

**ORDINANCE NO.**

**AN ORDINANCE AMENDING CHAPTER 4-12 (*REGISTRATION OF CREDIT ACCESS BUSINESSES*) OF THE CITY CODE RELATING TO THE REGISTRATION OF BOTH CREDIT SERVICES ORGANIZATIONS AND CREDIT ACCESS BUSINESSES; CREATING AN OFFENSE AND PENALTY; AND AMENDING THE 2019-2020 FEE SCHEDULE IN ORDINANCE NO. 20190910-002 TO ADD A REGISTRATION APPLICATION FEE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** City Code Chapter 4-12 (*Registration of Credit Access Businesses*) is amended to amend the title of the chapter to read as follows:

**CHAPTER 4-12 REGISTRATION OF CREDIT SERVICES ORGANIZATIONS AND CREDIT ACCESS BUSINESSES.**

**PART 2.** City Code Chapter 4-12 (*Registration of Credit Services Organizations and Access Businesses*) is amended to replace “Director” with “director” in each place that the word appears within Chapter 4-12.

**PART 3.** City Code Section 4-12-1 (*Definitions*) is amended to add new definitions for “Credit Access Fees”, “Credit Services Organization”, “Extension of Consumer Credit Transaction”, and “Valuable Consideration”; to amend the existing definitions for “Certificate of Registration”, “Consumer”, and “Owner”; to delete the definition of “Registrant”; to delete and replace the definition of “Credit Access Business”; and to re-letter the remaining definitions as set forth below:

(A) **CERTIFICATE OF REGISTRATION** means a certificate of registration issued by the director [~~Director~~] under this chapter to the owner or operator of a credit services organization or a credit access business.

(B) **CONSUMER** means an individual who is solicited to purchase or who purchases the services of a credit services organization or a credit access business.

(C) **CREDIT ACCESS BUSINESS** means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of

24 consumer credit in the form of a deferred presentment transaction or a motor  
25 vehicle title loan.

26 (D) CREDIT ACCESS BUSINESS FEES mean the fees charged by a credit access  
27 business pursuant to Section 393.602, Texas Finance Code.

28 (E) CREDIT SERVICES ORGANIZATION means a person who obtains an  
29 extension of consumer credit for a consumer as described in Section  
30 393.001(3)(B), Texas Finance Code, or a person who provides advice or  
31 assistance to a consumer with regard to obtaining an extension of consumer  
32 credit.

33 (I) EXTENSION OF CONSUMER CREDIT TRANSACTION means the entirety  
34 of the agreements made by a consumer to obtain an extension of consumer  
35 credit, and includes any loan agreement between the lender and the consumer,  
36 and any fee agreement between the credit services organization or credit access  
37 business and the consumer.

38 (K) OWNER means, for the purposes of this chapter, any person who directly or  
39 indirectly owns a credit services organization or a credit access business. For  
40 publicly traded companies, the term means any person who directly or  
41 indirectly owns or controls 10% or more of the outstanding shares of stock in  
42 the credit services organization or credit access business.

43 (N) VALUABLE CONSIDERATION means the consideration described in  
44 Section 393.001(3), Texas Finance Code. Valuable consideration includes an  
45 immediate payment and any future payments in exchange for an extension of  
46 consumer credit as described in Section 393.001(3)(B), Texas Finance Code,  
47 or advice or assistance with regard to an extension of consumer credit as  
48 described in Section 393.001(3)(B), Texas Finance Code.

49 **PART 4.** City Code Sections 4-12-2 (*Purpose*), 4-12-10 (*Registration Required*),  
50 4-12-11 (*Registration Application*), 4-12-12 (*Issuance and Display of Certificate of*  
51 *Registration; Presentment Upon Request*), 4-12-13 (*Expiration and Renewal of*  
52 *Certificate of Registration*), 4-12-14 (*Nontransferability*), and 4-12-15 (*Revocation*  
53 *of Certificate of Registration*) are amended to read as follows:

54 **§ 4-12-2 PURPOSE.**

55 The purpose of this chapter is to protect the welfare of the citizens of the  
56 City by monitoring and regulating credit services organizations and credit access

57 businesses [~~in an effort~~] to reduce the harm caused by abusive and predatory  
58 lending practices.

59 **§ 4-12-10 REGISTRATION REQUIRED.**

60 (A) A person may not operate or conduct business as a credit services organization  
61 or as a credit access business without a valid certificate of registration.

62 (B) A certificate of registration is required for each credit services organization or  
63 each credit access business at each location where the credit services  
64 organization or credit access business operates or conducts business.

65 (C) A person operating or conducting a business as both a credit services  
66 organization and a credit access business at the same location may obtain one  
67 certificate of registration per location.

68 **§ 4-12-11 REGISTRATION APPLICATION.**

69 (A) To obtain a certificate of registration for a credit services organization or a  
70 credit access business, a person must submit an application on a form  
71 provided for that purpose to the director [~~Director~~]. The application must  
72 contain the following:

73 [~~(1) the name, street address, mailing address, facsimile number, and~~  
74 ~~telephone number of the registrant;~~]

75 (1) [(2)] the business or trade name, street address, mailing address, facsimile  
76 number, and telephone number of the credit services organization or credit  
77 access business;

78 (2) [(3)] the names, street addresses, mailing addresses, and telephone  
79 numbers of all owners of the credit services organization or the credit  
80 access business and other persons with a financial interest in the credit  
81 services organization or credit access business, and the nature and extent of  
82 each person's interest in the credit services organization or credit access  
83 business;

84 (3) [(4)] a copy of a current, valid state license held by the credit access  
85 business pursuant to Section 393.603, [~~of the~~] Texas Finance Code;

86 (4) a copy of an unexpired, valid state registration statement submitted by the  
87 credit services organization pursuant to Section 393.101, Texas Finance

88 Code, including any updates filed as required by Section 393.102, Texas  
89 Finance Code;

90 (5) a copy of a current, valid certificate of occupancy showing that the credit  
91 services organization or the credit access business complies [is in  
92 compliance] with City Code Title 25 (Land Development Code) [of the  
93 City Code of Ordinances];

94 (6) a non-refundable application fee that is set by separate ordinance [of \$50];  
95 and

96 (7) if a publicly traded company, the name of the registered agent for service  
97 of process in Texas.

98 (B) A credit services organization or credit access business [Registrant] shall  
99 notify the director [Director] in writing at least [no later than] 10 days before  
100 making any material change in its business operations. A material change  
101 includes[, including] changes to the information contained in the application  
102 for a certificate of registration, any change of address, business ownership or  
103 equity interest, store location, type of loan products offered, operating status,  
104 bankruptcy filings, closure of a store, and any change in the status of the state  
105 license held or the state registration statement submitted by the credit services  
106 organization or credit access business that has applied for or that currently  
107 holds a certificate of registration [applicant or registrant].

108 **§ 4-12-12 ISSUANCE AND DISPLAY OF CERTIFICATE OF**  
109 **REGISTRATION; PRESENTMENT UPON REQUEST.**

110 (A) The director [Director] shall issue to a credit services organization or a credit  
111 access business [the Registrant] a certificate of registration for each location  
112 upon receiving a completed application under Section 4-12-11 (*Registration*  
113 *Application*).

114 (B) A certificate of registration issued under this section must be conspicuously  
115 displayed to the public in the credit services organization or the credit access  
116 business. The certificate of registration must be presented upon request to the  
117 director [Director] or the director's [Director's] designee for examination.

118 **§ 4-12-13 EXPIRATION AND RENEWAL OF CERTIFICATE OF**  
119 **REGISTRATION.**

120 (A) A certificate of registration expires on the earlier of:

- 121 (1) one year after the date of issuance; or
- 122 (2) if the certificate of registration is held by a credit access business, on the  
123 date of expiration, revocation, or termination of the credit access  
124 business's [registrant's]state license.

125 (B) A certificate of registration may be renewed by making application in  
126 accordance with Section 4-12-11 (*Registration Application*). A credit services  
127 organization or credit access business [registrant] shall apply for renewal at  
128 least 30 days before the registration expires [expiration of the registration].

129 **§ 4-12-14 NONTRANSFERABLEILITY.**

130 A certificate of registration for a credit services organization or a credit  
131 access business is not transferable.

132 **§ 4-12-15 REVOCATION OF CERTIFICATE OF REGISTRATION.**

133 (A) The director [Director] may revoke a certificate of registration if the director  
134 [Director] determines that a person [has]:

- 135 (1) made a false statement, in writing or orally, related to [an] an application  
136 for a certificate of registration [has made a false oral statement relating to  
137 an application for a certificate of registration,];
- 138 (2) used a device, subterfuge, or pretense to evade the requirements of this  
139 chapter; or
- 140 (3) engaged in serious or repeated violations of this chapter.

141 (B) ~~[If t]~~The director [Director] must give notice of the revocation to [revokes a  
142 certificate of registration, the Director shall notify] the credit services  
143 organization or the credit access business [whose certificate of registration has  
144 been revoked] by regular mail and by certified mail, return receipt requested, at  
145 the address on the application for a certificate of registration. If the certified  
146 letter is returned as undelivered, the director [Director] must post the notice of  
147 revocation on the front door of the location of the [shall notify] credit services  
148 organization or the credit access business [by providing the notice to the credit  
149 access business by hand delivery] that is the subject of the revocation.

- 150 (C) Not later than the 10<sup>th</sup> day after the credit services organization or the credit  
151 access business receives notice of the revocation by the director [~~Director~~], the
- 152 credit services organization or the credit access business may file a notice of  
153 appeal with the director [~~Director~~]. The notice of appeal must be in writing,  
154 describe the decision being appealed, and state the reason why the revocation  
155 should be reversed. Failure to timely file the notice of appeal results in the  
156 revocation [~~Director's action~~] becoming final.
- 157 (D) If a credit services organization or a credit access business timely files a notice  
158 of appeal under this section, the revocation [~~Director's action~~] is stayed.
- 159 (E) The city manager or the city manager's designee shall act as a hearing officer  
160 and hear the appeal. The Texas Rules of Evidence [~~formal rules of evidence~~]  
161 do not apply at a hearing under this section.
- 162 (F) The hearing officer shall hold the hearing not later than the 10<sup>th</sup> day after the  
163 date the notice of the appeal is filed and shall render a written decision not later  
164 than 30 days after the hearing.
- 165 (G) The hearing officer shall make a decision based on the preponderance of the  
166 evidence submitted and may affirm, reverse, or modify the action of the  
167 director [~~Director~~].
- 168 (H) The decision of the hearing officer is final.

169 **PART 5.** City Code Chapter 4-12, Article 3 (*Miscellaneous Requirements for*  
170 *Credit Access Businesses*) is repealed and replaced to read as follows:

171 ***ARTICLE 3. MISCELLANEOUS REQUIREMENTS FOR CREDIT***  
172 ***SERVICES ORGANIZATIONS AND CREDIT ACCESS BUSINESSES***

173 **§ 4-12-20 MAINTENANCE OF RECORDS.**

- 174 (A) A credit services organization and a credit access business shall maintain a  
175 complete set of records of all extensions of consumer credit transactions:
- 176 (1) that the credit services organization or credit access business arranged or  
177 obtained for a consumer; and
- 178 (2) on which the credit services organization or credit access business  
179 provided advice or assistance to a consumer.

180 (B) A complete set of records must include the following information:

- 181 (1) the name and address of the consumer;
- 182 (2) the principal amount of cash actually advanced;
- 183 (3) the fees charged to arrange or obtain an extension of consumer credit;
- 184 (4) the fees charged to advise or assist a consumer in obtaining an extension  
185 of consumer credit;
- 186 (5) the documentation used to establish a consumer's income under Section  
187 4-12-22 (*Restrictions on Extensions of Consumer Credit Transactions*);
- 188 (6) a copy of each written agreement, between the credit services  
189 organization or credit access business and a consumer, evidencing an  
190 extension of consumer credit including, but not limited to, any  
191 refinancing or renewal agreement with the consumer;
- 192 (7) whether any part of the extension of consumer credit transaction has been  
193 refinanced or renewed and, if any part of the extension of consumer  
194 credit transaction has been refinanced or renewed, the number of  
195 refinances or renewals made; and
- 196 (8) a copy of each written agreement between the lender and consumer.

197 (C) A credit access business shall also maintain, and file with the director, copies,  
198 in a format prescribed by the director, of all annual reports, quarterly reports,  
199 and all revisions and updates to those reports filed with the Texas Consumer  
200 Credit Commissioner as required by Chapter 393, Texas Finance Code. The  
201 reports, revisions, and updates must be submitted to the City within five  
202 business days of being submitted to the Texas Consumer Credit  
203 Commissioner.

204 (D) The records required to be maintained under this section:

- 205 (1) must be retained for at least three years; and
- 206 (2) to the extent not filed with the director, made available for inspection and  
207 copying by the City upon request during usual and customary business  
208 hours.

209 **§ 4-12-21 CONSUMER RIGHT TO COPY OF AGREEMENT.**

210 (A) A credit services organization and a credit access business shall give to the  
211 consumer, upon request, a printed copy of a signed contract, and any other  
212 document the credit services organization or credit access business requires a  
213 consumer to sign or acknowledge reading.

214 (B) All contracts and other documents that a credit services organization or credit  
215 access business requires the consumer to sign or acknowledge reading shall be  
216 in the language in which the contract was negotiated and explained to the  
217 consumer.

218 **§ 4-12-22 RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT**  
219 **TRANSACTIONS.**

220 (A) A credit services organization or credit access business shall not obtain for a  
221 consumer, or advise or assist a consumer in obtaining, a cash advance, under  
222 an extension of consumer credit transaction, that exceeds more than 20  
223 percent of the consumer's gross monthly income.

224 (B) A credit services organization or credit access business shall not obtain for a  
225 consumer, or advise or assist a consumer in obtaining, a cash advance in the  
226 form of a motor vehicle title loan that exceeds the lesser of:

227 (1) three percent of the consumer's gross annual income; or

228 (2) 70 percent of the retail value of the motor vehicle.

229 (C) A credit services organization or credit access business shall use a paycheck,  
230 bank statement, IRS Form W-2 from the previous tax year, the previous year's  
231 tax return, a signed letter from an employer, or other similar documentation  
232 establishing income to determine a consumer's income.

233 (D) A credit services organization or credit access business shall not obtain for a  
234 consumer, or advise or assist a consumer in obtaining, an extension of  
235 consumer credit transaction that by its terms:

236 (1) allows for five payments or more of the total amount of the extension of  
237 consumer credit transaction, including any principal, interest, fees,  
238 valuable consideration, credit access business fees, and any other charges  
239 or costs; or

240 (2) fails to reduce by at least 25 percent per payment the total amount of the  
241 extension of consumer credit transaction, including any principal,  
242 interest, fees, valuable consideration, credit access business fees, and any  
243 other charges or costs.

244 (E) A credit services organization or credit access business shall not refinance or  
245 renew an extension of consumer credit transaction, unless the total amount of  
246 the extension of consumer credit transaction, including any principal, interest,  
247 fees, valuable consideration, credit access business fees, and any other charges  
248 or costs, is due in a single payment.

249 (F) A credit services organization or credit access business that refinances or  
250 renews an extension of consumer credit transaction under Subsection (E):

251 (1) may not refinance or renew the extension of consumer credit transaction  
252 more than three times; and

253 (2) the minimum payment amount due to refinance or renew such extension  
254 of consumer credit transaction must reduce by at least 25 percent the total  
255 amount of the extension of consumer credit transaction, including any  
256 principal, interest, fees, valuable consideration, credit access business  
257 fees, and any other charges or costs, such that the total amount owed by  
258 the consumer is paid in full after a maximum of three refinances or  
259 renewals.

260 (G) For purposes of this section, an extension of consumer credit transaction that  
261 is made to a consumer within seven business days after a previous extension  
262 of consumer credit transaction has been paid by the consumer constitutes a  
263 refinancing or renewal.

264 **§ 4-12-23 REFERRAL TO CONSUMER CREDIT COUNSELING.**

265 (A) A credit services organization and a credit access business shall provide a list  
266 of non-profit agencies that provide financial education, training programs, or  
267 cash assistance programs to each consumer who seeks to obtain or seeks  
268 advice or assistance on obtaining an extension of consumer credit. The list  
269 must be on a form approved by the director and contain information regarding  
270 extensions of consumer credit.

271 (B) A credit services organization and a credit access business must conspicuously  
272 display a poster, or other similar document, that contains information

273 regarding extensions of consumer credit, as prescribed by the director. The  
274 organization or business must display the poster or similar document so that it  
275 is clearly visible to each consumer who enters the facility.

276 **§ 4-12-24 RESTRICTIONS ON NON-DEFERRED PRESENTMENT OR**  
277 **MOTOR VEHICLE TITLE LOAN EXTENSIONS OF CONSUMER**  
278 **CREDIT.**

279 (A) This section applies to an extension of consumer credit transaction that a  
280 credit services organization obtains or arranges for a consumer or provides  
281 advice or assistance to obtain and that is not a deferred presentment  
282 transaction or a motor vehicle title loan.

283 (B) The sum of all valuable consideration, fees, or other charges owed by the  
284 consumer to the credit services organization may not exceed 0.1 percent per  
285 day of the outstanding balance of the extension of consumer credit.

286 **§ 4-12-25 COMPLIANCE REQUIRED.**

287 A person may not knowingly use a device, subterfuge, or pretense to evade  
288 the application of this chapter.

289 **§ 4-12-26 OFFENSE AND PENALTY.**

290 (A) A person who violates any section of this chapter commits a Class C  
291 misdemeanor punishable by a fine not to exceed \$500.

292 (B) Except as provided in Subsection (C), each day that a violation occurs is a  
293 separate offense.

294 (C) Each extension of consumer credit transaction is a separate offense if the  
295 extension of consumer credit transaction violates:

296 (1) Section 4-12-22 (*Restrictions on Extensions of Consumer Credit*  
297 *Transactions*); or

298 (2) Section 4-12-24 (*Restrictions on Non-Deferred Presentment or Motor*  
299 *Vehicle Title Loan Extensions of Consumer Credit*).

300 (D) The penalties provided for in Subsection (A) are in addition to any other  
301 remedies available under City ordinance or state law.

302 (E) Except for an offense under Section 4-12-25 (*Compliance Required*), a  
303 culpable mental state is not required for a violation of this chapter and need  
304 not be proved.

305 **PART 6.** The 2019-2020 Fee Schedule attached as Exhibit “A” to Ordinance No.  
306 20190910-002 is amended to add a “Credit Service Organization/Credit Access  
307 Business” fee of \$50 for Telecommunications and Regulatory Affairs, as follows:

308 **Fee Notes**

309 *Telecommunications and Regulatory Affairs*

310 **PROFESSIONAL SERVICES/ANALYSIS**

311 PC Community Program Software License Fee \$6 per license

312 **CREDIT SERVICE ORGANIZATIONS/CREDIT ACCESS BUSINESSES**

313 Registration Application Fee \$50 per application

314 **PART 7.** This ordinance takes effect on \_\_\_\_\_, 2020.

315  
316  
317 **PASSED AND APPROVED**

318  
319 §  
320 §  
321 \_\_\_\_\_, 2020 § \_\_\_\_\_

322 Steve Adler  
323 Mayor

324  
325  
326 **APPROVED:** \_\_\_\_\_

327 Anne L. Morgan  
328 City Attorney

326 **ATTEST:** \_\_\_\_\_

327 Jannette S. Goodall  
328 City Clerk