refinancing or renewal), disclosure, and notice required by law must be read orally to the consumer in English or Spanish. The consumer must provide for any additional or further interpretation into another language, if needed or desired.

Sec. 14-10-13. 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 Sec. 14-10-10(a)(1)-(4) 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.

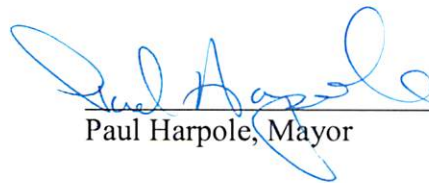
SECTION 2. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 3. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 4. Penalty. A violation of this ordinance is an offense punishable in accordance with the terms stated in SECTION 1 of this ordinance, to be codified at Section 14-10-3 of the Amarillo Municipal Code of Ordinances.


SECTION 5. Publishing and Effective Date. This ordinance shall be published and shall become effective November 1, 2014.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the 9th day of September, 2014; and PASSED on Second and Final Reading the 16th day of September, 2014.



Paul Harpole, Mayor

ATTEST:



Frances Hibbs, City Secretary