

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** City Attorney

**AGENDA DATE:** Introduction: January 2, 2013  
Public Hearing: January 8, 2013

**CONTACT PERSON NAME AND PHONE NUMBER:** Sol M. Cortez, 541-4119

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS) OF THE EL PASO CITY CODE BY ADDING CHAPTER 5.17(CREDIT ACCESS BUSINESSES) IN ORDER TO SET FORTH REGISTRATION REQUIRMENTS AND CREDIT EXTENSION GUIDELINES THE PENALTY BEING PROVIDED IN SECTION 5.17.030 (VIOLATIONS; PENALTY) OF THE EL PASO CITY CODE.

**BACKGROUND / DISCUSSION:**

Attached is the proposed ordinance to amend Title 5 Building and Construction to add Chapter 5.17 Credit Access Businesses to protect El Paso consumers from high costs payday loans and auto title loans. The provisions will make loans more affordable to El Paso consumers based on their income and help to limit the abusive practice of trapping consumers in a cycle of debt. Consumers will be provided with information about non-profit agencies which can help with financial counseling and make sure that consumers are provided the contract documents in the language the borrowers understand.

**PRIOR COUNCIL ACTION:**

Yes, Council discussed the adoption a payday lending ordinance on the Special City Council Meeting on December 6, 2012.

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

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

**AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS) OF THE EL PASO CITY CODE BY ADDING CHAPTER 5.17(CREDIT ACCESS BUSINESSES) IN ORDER TO SET FORTH REGISTRATION REQUIRMENTS AND CREDIT EXTENSION GUIDELINES THE PENALTY BEING PROVIDED IN SECTION 5.17.030 (VIOLATIONS; PENALTY) OF THE EL PASO CITY CODE.**

**WHERE AS**, 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

**WHERE AS**, 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

**WHERE AS**, 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.” It was further noted that “on average, a borrower takes out eight loans of \$375 each per year and spends \$520 on interest.”; and

**WHERE AS**, 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

**WHERE AS**, 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

**WHERE AS**, 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 of 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

**WHERE AS**, the Center for Responsible Lending, a non-profit, non-partisan organization, state 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

**WHERE AS**, 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

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**Section 1.** That Title 5 (Business License and Permit Regulations) of the City of El Paso Code, is amended to add Chapter 15.17, Credit Access Businesses, to read as follows:

**Chapter 5.17- CREDIT ACCESS BUSINESSES**

**5.17.010- Short Title and Purpose.**

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

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

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

**5.17.020- 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, 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.

**5.17.030- 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

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

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.

### **5.17.040- 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.

### **5.17.050- 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.

### **5.17.060- 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 El Paso Code.

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

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

(b) An applicant or registrant shall notify the director within 45 days after any material change in the information contained in the application for a certificate of registration, including, but not limited to, any change of address and any change in the status of the state license held by the applicant or registrant.

**5.17.070- 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 5.17.040.

(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.

**5.17.080- 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 5.17.040. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

**5.17.090- Non-transferability.**

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

**5.17.100-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.

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

(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 5.17.110.

(b) A credit access business shall maintain a copy of each written agreement between the credit access business and a consumer evidencing an extension of a consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

(c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code.

(d) The records required to be maintained by a credit access business under this section must be retained for at least three years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business.

#### **5.17.110- 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.

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

(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.

**5.17.120- 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.

**5.17.130- 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 5.17.100(a)(1)-(5) 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 to the consumer’s language of preference.

**Section 2.** Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had

been enacted and ordained without the portion held to be illegal, inoperative, unconstitutional, invalid, or ineffective.

**Section 3.** This ordinance shall take effect July 1, 2013

**ADOPTED THIS** \_\_\_\_\_ day of \_\_\_\_\_ 2013.

**CITY OF EL PASO**

ATTEST:

\_\_\_\_\_  
John F. Cook, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sol M. Cortez  
Assistant City Attorney

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

12-1078-010.001 / PL#149988  
Ordinance amending Title 5  
Adding Credit Access Businesses  
SMC

JOHN COOK  
MAYOR



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
EMMA ACOSTA, DISTRICT 3  
CARL ROBINSON, DISTRICT 4  
DR. MICHEL NOE, DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
CORTNEY NILAND, DISTRICT 8

JOYCE WILSON  
CITY MANAGER

## MAYOR AND COUNCIL

# MEMORANDUM

**TO:** Mayor and Council

**FROM:** Susie Byrd, City Representative, District #2

**DATE:** December 3, 2012

**RE:** LRC Agenda Back up: Discussion and action on adopting a payday lending ordinance to protect consumers from high costs loans.

Dear Mayor and Council:

At Thursday's Special City Council meeting, I would like you to consider beginning the process to adopt an ordinance whose intent is to curb the harmful effects of payday loans and auto title loans for El Paso consumers.

The State of Texas has failed to protect consumers from high cost loans that trap them in a cycle of debt where they continue to pay fees and interest but never pay off the loan. Many cities are stepping up to protect Texas consumers. El Paso should join them.

According to the Texas Fair Lending Alliance, "The average Texas borrower pays \$840 or more for a \$300 loan and around \$1,000 per month in *fees alone* for a \$4,000 auto title loan. Borrowers often pay these fees month after month without reducing the loan principal."

The proposed ordinance modeled after similar legislation passed in Dallas, Austin and San Antonio would:

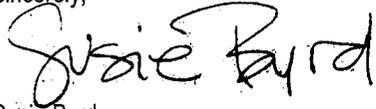
- Require Credit Access Businesses to register with the City and to maintain records of loans made to consumers that can be reviewed by the City
- Limit payday loans to 20% of the borrower's gross monthly income.
- Limit auto title loans to the lesser of 3% of the borrower's gross annual income or 70% of the vehicle value.
- Limit loans to no more than four installments or three rollovers or renewals (a rollover or renewal is defined as an extension of consumer credit made within seven days of the previous extension of credit).
- Require the proceeds from each installment or renewal to reduce the loan principal by 25%.
- Requiring that every contract be written in a language the borrower can understand, or be read in its entirety to any borrower who cannot read.
- Requiring the lender to provide to the borrower a form created by the city, which references non-profit agencies that provide financial education and agencies with cash assistance programs, and contains general information regarding extensions of consumer credit.

While the City cannot cap fees and interest, these provisions will make loans more affordable to El Paso consumers based on their income and help to limit the abusive practice of trapping consumers in a cycle of debt where they never pay down the principal. Additionally, consumers will be provided with information about non-profit agencies which can help with financial counseling and make sure that consumers are provided the contract documents in the language the borrowers can understand.

The Texas AARP and the El Paso Credit Union Affordable Housing Group are supportive of any local measures to curb the harmful effects of these high costs loans on consumers.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Susie Byrd". The signature is written in a cursive, flowing style.

Susie Byrd  
City Council Representative, District 2

AN ORDINANCE 2012-09-20-0739

REGULATING CREDIT ACCESS BUSINESSES;  
ESTABLISHING CERTAIN FEES AND FINES; AND  
AMENDING THE CITY CODE OF SAN ANTONIO, TEXAS TO  
REFLECT SUCH CHANGES.

\* \* \* \* \*

**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 credit 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." It was 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 a temporary one. Thus it seems that the payday loan industry is selling a product that 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, stated on its internet site (<http://www.responsiblelending.org/other-consumer-loans/car-title-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 loan is not a factor in the lending decision ..."; "loan rates for 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**, this ordinance was initiated by a Council Consideration Request (CCR) by Councilman Diego Bernal, and this issue was twice presented to the Governance Committee for consideration and review, which recommended consideration by the full City Council; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** That CHAPTER 16, "LICENSES AND BUSINESS REGULATIONS" of the San Antonio Municipal Code is hereby amended by adding new Article XVI, "Credit Access Businesses," composed of Sections 16 - 901 through 16 - 913, to read as follows:

**ARTICLE XVI.  
CREDIT ACCESS BUSINESSES**

**Sec. 16-901. - Short title and purpose.**

- (a) This article may be known and cited as "Credit Access Businesses Regulation."
- (b) The purpose of this article is to protect the welfare of the citizens of the City of San Antonio 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. 16-902 - Definitions.**

As used in this article:

- (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, or the city manager's designee, to enforce and administer this article and includes any representatives, agents, or department employees designated by the director.

(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 article and includes all owners and operators of the credit access business identified in the registration application filed under this article.

(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. 16-903 - Violations; penalty.**

(a) A person who violates a provision of this article, or who fails to perform an act required of the person by this article, 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 article 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. 16-904 - 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. 16-905 - 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.

**Sec. 16-906 - 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 other persons with a financial interest in 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 San Antonio Unified Development Code.
- (6) A non-refundable application fee of \$50.

(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. 16-907 - 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 16-906.

(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. 16-908 - Expiration and renewal of certificate of registration.**

(a) A certificate of registration expires on the earlier 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 16-906. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

**Sec. 16-909 - Non-transferability.**

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

**Sec. 16-910 - 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 16-911.

(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 consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer).

(c) A credit access business shall maintain copies of all quarterly reports filed with the Texas Consumer Credit Commissioner under Section 393.627 of the Texas Finance Code.

(d) The records required to be maintained by a credit access business under this section must be retained for at least three years and made available for inspection by the city upon request during the usual and customary business hours of the credit access business.

**Sec. 16-911 - Restriction on extensions 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.

**Sec. 16-912 - Requirement consumer understand the agreement.**

(a) Every agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer), must be written in the consumer's language of preference. Every credit access business location must maintain on its premises, to be available for use by consumers, agreements in the English and Spanish languages.

(b) For every consumer who cannot read, every agreement between the credit access business and a consumer evidencing an extension of consumer credit (including, but not limited to, any refinancing or renewal granted to the consumer) must be read to the consumer in its entirety in the consumer's language of preference, prior to the consumer's signature.

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

**Sec. 16-913 - 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. 16-910 (a)(1) - (5) 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 to the consumer in the consumer's language of preference.

**SECTION 2.** Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, for any reason, be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be illegal, inoperative, unconstitutional, invalid or ineffective.

**SECTION 3.** The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

**SECTION 4.** The City Clerk of the City of San Antonio is hereby directed to publish notice of this ordinance as required by the Charter of the City of San Antonio and the laws of the State of Texas.

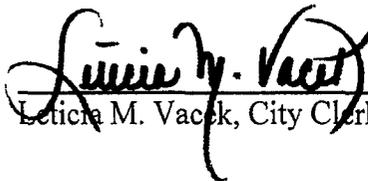
**SECTION 5.** This ordinance shall take effect January 1, 2013.

**PASSED and APPROVED** this 20th day of September, 2012.

  
M A Y O R  
Julián Castro

**ATTEST:**

**APPROVED AS TO FORM:**

  
Leticia M. Vaccik, City Clerk

  
Michael Bernard, City Attorney



Request for  
**COUNCIL  
 ACTION**

City of San Antonio



## Agenda Voting Results - 29

<b>Name:</b>	29						
<b>Date:</b>	09/20/2012						
<b>Time:</b>	01:52:33 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance adding new Article XVI, "Credit Access Businesses" to the City Code of San Antonio, Texas; establishing a registration program for credit access businesses; imposing restrictions on credit access businesses; establishing violations; providing an effective date for January 1, 2013; and providing for publication. [Michael D. Bernard, City Attorney]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				x
Rey Saldaña	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				



Texas Fair Lending Alliance

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# Stop Predatory Lending.

## Payday and auto title loans destabilize families and undermine local economies.

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**Industry Says:** These loans meet the needs of families with difficulty accessing credit. Limiting what payday and auto title lenders can charge for their product would force them out of business—costing the state jobs and millions in tax revenue.

### Texas Fair Lending Alliance Says: Not True!

- **Payday and auto title loans help in the short-term, but create a long-term debt trap.** On average, borrowers are in debt of 212 days during the first year of a loan and are about 88% more likely than the general population to file for Chapter 13 bankruptcy within two years of borrowing.\*
- **Families struggling with payday and auto title loan debt are draining the limited resources of faith communities and local charities.** The demand is exceeding their capacity to help families cover rent, utilities, or a medical bill.
- **Inflated fees on payday and auto title loans undermine local economies—this is money not spent in the community on goods and services.** Bankruptcies, loss of bank accounts, and delinquencies in paying bills further contribute to a drain on the local economy.
- **For every Texan employed by this industry, a hundred-fold are struggling.** The high recurring fees and 500% APR charged on payday and auto title loans are to blame.
- **A concentration of payday and auto title lenders in lower-income communities discourages other types of economic development.** The cities of Dallas, Austin, and San Antonio passed ordinances limiting the clustering of new outlets in low-income areas and on major highways.

#### Bottom Line:

1. Payday and auto title businesses do offer loans at lower cost in other states. Texas consumers should not continue to underwrite 60% of the annual profits of this industry's largest publicly traded companies.
2. Reducing the cost of these loans benefits consumers and allows more freedom of choice.

\*For sources, please contact Brett Merfish at [bmerfish@texasppleaseed.net](mailto:bmerfish@texasppleaseed.net) or see the Texas Fair Lending Alliance website at [www.texasfairlending.org](http://www.texasfairlending.org).



Texas Fair Lending Alliance

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# Texans Deserve Better.

**Payday and auto title loans are defective products—  
designed to trap borrowers in a cycle of debt.**

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**Industry Says:** Additional regulation is unnecessary and would only restrict borrowers' freedom of choice.

## **Texas Fair Lending Alliance Says: Not True!**

- **Limits on rates and fees are needed.** The average borrower pays \$840 or more for a \$300 loan and around \$1,000 per month in *fees alone* for a \$4,000 auto title loan.\* Borrowers often pay these fees month after month *without reducing the loan principal*.
- **Unlimited loan rollovers compound the problem.** Payday and auto title loans are structured to require full repayment of the loan principal *within two to four weeks*. As a result, borrowers roll over these loans an average of nine times. Loan rollovers account for 76% of all payday loan volume—inflating industry profits by more than \$20 billion annually.\*
- **It is critical that Texas enforce basic standards for affordable credit.** The current regulatory climate makes it difficult for lower-cost products to compete on the same scale with heavily-marketed, high-cost payday and auto title loans saturating low-income neighborhoods.
- **Capping rates and fees would not put payday and auto title lenders out of business.** There is a need for a range of small-dollar loan products, but allowing high-cost lenders to dominate is not *free market* and hurts consumers. The payday and auto title industry continues to offer loans in other states at lower rates and fees.

### **Bottom Line:**

Payday and auto title companies can make a *fair profit* and consumers can have *access to fair credit* when:

1. The number of allowable loan rollovers are limited, payments actually pay down the principal, and borrowers' capacity to repay is evaluated before a loan is issued.
2. Basic standards for affordable credit are enforced—ending 500%+ APR and excessive fee charges.

\*For sources, please contact Brett Merfish at [bmerfish@texaspeopleseed.net](mailto:bmerfish@texaspeopleseed.net) or see the Texas Fair Lending Alliance website at [www.texasfairlending.org](http://www.texasfairlending.org).

# What is a Payday or Auto Title Loan?

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## Payday loan

- small cash advance
- two weeks loan term
- interest and fees
- unsecured, but require postdated check or electronic access to a debit account as collateral

## Auto title loan

- car title is used as collateral
- typical term of one month
- interest and fees
- if a borrower defaults, loan company can take the car



# Storefronts are Multiplying.

- Around 3,300 payday and auto title storefronts in Texas

- **123** storefronts in El Paso

**More storefronts than McDonald's  
and Whataburgers combined!**

# Texans are Being Harmed

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- Texans pay more for these loans than people in other states
  - Most common regulatory schemes are rate cap around 36% APR or fee cap of \$10-\$15.50 per \$100 borrowed
  - **On average, Texans pay \$22 per \$100 borrowed.**
  - **El Pasoans pay, \$23.16 per \$100 borrowed.**



# Defective Products

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- **Usurious rates**, often 500% to 1,000% APR
- **Excessive fees**
  - Fees on a \$4,000 auto title loan are over \$1,000 per month.
  - The average borrower paid \$841.49 for a \$471.31 loan in the first 3 months of the year



**Cycle of debt:** high fees are often paid month after month without reducing the loan amount.

- Nearly **75% of Texas borrowers rollover loans**
  - Average of 2.6 rollovers in a 3-month period.

# El Paso Families are Hurting.\*

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- 83% of payday and auto title borrowers had a hard time paying the loan back on the due date\*;
- 70% -75% had to get a new loan because they couldn't pay the first loan\*; and
- 77% said the loans make it harder to cover other bills\*
- on average, borrowers are in debt of 212 days during a loan's 1st year of a loan

\*2010 Survey of Texas borrowers.

# High Rate of Repossession

Since January 2012, CABs have repossessed **over 17,000 vehicles** because of auto title loan defaults.

- Repossession rates ranged from 7% to 16% of all loan customers depending on the loan product
- 306 cars have been repossessed in El Paso in the first half of this year for failure to pay back auto title loans



# Proposed Ordinance

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- **Limit loan size** according to borrowers' ability to pay
  - Payday loans—limited to 20% of the borrower's gross monthly income.
  - Auto title loans—limited to the lesser of 3% of the borrower's gross annual income or 70% of the vehicle value
- **Limit # of installments to 4 and rollovers/renewals to 3**
- **Proceeds from each installment or renewal must reduce loan principal by 25%**
- **Defines rollover or renewal** as any extension of consumer credit made w/n 7 days of the previous extension of credit.
- **Register with the city**
- **Provide consumer with information about financial counseling from area non-profits.**
- **Provide consumer with information about loan in their preferred language.**

DRAFT RESOLUTION  
OF  
**THE CITY OF EL PASO**  
TO REQUEST THAT THE TEXAS STATE LEGISLATURE AND THE GOVERNOR OF TEXAS TAKE  
ACTION TO STOP USURIOUS LENDING BY PAYDAY AND AUTO TITLE LENDERS  
AND  
TO SUPPORT CITIES' AUTHORITY TO PASS ORDINANCES AIMED AT CURTAILING CREDIT  
ACCESS BUSINESSES' EXPLOITATION OF ECONOMICALLY VULNERABLE CITIZENS

WHEREAS, the Council of the City of El Paso, represents the citizens of the City of El Paso;

WHEREAS, citizens of the City of El Paso are deeply concerned about the harmful effects of payday and auto title lending practices in our community and throughout Texas;

WHEREAS, in the state of Texas there are over 3,300 of these lending storefronts, operating outside of state usury laws, evading licensed consumer lending standards under Texas law, and making over \$3 billion in high-cost loans to Texas families each year;

WHEREAS, there are at least 122 of these loan businesses in our local community promising "easy credit" only to hurt people with annual percentage rates upwards of 500% and loan terms that often pull people deeper into debt;

WHEREAS, in response to the targeting of working families, senior citizens, and military families who struggle to pay rent, bills, and provide for other basic needs, at least 16 states and the District of Columbia have adopted 36% or lower annual percentage rate cap for these small loans;

WHEREAS, upon the Department of Defense's finding that these loans, "undermine military readiness, harm the morale of troops and their families, and add to the cost of fielding an all-volunteer fighting force", the federal government enacted a rate cap of 36% for loans up to 90 days and up to \$2,000 to protect certain members of the military from exploitation; however, Texas payday lenders have found ways to evade the rate cap and continue to exploit the military community;

WHEREAS, to prevent payday and auto title lenders from trapping borrowers in a perpetual cycle of debt, other states have implemented provisions such as rate caps, fee caps, prorated fees, and limits on the total number of loans per consumer to ensure that borrowers can actually repay loans on time; and in these states, payday and auto title businesses continue to operate in compliance with these standards;

WHEREAS, we see a crisis in our community and it is vital that the Texas State Legislature take immediate action;

NOW, THEREFORE, BE IT RESOLVED that:

1. The City of El Paso urges the Texas State Legislature and the Governor of Texas to take action in the next regular session of the State Legislature in 2013 to enact laws that will:
  - o End the exploitative practices of credit access businesses that hurt our communities and struggling Texans by charging usurious and immoral rates and fees;
  - o Affirm cities' right to promote the public welfare and prevent predatory practices by upholding local control, as permitted by current law.
2. The City of El Paso supports cities' authority to pass ordinances aimed at curtailing predatory payday and auto title business practices and ending the damaging cycle of debt and economic drain too often caused by these loans.