

ORDINANCE NO. O2020-9

AN ORDINANCE AMENDING CHAPTER 4, BUSINESS & COMMERCE, OF THE CITY OF DAYTON CODE OF ORDINANCES, BY CREATING ARTICLE 4.1700 SETTING FORTH REGISTRATION REQUIRMENTS AND CREDIT EXTENSION GUIDELINES FOR CREDIT ACCESS BUSINESSES AND REGULATING CHECK CASHING BUSINESSES, PROVIDING A PENALTY, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, certain credit access businesses, commonly known as “cash advance lenders,” “payday lenders,” and “auto title lenders,” engage in abusive and predatory lending practices, offering easy money to those members of our community who are in financial distress with onerous terms and fees; and

WHEREAS, the practices of certain credit access businesses can cause members of our community to become trapped in a cycle of short term, high interest loans resulting in large debt and large payments; and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why*, (July 2012), wrote that “payday loans are sold as two-week credit products that provide fast cash, but borrowers are actually indebted for an average of five months per year.” The report further noted that “on average, a borrower takes out eight loans of \$375 each per year and spends \$520 on interest;” and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why*, (July 2012), also noted: “How much borrowers spend on loans depends heavily on the fees permitted by their state. The same \$500 storefront loan would generally cost about \$55 in Florida, \$75 in Nebraska, \$87.50 in Alabama, and \$100 in Texas, even if it were provided by the same national company in all those states. Previous research has found that lenders tend to charge the maximum permitted in a state;” and

WHEREAS, the Pew Charitable Trusts, in their publication entitled *Payday Lending in America: Who Borrows, Where they Borrow, and Why*, (July 2012), also stated that “the vast majority of borrowers use the loans on a long-term basis, not temporary one. Thus it seems that the payday loan industry is selling a product few people use as designed and that imposes debt that is consistently more costly and longer lasting than advertised;” and

WHEREAS, 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, certain check cashing businesses engage in similarly abusive and predatory practices, offering easy money to those members of our community who are in financial distress with onerous fees; and

WHEREAS, Chapter 393 of the Texas Finance Code regulates credit access businesses and check cashing businesses, but does not with unmistakable clarity preempt supplementary regulation of credit access businesses and check cashing businesses by home-rule cities; and,

WHEREAS, the City Council of the City of Dayton finds it to be in the public interest to make certain amendments to the Dayton Code of Ordinances so as to regulate credit access businesses and check cashing businesses.

NOW THEREFORE, BE IT ORDAINED by the City of Dayton, Liberty County, Texas:

SECTION 1. That Chapter 4, Business & Commerce, of the Code of Ordinances of the City of Dayton, Texas shall be amended add Article 4.1700:

CHAPTER 4

BUSINESS & COMMERCE

ARTICLE 4.1700 CREDIT ACCESS BUSINESSES AND CHECK CASHING BUSINESSES

Sec. 4.1701 Short Title and Purpose.

(a) This article may be known and cited as "Credit Access Businesses and Check Cashing Businesses."

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

(c) The purpose of this article is further to protect the welfare of the citizens of the City of Dayton by monitoring check cashing businesses in an effort to reduce similarly abusive and predatory practices. To this end, this article establishes a registration program for check cashing businesses and imposes penalties on check cashing businesses operating in violation of state law or in violation of the Code of Ordinances of the City of Dayton.

Sec. 4.1702 Definitions.

For the purpose of this Article, the following terms shall have the meanings respectively ascribed to them:

Certificate of Registration. A certificate of registration issued by the Director, or the Director's designee, or the Chief of Police, or the Chief of Police's designee, under this article, to the owner or operator of a credit access business.

Check Cashing Business. A business other than a financial institution with a primary business activity of providing customers with amounts equal to the face of the check, or those specified in written authorization to electronically transfer money, for a fee.

Chief of Police. The Chief of Police of the City of Dayton Police Department, or the Chief of Police's designee.

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

Consumer's Language of Preference. The language the consumer understands best.

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

Deferred Presentment Transaction. Deferred Presentment Transaction has the meaning given that term in Section 393.601 of the Texas Finance Code, which definition incorporates Section 341.001(6) of the Texas Finance Code.

Director. The Director of the department designated by the City Council, City Manager, or City Council or City Manager's designee, to enforce and administer this article, or said Director's designee.

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

Financial Institution. An establishment that is open to the public for the deposit, custody, loan, exchange or issue of money, the extension of credit and/or facilitating the transmission of funds, that is licensed by the appropriate federal agency as a bank, savings and loan association, credit union, or stock brokerage.

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

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

Registrant. 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.

State License. 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.

Division 1: Credit Access Businesses

Sec. 4.1703 Violations; Penalty

(a) A person who violates a provision of this division, or who fails to perform an act required of the person by this division, 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 division 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 division 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.

(e) A registrant who violates any provision of this division is subject to denial of issuance, renewal, or revocation of a certificate of registration.

Sec. 4.1704 Defenses

It is a defense to prosecution under this division 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. 4.1705 Registration Required

A person commits an offense if the person owns, 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. 4.1706 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 or the Chief of Police. 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 Dayton Code of Ordinances.

(6) A non-refundable application fee, the amount set within the City of Dayton Fee Ordinance.

(b) An applicant or registrant shall notify the director within 30 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. 4.1707 Issuance and Display of Certificate of Registration; Presentment upon Request.

(a) The Director or the Director's designee, or the Chief of Police or the Chief of Police's designee, shall issue to the applicant a certificate of registration upon receiving a completed application under Section 4.1706.

(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. 4.1708 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 4.1706. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

Sec. 4.1709 Non-transferability.

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

Sec. 4.1710 Appeal.

(a) Upon denial of issuance or renewal of a credit access business certificate of registration by the City of Dayton, the credit access business owner or operator may appeal the decision of denial to the City Manager or the City Manager's designee.

- (1) The notice of appeal must be in writing, fully briefing the appellant's position, and filed with the City Manager's Office within ten (10) days of the receipt of the notice of denial.
- (2) The notice of denial is deemed received and in receipt of the owner or operator of the credit access business on the third day after mailing by the City by certified mail.
- (3) The City Manager may determine from the notice of appeal and submissions from the Director or the Chief of Police, or their designee, whether the denial should be upheld or overturned and the certificate of registration issued, within ten (10) days.

(b) Upon revocation of a credit access business certificate of registration by the City of Dayton, the credit access business owner or operator may appeal the decision of revocation to the City Manager or the City Manager's designee.

- (1) The notice of appeal must be in writing and filed with the City Manager's Office within ten (10) days of the receipt of the notice of revocation.
- (2) The notice of revocation is deemed received and in receipt of the owner or operator of the credit access business on the third day after mailing by the City by certified mail.
- (3) The City Manger may determine from the notice of appeal and submissions from the Director or the Chief of Police, or their designee, whether the denial should be upheld, or overturned and the certificate of registration reinstated, within ten (10) days.

Sec. 4.1711 Maintenance of Records.

(a) A credit access business shall maintain a complete set of records of all applications and 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.

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

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

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

Sec. 4.1712 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 the following documentation to determine a consumer's income:

(1) A payroll document identifying the consumer's wages for the consumer's most recent pay period;

(2) A paycheck or paystub issued to the consumer for the consumer's most recent pay period;

(3) An account statement from a financial institution issued to the consumer;

(4) A recent report from a nationally recognized credit and data reporting company that identifies the consumer's income;

- (5) An Internal Revenue Service Form W-2 for the preceding year issued to the consumer;
- (6) The consumer's income tax return for the preceding tax year; or,
- (7) A signed letter from the consumer's employer which details the consumer's earnings for the previous six months and the consumer's expected earnings for the next six months.

(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. 4.1713 Requirement of Consumer Understanding of Agreement.

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

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

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

Sec. 4.1714 Referral to Consumer Credit Counseling.

A credit access business shall provide a form, to be prescribed by the Director or the Chief of Police, or their designee, to each consumer seeking assistance in obtaining an extension of consumer credit which references non-profit agencies that provide financial education and training programs and agencies with cash assistance programs. The form will also contain information regarding extensions of consumer credit, and must include the information required by Section 4.1711 and Section 4.1712 of this ordinance specific to the loan agreement with the consumer. The form must be provided to the consumer in the consumer's language of preference.

Sec. 4.1715 Location of Credit Access Businesses

Credit Access Businesses shall only be located in an area that is zoned for general commercial use as defined in the City of Dayton's Unified Development Code, and as depicted on the Zoning Map of the City of Dayton.

Secs. 4.1716 – 4.1749 Reserved.

Division 2: Check Cashing Businesses

Sec. 4.1750 Violations; Penalty

(a) A person who violates a provision of this division, or who fails to perform an act required of the person by this division, 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 division 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 division 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.

(e) A registrant who violates any provision of this division is subject to denial of issuance, renewal, or revocation of a certificate of registration.

Sec. 4.1751 Compliance with State and Federal Law.

All check cashing businesses within the City of Dayton shall comply with all Texas and Federal laws related to the cashing of checks.

Sec. 4.1752 Compliance with City Code.

All check cashing businesses within the City of Dayton, but not "financial institutions" as defined by this ordinance, shall comply with this section and with all applicable zoning regulations under the City of Dayton's Code of Ordinances.

Sec. 4.1753 ID Required

All check cashing businesses within the City of Dayton must require a legal form of photographic identification from a customer prior to cashing a check.

Sec. 4.1754 Registration.

(a) Any business that wishes to operate as a check cashing business operating in the City of Dayton shall register to operate as a check cashing business within the city.

(b) Within 60 days of the effective date of the ordinance enacting this division, all existing check cashing businesses operating in the City of Dayton shall register to operate as a check cashing business within the city.

(c) Registration shall be required for each location a check cashing business operates in the City of Dayton and shall be renewed annually.

(d) The registration form shall be in a form provided by the Director or the Director's designee, or the Chief of Police or the Chief of Police's designee, and shall be sufficient if it contains the following information:

(1) The name, address, and telephone number of each applicant (an individual or entity with an ownership interest of ten percent or more in the business is considered an applicant and must provide the information required by the application);

(2) The business address of the applicant;

(3) Location where the business will be conducted;

(4) Whether the applicant or any co-principal or employee has been found guilty of any criminal offense defined in V.T.C.A., Penal Code tit. 7, title 11 or their criminal equivalents or the Texas Controlled Substances Act, V.T.C.A., Health and Safety Code § 481.001 et seq., by any court of competent jurisdiction and, if so, the venue of such offense and penalty imposed; and

(5) Whether the applicant has ever engaged in business under an assumed name and, if so, the name assumed by such business.

(e) Fee. Every application must be accompanied by a nonrefundable fee of \$100.00 paid to the Director or the Director's designee, or the Chief of Police or the Chief of Police's designee.

SECTION 2. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of this ordinance.

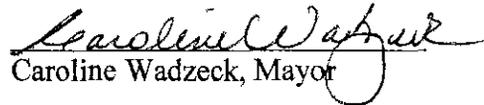
SECTION 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given as required by law.

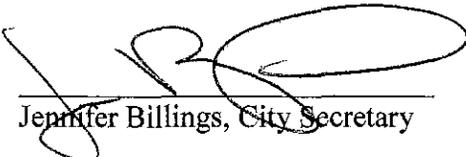
SECTION 5. That this ordinance shall take effect from and after the date of its publication in the newspaper in accordance with Texas law.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Dayton, this the 16 day of March, 2020.

CITY OF DAYTON, TEXAS


Caroline Wadzeck, Mayor

ATTEST:


Jennifer Billings, City Secretary