

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> January 28, 2014		<b>DATE SUBMITTED:</b> January 3, 2014	
<b>DEPARTMENT OF ORIGIN:</b> City Manager's Office		<b>SUBMITTED BY:</b> Hugh R. Walker for Legal Services	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input checked="" type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration of an ordinance to amend Chapter 18 (Businesses) of the Bryan Code of Ordinances by adding Article III, entitled "Credit Access Businesses," which would regulate certain credit access businesses from engaging in abusive and predatory lending practices.			
<b>SUMMARY STATEMENT:</b> A Credit Access Business is a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan. The term originates from Section 393.601 of the Texas Finance Code. The practice of certain credit access businesses is to engage in abusive and predatory lending practices by offering easy money with onerous terms and fees to those members of our community who are in a financial hardship, often leading those members to become trapped in a cycle of short term, high interested loans resulting in large debt and huge payments. Many times, the borrower will use their vehicle title as collateral and when they cannot pay the fees, they may lose their vehicle, which can drastically affect the borrower's means of transportation for work or other essential household functions.			
<p>The purpose of this proposed ordinance is to protect the welfare of the citizens of the City of Bryan by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. The addition of this Article will establish a registration program for credit access businesses, impose restrictions on extensions of consumer credit made by credit access businesses, and impose recordkeeping requirements on credit access businesses. The key terms of this proposed ordinance are as follows:</p> <ol style="list-style-type: none"> <li>(1) A credit access business must apply for and receive a certificate of registration from the City.</li> <li>(2) A credit access business must maintain complete records of all loans made by the business for at least three (3) years and make the records available to the City for inspection upon request.</li> <li>(3) The amount of a payday loan may not exceed 20 percent (20%) of the consumer's (borrower's) gross monthly income.</li> <li>(4) The amount of an auto title loan may not exceed the lesser of three percent (3%) of the consumer's (borrower's) gross annual income or seventy percent (70%) of the retail value of the motor vehicle.</li> <li>(5) Any loan from a credit access business that provides for repayment in installments may not be payable in more than four (4) installments, and the proceeds from each installment must be used to repay at least twenty-five percent (25%) of the principal amount of the loan. No renewals or refinancing of installment-payment loans are permitted.</li> <li>(6) Any loan from a credit access business that provides for a single lump sum repayment may not be refinanced or renewed more than three (3) times, and the proceeds from each refinancing or renewal must be used to repay at least twenty-five percent (25%) of the principal amount of the loan. Any loan made to a consumer within seven (7) days of a previous loan being paid by the consumer constitutes a refinancing or renewal.</li> </ol>			

This proposed ordinance is crafted from a model provided by the Texas Municipal League. Other cities across the State have adopted or are considering adopting similar legislation.

**STAFF ANALYSIS AND RECOMMENDATION:** If the City Council is interested in providing local regulations over certain credit access businesses, then approving this proposed ordinance is recommended. The intent of the proposed ordinance is to reduce the opportunity for credit access businesses to engage in abusive and predatory lending practices.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve the proposed ordinance
2. Approve the proposed ordinance to be effective at a future date or upon a specific event (e.g., disposition of San Antonio litigation, future date to provide citizens time to adjust to the pending change, etc.) – this action may be appropriate for the January 28, 2014, City Council agenda depending on the desired action of the City Council
3. Modify and then approve the proposed ordinance, which may require consideration at a future City Council meeting
4. Do not approve the proposed ordinance

**ATTACHMENTS:**

1. Proposed ordinance

**FUNDING SOURCE:** While specific funding is not necessary, staffs resources will be needed to administer certificates of registration, perform records reviews, and other duties and responsibilities as may be necessary and appropriate to administer this new Article (i.e., proposed ordinance).

**APPROVALS:**

**APPROVED FOR SUBMITTAL: CITY MANAGER** Kean Register, 01-06-2013

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 01-06-2013

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 18 “BUSINESSES” BY ADDING ARTICLE III, ENTITLED “CREDIT ACCESS BUSINESSES”; PROVIDING REGISTRATION REQUIRMENTS AND CREDIT EXTENSION GUIDELINES FOR CREDIT ACCESS BUSINESSES; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR PUBLICATION; AND PROVIDING AN 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 a 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 BRYAN, TEXAS, THAT:**

1.

The findings and recitations contained in the preamble to this ordinance are hereby adopted.

2.

That Chapter 18 of the City of Bryan Code of Ordinances is hereby amended by adding Article III, “Credit Access Businesses” to read as follows:

**ARTICLE III- CREDIT ACCESS BUSINESSES**

**Sec. 18-23. 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 Bryan 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. 18-24. 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 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.

#### **Sec. 18-25. 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 and state law.

#### **Sec. 18-26. 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.

#### **Sec. 18-27. Registration Required**

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. 18-28. 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 Bryan Code.

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

(b) An applicant or registrant shall notify the director within forty-five (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. 18-29. 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 18-28.

(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. 18-30. 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 18-28. A registrant shall apply for renewal at least thirty (30) days before the expiration of the registration.

**Sec. 18-31. Non-transferability.**

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

**Sec. 18-32. 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 18-33 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 (3) years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business.

**Sec. 18-33. 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) Seventy percent (70%) 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 (4) installments. Proceeds from each installment must be used to repay at least twenty-five percent (25%) 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 (3) times. Proceeds from each refinancing or renewal must be used to repay at least twenty-five percent (25%) 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 (7) days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

**Sec. 18.34. 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 consumers in its entirety in the consumer's language of preference, prior to the consumer's signature.

**Sec. 18.35. 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 18-32 (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.

3.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

4.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

5.

Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this Ordinance are declared to be severable.

6.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place and purpose of said meetings was given.

7.

It is the intention of the City Council that this Ordinance shall become a part of the Code of the City of Bryan, Texas, and it may be renumbered and codified therein accordingly.

8.

The City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

9.

This Ordinance shall become effective after publication as required by the City Charter, said date being August 1, 2014.

PRESENTED AND GIVEN first reading the 28<sup>th</sup> day of January, 2014, at a regular meeting of the City Council of the City of Bryan, Texas; and given a second reading, passed and approved on the 3rd day of February, 2014, by a vote of \_\_\_\_\_ yeses and \_\_\_\_\_ noes at a special meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney