

Ordinances Governing
CREDIT ACCESS BUSINESS
in the
CITY OF ARLINGTON
TEXAS

Adopted by Ordinance No. 15-063
(November 17, 2015)

(Chapter Designator: CREDIT ACCESS BUSINESS)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
15-063	11/17/15	Adopt new "Credit Access Business" Chapter of the Code of the City of Arlington relative to setting forth registration requirements and credit extension guidelines for Credit Access Businesses.

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ARTICLE I**PURPOSE AND INTENT****Section 1.01 Adoption of Preamble**

The findings contained in the preamble of this ordinance are determined to be true and correct and are adopted as a part of this ordinance.

Section 1.02 Purpose

The purpose of this Chapter is to protect the welfare of the citizens of the City of Arlington by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this Chapter 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. (Adopt Ord 15-063, 11/17/15)

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

As used in this Chapter:

"Certificate of Registration" means a certificate of registration issued by the Director under this Chapter to the owner or operator of a credit access business.

"Consumer" means an individual who is solicited to purchase or who purchases the services of a credit access business.

"Credit Access Business" has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

"Deferred Presentment Transaction" has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

"Director" means the director of the department designated by the City Manager to enforce and administer this Chapter, and includes the Director's designees.

"Extension of Consumer Credit" has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.

"Motor Vehicle Title Loan" has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

"Person" means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.

"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.

"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. (Adopt Ord 15-063, 11/17/15)

ARTICLE III**REGISTRATION OF CREDIT ACCESS BUSINESSES****Section 3.01 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 3.02 Registration Application

- A. To obtain a certificate of registration for a credit access business, a person must submit to the Director an application on a form prescribed by 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, as amended; and
 5. A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Code of Ordinances of the City of Arlington.
- 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.

Section 3.03 Issuance and Display of Certificate of Registration

- A. The Director shall issue to the applicant a certificate of registration upon receiving a completed application under this Chapter.
- B. A certificate of registration issued under this section must be conspicuously displayed to the public in the credit access business.

Section 3.04 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 the registrant updating the registrant's information in accordance with Section 3.02, as amended, and requesting a renewal. A registrant shall request a renewal at least 30 days before the expiration of the registration.

Section 3.05 Non-transferability

A certificate of registration for a credit access business is not transferable. (Adopt Ord 15-063, 11/17/15)

ARTICLE IV**EXTENSIONS OF CONSUMER CREDIT****Section 4.01 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 4.02, as amended.
- 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, 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. The Director or other representative of the City may inspect such records:
1. upon request, with the consent of a manager, employee, or other authorized representative of the credit access business; or
 2. through a warrant, subpoena, or any other remedy provided by law.

Section 4.02 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.
- G. This section does not apply to extensions of consumer credit, deferred presentment transactions, motor vehicle title loans, and any other contracts or loans that occurred prior to the effective date of this Ordinance. (Adopt Ord 15-063, 11/17/15)

ARTICLE V**ADDITIONAL REGULATIONS****Section 5.01 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 choice of English, Vietnamese or Spanish. Every credit access business location must maintain on its premises, to be available for use by consumers, agreements in the English, Vietnamese, 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 choice of English, Vietnamese or Spanish, 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 choice of English, Vietnamese or Spanish, prior to the consumer's signature.

Section 5.02 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 Section 4.01(a), as amended, specific to the loan agreement with the consumer. If the Director has prescribed a form in English, Vietnamese or Spanish, the form must be provided in the consumer's choice of English, Vietnamese or Spanish. (Adopt Ord 15-063, 11/17/15)

ARTICLE VI

PENALTY AND AFFIRMATIVE DEFENSE

Section 6.01 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 Chapter and need not be proved.
- D. The penalties provided for in this Section are in addition to any other remedies that the City may have under City ordinances and state law.
- E. The offense provisions of this Chapter do not apply to: the customers of a credit access business and consumers of services offered by a credit access business. Such persons cannot commit an offense under this Chapter and cannot be charged with an offense under this Chapter.

Section 6.02 Affirmative Defense

It is an affirmative defense to prosecution under this Chapter 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. (Adopt Ord 15-063, 11/17/15)

Ordinance No. 15-063

An ordinance adding the “Credit Access Business” Chapter to the Code of the City of Arlington, Texas, 1987, relative to setting forth registration requirements and credit extension guidelines for Credit Access Businesses; providing for a fine of up to \$500 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication; and providing for an effective date

- WHEREAS, the practices of certain credit access businesses cause customers 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; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the “**Credit Access Business**” Chapter of the Code of the City of Arlington, Texas, 1987, is hereby adopted to read as follows:

ARTICLE I

PURPOSE AND INTENT

Section 1.01 Adoption of Preamble

The findings contained in the preamble of this ordinance are determined to be true and correct and are adopted as a part of this ordinance.

Section 1.02 Purpose

The purpose of this Chapter is to protect the welfare of the citizens of the City of Arlington by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this Chapter 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.

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DEFINITIONS

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"Consumer" means an individual who is solicited to purchase or who purchases the services of a credit access business.

"Credit Access Business" has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

"Deferred Presentment Transaction" has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

"Director" means the director of the department designated by the City Manager to enforce and administer this Chapter, and includes the Director's designees.

"Extension of Consumer Credit" has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.

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"Person" means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.

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REGISTRATION OF CREDIT ACCESS BUSINESSES

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 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, as amended; and
 5. A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Code of Ordinances of the City of Arlington.

- 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.

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- A. The Director shall issue to the applicant a certificate of registration upon receiving a completed application under this Chapter.
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- 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 the registrant updating the registrant's information in accordance with Section 3.02, as amended, and requesting a renewal. A registrant shall request a renewal at least 30 days before the expiration of the registration.

Section 3.05 Non-transferability

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

ARTICLE IV

EXTENSIONS OF CONSUMER CREDIT

Section 4.01 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:

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 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 4.02, as amended.
- 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, 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. The Director or other representative of the City may inspect such records:
1. upon request, with the consent of a manager, employee, or other authorized representative of the credit access business; or
 2. through a warrant, subpoena, or any other remedy provided by law.

Section 4.02 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.
 - G. This section does not apply to extensions of consumer credit, deferred presentment transactions, motor vehicle title loans, and any other contracts or loans that occurred prior to the effective date of this Ordinance.

ARTICLE V

ADDITIONAL REGULATIONS

Section 5.01 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 choice of English, Vietnamese or Spanish. Every credit access business location must maintain on its premises, to be available for use by consumers, agreements in the English, Vietnamese, 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 choice of English, Vietnamese or Spanish, 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 choice of English, Vietnamese or Spanish, prior to the consumer's signature.

Section 5.02 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 Section 4.01(a), as amended, specific to the loan agreement with the consumer. If the Director has prescribed a form in English, Vietnamese or Spanish, the form must be provided in the consumer's choice of English, Vietnamese or Spanish.

ARTICLE VI

PENALTY AND AFFIRMATIVE DEFENSE

Section 6.01 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 Chapter and need not be proved.
- D. The penalties provided for in this Section are in addition to any other remedies that the City may have under City ordinances and state law.
- E. The offense provisions of this Chapter do not apply to: the customers of a credit access business and consumers of services offered by a credit access business. Such persons cannot commit an offense under this Chapter and cannot be charged with an offense under this Chapter.

Section 6.02 Affirmative Defense

It is an affirmative defense to prosecution under this Chapter 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.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars (\$500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

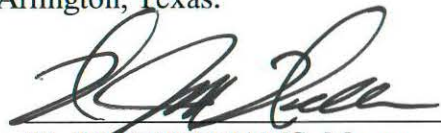
7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.


This ordinance shall become effective on January 1, 2016.

PRESENTED AND GIVEN FIRST READING on the 10th day of November, 2015, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 17th day of November, 2015, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney


BY _____