

CAUSE NO. _____

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|---------------------------|---|--------------------------|
| ACE CASH EXPRESS, INC., | § | IN THE DISTRICT COURT OF |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | DENTON COUNTY, TEXAS |
| | § | |
| THE CITY OF DENTON, TEXAS | § | |
| | § | |
| Defendant. | § | _____ JUDICIAL DISTRICT |

**PLAINTIFF’S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff ACE Cash Express, Inc. (“ACE”) respectfully files this, its Original Petition and Application for Permanent Injunction and, for cause of action, would show as follows:

I. INTRODUCTION

ACE seeks declaratory and injunctive relief to preclude the Defendant, the City of Denton (the “City”), from enforcing City Ordinance No. 2013-073 (the “Ordinance”), an arbitrary and unreasonable law, which prevents ACE from providing essential credit services to low- and moderate-income citizens of Denton and effectively running its lawfully established business. The Ordinance lacks a substantial relation to the health, safety, morals or general welfare of the citizens of the City and stymies a model corporate citizen’s ability to run its business. Accordingly, ACE seeks from this Court (1) a declaration that the Ordinance is unenforceable and (2) injunctive relief precluding the City from enforcing the Ordinance.

II. DISCOVERY CONTROL PLAN

1. ACE requests that discovery be conducted in this case under a Level Three discovery control plan. The amount in controversy in this matter is difficult to quantify at this

time, but Plaintiff seeks non-monetary relief in the form of a permanent injunction and monetary relief in an amount less than \$100,000.

III. PARTIES

2. ACE is a Texas corporation with its principal place of business in Irving, Texas. ACE is duly registered to conduct business in Texas, and it operates multiple stores located in Texas. ACE is a leading retailer of financial services and offers a variety of services, including arranging for access to payday, title, and installment loans for customers who need them. ACE also offers auto insurance, prepaid debit cards, money transfers, check cashing, and bill payment services.

3. Defendant City of Denton is an incorporated city. Pursuant to Section 17.024(b) of the Texas Civil Practice and Remedies Code, Defendant City of Denton may be served with process by serving the City of Denton Secretary at 215 E. McKinney, Denton, Texas 76201.

IV. JURISDICTION & VENUE

4. The Court has subject matter jurisdiction because the amount in controversy is within the jurisdictional limits of this Court, and pursuant to Sections 37.003 and 65.021 of the Texas Civil Practice and Remedies Code because ACE seeks declaratory and injunctive relief.

5. The Court has personal jurisdiction over the City of Denton because the City of Denton is a local government in the State of Texas.

6. Venue of this action is proper in Denton County, Texas, pursuant to Section 15.002(a)(1) and (3) of the Texas Civil Practice and Remedies Code, because all or a substantial part of the events or omissions giving rise to the claim have occurred or will occur in Denton County, Texas.

V. FACTUAL BACKGROUND

A. The State of Texas Enacts Legislation Regulating Credit Access Businesses.

7. On June 17, 2011, Governor Rick Perry signed House Bills 2592 and 2594, both of which amended Chapter 393 of the Finance Code (the “CSO Act”). Those amendments included the creation of a new Chapter G, which provides for the licensing and regulation of credit access businesses (“CABs”). *See* Tex. Fin. Code § 393.601 *et. seq.* (as amended). The effective date of the amendments to the CSO Act was January 1, 2012.

8. Under the terms of the amended CSO Act, CAB’s are credit services organizations that assist consumers in obtaining extensions of consumer credit from third-party lenders. The amendments to the CSO Act require CABs to be licensed by the State of Texas and to conduct their business under the applicable provisions of the Texas Finance Code. As amended, the CSO Act regulates the field of business in which CABs operate. ACE is considered a CAB under the amended CSO Act.

9. The amendments to the CSO Act broadly authorize CABs to assess fees for their services on the terms agreed upon between the CABs and their customers:

A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

See Tex. Fin. Code § 393.602(b) (as amended).

B. The City Enacts the Ordinance to Also Regulate Credit Access Businesses.

10. On March 19, 2013, the Denton City Council approved an amendment to the Denton City Code, the Ordinance, which purports to regulate CABs that operate in the City. *See* Ex. A. The Ordinance regulates the same activity regulated by the amended CSO Act. The

Ordinance is nearly identical in substance to an ordinance enacted earlier by the City of Dallas on June 22, 2011¹ (“the Dallas Ordinance”).

11. The stated purpose of the Ordinance is to:

[P]rotect the welfare of the citizens of the city of Denton by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this ordinance establishes a registration program for credit access businesses, and imposes recordkeeping requirements on credit access businesses.

Ex. A.

12. The Ordinance contains significant restrictions on the amounts of consumer credit that CABs may provide or assist consumers in obtaining, as well as on the terms under which CABs may provide consumers with access to emergency funding. *See* Ex. A at § 11.

13. The Ordinance’s restrictions on credit (the “Credit Restrictions”) include the following:

(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

¹ The Dallas Ordinance was to be effective January 1, 2012, but enforcement was stayed until June 17, 2012.

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.

Ex. A at § 11.

14. The Ordinance also specifically regulates the maintenance of a CAB's records:

(a) A credit access business shall maintain a complete set of records of all extensions of consumer credit made 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 documentation used to establish a consumer's income under Section 11.

(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, as amended.

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

Ex. A at § 10.

15. The Ordinance imposes a penalty of \$500 for a knowing violation of a provision of the Ordinance, with each day of a violation deemed to be a separate offense. Ex A. at § 3.

16. The Ordinance became effective April 9, 2013.

C. The City Never Conferred with ACE Before Enacting the Ordinance.

17. Although ACE is one of the country's leading payday lenders, the City never sought information from ACE concerning its business or the credit needs of its customers in Denton before enacting the Ordinance. The City never contacted ACE to determine what restrictions would actually advance the City's stated goal of "reduc[ing] abusive and predatory lending practices ..." without denying low- and moderate-income citizens of Denton access to needed credit services.

18. To ACE's information and belief, the City also did not meet with, or seek or obtain information from, any other credit access business, or any consumers of payday or title loans, before passing the Ordinance to investigate and determine what types of restrictions might actually advance the City's stated goal of "reduc[ing] abusive and predatory lending practices ..." without denying low- and moderate-income citizens of Denton access to needed credit services.

19. The Ordinance contains the same Credit Restrictions as are found in the Dallas Ordinance. However, to ACE's information and belief, and despite the fact that the Dallas Ordinance had been in effect for almost two years at the time the Ordinance was enacted, the City made no effort to investigate the experience of credit access businesses or their customers in Dallas operating under the terms of the Dallas Ordinance.

D. ACE Has Suffered and Continues to Suffer Pecuniary Damages Because of its Compliance with the Dallas Ordinance.

20. As a good corporate citizen, ACE has complied with the restrictions in the Dallas Ordinance since its effective date.

21. The experience of ACE—and, presumably, of other credit access businesses that have complied with the Dallas Ordinance—is that the restrictions contained therein render payday and title loans inadequate for the credit needs of ACE’s former customers in Dallas. As a result of the enactment of this Dallas Ordinance, ACE has lost most of the customers served by, and the majority of the revenue formerly earned in, its Dallas locations. In fact, multiple ACE storefronts in Dallas have closed or will close as a result of the impact of the Dallas Ordinance, resulting in lost jobs and leaving empty storefronts where there were once tax-paying businesses.

22. In light of the devastating effects of the Dallas Ordinance and its initial experience in the months since passage of the Ordinance, ACE reasonably believes that compliance with the arbitrary Ordinance will cause a similar drastic drop in revenue from ACE’s Denton locations.

E. ACE’s Customers Are Also Harmed by the Dallas Ordinance, and Will Be Harmed by the Ordinance.

23. It is also clear that the Dallas Ordinance has negatively impacted the very consumers that it purports to protect. The payday, title, and installment loans arranged by ACE provide access to credit for low and moderate-income consumers who would otherwise be forced to go without. The typical ACE customer does not have access to most traditional credit sources, either as a result of income constraints or credit concerns. Even when available, those traditional credit sources can involve high transaction costs for higher risk customers. At the other end of the spectrum, unlicensed offshore lenders and the unsavory world of loansharking stand ready with the very predatory practices that the Ordinance was intended to prevent. In the absence of

emergency credit on acceptable terms, consumers often suffer severe financial consequences, such as utility disconnects and costly reconnect fees; loss of job-related personal transportation; bounced-check charges; and, ultimately, personal bankruptcy.

24. ACE is a state-licensed, city-registered corporate citizen that is not engaged in predatory practices. The loans arranged by ACE typically bridge short-term cash flow problems associated with unexpected events. Rather than protecting consumers, paternalistic arbitrary limitations on the amount that can be borrowed or mandates as to principal repayments have a punitive impact on consumers: the products that they need are no longer available inside city limits. One need only compare demand for the loan products arranged by ACE, before and after the enactment of the Dallas Ordinance, to see that consumers' needs for short-term credit are not being met by ordinance-abiding businesses within Dallas city limits.

VI. CAUSES OF ACTION

A. First Cause of Action: The Ordinance Exceeds the City's Police Power and Contravenes the Due Process of Law and Due Course of Law Requirements of the United States and Texas Constitution.

25. The police power of a municipality such as the City extends only to those regulations that are reasonably necessary to the protection of the public health, safety and morals. An ordinance or other regulation that extends beyond the legitimate scope of operation of the municipality's police power violates the due process of law requirement of the United States Constitution and the due course of law requirement of Article 1, Section 19 of the Texas Constitution.

26. The Ordinance, and in particular Section 11 thereof, is not reasonably necessary to the protection of public health, safety or morals. The restrictions on credit access businesses set out in Section 11 are not reasonably related to the Ordinance's stated purpose of reducing "abusive and predatory lending practices." ACE is informed, and on the basis of such

information does believe, that the City made no effort to determine, in enacting the Ordinance, whether the activities of credit access businesses such as ACE constitute abusive or predatory lending practices, or whether the restrictions and requirements set out in Section 11 would serve to reduce such practices if in fact they were being conducted by credit access businesses.

27. As a result, the Ordinance does not serve the purposes for which it was enacted. Rather, the Ordinance, and in particular Section 11 thereof, operates to deny low- to moderate-income citizens of Denton access to an essential source of emergency credit, and to destroy the legitimate business of ACE and its ability to provide credit services to those most in need of such services.

28. The Ordinance is therefore invalid as exceeding the police power of the City in contravention of ACE's rights to due process and due course of law under the Constitutions of the United States and the State of Texas.

B. Second Cause of Action: The City's Enactment of the Ordinance Exceeds the City's Authority Under the Texas Constitution.

29. "The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. Art. 11, § 5.

30. The Ordinance is preempted in its entirety because (1) it conflicts with the amended CSO Act, which regulates the same activity that the Ordinance purports to regulate, and (2) it conflicts with the CSO Act by prohibiting, under the Credit Restrictions, ACE from acting in a way expressly authorized by the amended CSO Act. Specifically, the amended CSO Act authorizes CABs to assess fees "as agreed to by the parties" and allows a CAB's fees to "be calculated daily, biweekly, monthly or on another periodic basis," Tex. Fin. Code § 393.602 (b)

(as amended), whereas the Ordinance's Credit Restrictions limit the number of installments and renewals, thereby infringing on the parties' rights to agree to the amount and calculation of the CAB's fees.

31. Any action to enforce the Ordinance is prohibited under the Texas Constitution and should be prohibited by declaratory and injunctive relief.

VII. DECLARATORY JUDGMENT

32. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth fully below.

33. A real and substantial justiciable controversy exists between ACE and the City with regard to the rights and status of the parties concerning the validity of the Ordinance. The declaratory judgment requested herein will resolve the controversy between the parties.

34. Pursuant to the provisions of Texas Civil Practice & Remedies Code Section 37.001 et seq., which provides for a legislative waiver of sovereign immunity, ACE seeks a judgment of this Court declaring the Ordinance arbitrary, unreasonable, and invalid.

Furthermore, ACE seeks a declaration stating:

The Ordinance regulating credit access businesses is invalid and void because it exceeds beyond the legitimate scope of the City's police powers and contravenes the due process and due course of law requirements of the United States and Texas Constitutions.

35. ACE also seeks a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code, which provides for a legislative waiver of sovereign immunity, regarding the rights and status under a municipal ordinance—the Ordinance—including the following declarations:

The Ordinance's credit restrictions are preempted and unenforceable because they conflict with § 392.602(b) of the amended CSO Act. The Credit Restrictions are preempted because they conflict with the CSO Act by prohibiting ACE from acting in

a way expressly authorized by the amended CSO Act. Specifically, the amended CSO Act authorizes CABs to assess fees “as agreed to by the parties” and allows a CAB’s fees to “be calculated daily, biweekly, monthly or on another periodic basis.” Tex. Fin. Code § 393.602(b) (as amended). The Ordinance’s Credit Restrictions conflict with this express language of the amended CSO Act by limiting the number of installments and renewals, thereby infringing on the parties’ rights to agree to the amount and calculation of the CAB’s fees.

VIII. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

36. The allegations of the preceding paragraphs are incorporated herein by reference as if fully set forth below.

37. The Ordinance, which is not reasonably necessary and appropriate to the protection of life, health or property, prevents ACE from engaging in a lawful business. The Ordinance will devastate ACE’s business and its ability to conduct its operations.

A. Probable Right to the Relief Sought.

38. ACE has a probable right to the relief sought in its claim against the City because the Ordinance is arbitrary and unreasonable. To ACE’s information and belief, the City conducted no independent inquiry or investigation into whether the specific provisions of the Ordinance bore any substantial relation to the general welfare. Enactment of the Ordinance exceeded the City’s police powers and contravened the due course and due process of law requirements of the Texas and United States Constitutions. Enforcement of the Ordinance must be enjoined.

39. Further, the Ordinance is preempted by state law. First, the Ordinance is preempted in its entirety because it conflicts with the amended CSO Act, which regulates the same activity that the Ordinance purports to regulate. Second, the Credit Restrictions are preempted because they conflict with the CSO Act by prohibiting ACE from acting in a way expressly authorized by the amended CSO Act. Specifically, the amended CSO Act authorizes

CABs to assess fees “as agreed to by the parties” and allows a CAB’s fees to “be calculated daily, biweekly, monthly or on another periodic basis,” Tex. Fin. Code § 393.602 (b) (as amended), whereas the Ordinance’s Credit Restrictions limit the number of installments and renewals, thereby infringing on the parties’ rights to agree to the amount and calculation of the CAB’s fees.

B. Threat of Probable, Imminent, and Irreparable Injury.

40. ACE will suffer a probable, imminent and irreparable injury if required to comply with the Ordinance. The Ordinance will prevent ACE from engaging in its lawful business practice and cause ACE to lose the bulk of its business in Denton. For example, as a non-exhaustive list, compliance with the Ordinance will cause irreparable harm to ACE by forcing it to (1) reinvent its business plan; (2) restructure loans; (3) re-format loan documents; (4) re-format websites; and (5) forgo arranging credit for customers who would otherwise have sought out ACE’s services.

C. No Adequate Remedy at Law.

41. ACE has no adequate remedy at law for the ongoing and potential injuries to its business. Although ACE stands to lose the majority of its revenue if the Ordinance is enforced, principles of sovereign immunity may prevent ACE from ever recovering monetary compensation for its substantial losses. This protected interest is unique and irreparable. For the potential harm and damage that would be inflicted upon ACE absent the intervention of this Court, ACE has no adequate remedy at law.²

² An applicant seeking to enjoin the violation of a city ordinance is not required to prove it has no adequate remedy at law. *See Schleuter v. City of Fort Worth*, 947 S.W.2d 920, 932 (Tex. App.—Fort Worth 1997, pet. denied); *San Miguel v. City of Windcrest*, 40 S.W.3d 104, 108 (Tex. App.—San Antonio 2000, no pet.).

42. ACE is ready and willing to post a reasonable bond in an amount deemed appropriate by this Court. However, ACE contends that no bond is necessary in this case to protect the City, which should not be harmed by complying with state law.

D. Cause of Action Against the City.

43. ACE seeks injunctive relief from this Court pursuant to equitable principles, Texas Rule of Civil Procedure 681, and Texas Civil Practice and Remedies Code Section 65.011, which provides in part:

A writ of injunction may be granted if:

- (1) the applicant is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant;
- (2) a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual;
- (3) the applicant is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions . . .
- (4) irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

44. ACE is also entitled to a permanent injunction pursuant to Texas Civil Practice and Remedies Code Section 65.011 because:

- (1) ACE is entitled to the relief above demanded and such relief requires the restraint of Defendant from acts that will be prejudicial to ACE;
- (2) The Ordinance violates ACE's right to due process of law and to engage in a lawful business;
- (3) ACE is entitled to a writ of injunction under the principles of equity; and
- (4) irreparable injury to ACE is threatened, irrespective of any remedy at law.

45. ACE also requests that a permanent injunction be issued upon final trial.

46. The temporary and permanent injunction should provide as follows:

The City of Denton, its agents, employees, and representatives, and all persons in active concert or participation with them, shall not, either directly or indirectly, on behalf of anyone take any action to enforce restrictions set out in Section 11 of the Ordinance.

IX. REQUEST FOR DISCLOSURE

47. Pursuant to Rule 194.1 of the Texas Rules of Civil Procedure, ACE requests that the City disclose the information identified in Rule 194.2(a)-(i). ACE requests that the City disclose such information within seven (7) days of being served with this Petition and Request.

X. ATTORNEY FEES

48. The allegations of the preceding paragraphs are incorporated herein by reference as if fully set forth below.

49. ACE has retained the undersigned counsel to represent them in this action and have agreed to pay such counsel their reasonable and necessary attorney fees. ACE seeks recovery of its reasonable and necessary attorney fees, costs, and expenses through trial and all appeals, pursuant to section 37.009 of the Texas Civil Practice & Remedies Code.

XI. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, ACE respectfully requests that, upon final trial in this matter, the Court award the following:

- (i) a temporary injunction, as set forth above;
- (ii) a permanent injunction, as set forth above;
- (iii) a judgment declaring the Ordinance invalid as a violation of both the City's police powers and the due process of law provided for in the State and Federal Constitutions;
- (iv) a judgment declaring the Ordinance invalid as preempted by State law; and
- (v) such other and further relief, at law or in equity, to which ACE may be justly entitled.

Respectfully submitted,

/s/ T. Ray Guy _____

T. Ray Guy

State Bar No. 08648500

Paige Holden Montgomery

State Bar No. 24037131

Olivia Zimmerman Miller

State Bar No. 24074724

WEIL, GOTSHAL & MANGES LLP

200 Crescent Court, Suite 300

Denton, Texas 75201-6950

(214) 746-7700 (Telephone)

(214) 746-7777 (Telecopy)

ATTORNEYS FOR PLAINTIFF

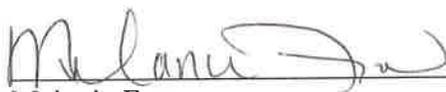
ACE CASH EXPRESS, INC.

VERIFICATION

STATE OF TEXAS §

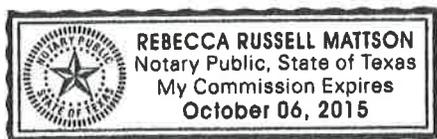
COUNTY OF DALLAS §

On this day Melanie Few personally appeared before me, the undersigned Notary Public, and after being duly sworn stated under oath that she has read Plaintiff's Petition and Application for Temporary and Permanent Injunction and states that every statement of fact contained in such document is within her personal knowledge and is true and correct.



Melanie Few

SWORN TO AND SUBSCRIBED before me on the 19th day of July 2013.





Notary Public for the State of Texas

EXHIBIT A

ORDINANCE NO. 2013-073

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REQUIRING REGISTRATION OF CREDIT ACCESS BUSINESSES; DEFINING TERMS; ESTABLISHING A REGISTRATION FEE; IMPOSING RESTRICTIONS ON EXTENSIONS OF CONSUMER CREDIT MADE BY CREDIT ACCESS BUSINESSES; PROVIDING RECORDKEEPING REQUIREMENTS; PROVIDING DEFENSES; PROVIDING A PENALTY NOT TO EXCEED \$500; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

Credit Access Businesses

SECTION 1. Purpose of Ordinance.

The purpose of this ordinance is to protect the welfare of the citizens of the city of Denton by monitoring credit access businesses in an effort to reduce abusive and predatory lending practices. To this end, this ordinance establishes a registration program for credit access businesses, and imposes recordkeeping requirements on credit access businesses.

SECTION 2. Definitions.

In this ordinance:

- 1) **Certificate of Registration** means a certificate of registration issued by the director under this ordinance 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) **Credit Access Business** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 4) **Deferred Presentment Transaction** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.
- 5) **Director** means the director of the department designated by the City Manager to enforce and administer this ordinance and includes any representatives, agents, or department employees designated by the director.
- 6) **Extension of Consumer Credit** has the meaning given that term in Section 393.001 of the Texas Finance Code, as amended.
- 7) **Motor Vehicle Title Loan** has the meaning given that term in Section 393.601 of the Texas Finance Code, as amended.

- 8) **Person** means any individual, corporation, organization, partnership, association, financial institution, or any other legal entity.
- 9) **Registrant** means a person issued a certificate of registration for a credit access business under this ordinance and includes all owners and operators of the credit access business identified in the registration application filed under this ordinance.
- 10) **State License** means a license to operate a credit access business issued by the Texas Consumer Credit Commissioner under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

SECTION 3. Violations; Penalty.

- a) A person who knowingly violates a provision of this ordinance, or who fails to perform an act required of the person by this ordinance, commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued.
- b) An offense under this ordinance is punishable by a fine of not more than \$500.
- c) The penalties provided for in Subsection (b) are in addition to any other enforcement remedies that the city may have under city ordinances and state law.

SECTION 4. Defense.

It is a defense to prosecution under this ordinance that at the time of the alleged offense the person was not required to be licensed by the state as a credit access business under Chapter 393, Subchapter G of the Texas Finance Code, as amended.

SECTION 5. Registration Required.

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

SECTION 6. Registration Application.

- a) To obtain a certificate of registration for a credit access business, a person must submit an application on a form provided for that purpose to the director. The application must contain the following.
 - 1) The name, street address, mailing address, facsimile number, and telephone number of the applicant.
 - 2) The business or trade name, street address, mailing address, facsimile number, and telephone number of the credit access business.

3) The names, street addresses, mailing addresses, and telephone numbers of all owners of the credit access business and 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.

5) A copy of a current, valid certificate of occupancy showing that the credit access business is in compliance with the Denton Development Code.

6) A non-refundable application fee of \$50.

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

SECTION 7. 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 pursuant to Section 6 hereof.

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.

SECTION 8. Expiration and Renewal of Certificate of Registration.

a) A certificate of registration expires on the earlier of:

1) one year after date of issuance; or

2) the date of expiration, revocation, or other termination of the registrant's state license.

b) A certificate of registration may be renewed by making application in accordance with Section 6. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

SECTION 9. Nontransferability.

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

SECTION 10. Maintenance of Records.

a) A credit access business shall maintain a complete set of records of all extensions of consumer credit made 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 documentation used to establish a consumer's income under Section 11.

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, as amended.

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

SECTION 11. Restrictions 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.

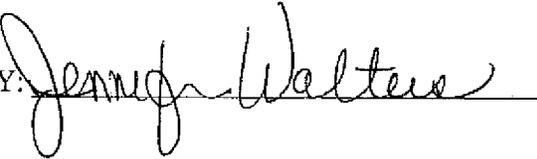
f) For purposes of this section, an extension of consumer credit that is made to a consumer within seven days after a previous extension of consumer credit has been paid by the consumer will constitute a refinancing or renewal.

SECTION 12. This ordinance shall become effective twenty-one (21) days from the date of its passage and approval.

PASSED AND APPROVED this the 19th day of March, 2013.


MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 