City of Houston, Texas, Ordinance No. 2013-____

AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF HOUSTON, TEXAS, RELATING TO CONSUMER PROTECTION AND REGULATION OF CREDIT ACCESS BUSINESSES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Houston finds and determines that lending practices employed by various credit access businesses, commonly referred to as payday loan or title loan institutions, are currently subject to only limited state regulations; and

WHEREAS, because of such limited regulation and in spite of borrower’s best intentions, there are those that suffer financial setbacks after they obtain credit and have difficulty repaying their financial obligations; and

WHEREAS, the City Council finds and determines that local regulation of credit access businesses would substantially curtail the likelihood of borrowers becoming trapped in a cycle of debt, affording the borrowers who utilize such institutions the opportunity to reduce their indebtedness while still affording the industry member institutions the opportunity to receive a fair return on their investment; and

WHEREAS, the City Council desires to adopt an ordinance implementing a regulatory scheme establishing minimum business practices for credit access businesses; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The findings contained in the preamble of the Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Chapter 28 of the Code of Ordinances, Houston, Texas is hereby amended by adding a new Article XV that reads as follows:

“ARTICLE XV
CONSUMER PROTECTION

DIVISION 1. CREDIT ACCESS BUSINESSES

Subdivision A. General Provisions

DRAFT NOT YET APPROVED
BY THE CITY ATTORNEY
Sec. 28-481. Definitions.

In this article:

*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.

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

*Consumer’s language of preference* is the language the consumer understands best.

*Credit access business* has the meaning given that term in Section 393.601 of the Texas Finance Code.

*Deferred presentment transaction* has the meaning given that term in Section 393.601 of the Texas Finance Code.

*Director* means the director of the department designated by the mayor to enforce and administer this chapter.

*Extension of consumer credit* has the meaning given that term in Section 393.001 of the Texas Finance Code.

*Motor vehicle title loan* has the meaning given that term in Section 393.601 of the Texas Finance Code.

*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 chapter.

*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. 28-482. 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 as provided in section 1-6 of this Code.

(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) of this section are in addition to any other remedies that the city may have under city ordinances and state law.

Sec. 28-483. Defense.

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.

Secs. 28-484—28-490. Reserved

Subdivision B. Registration of Credit Access Businesses

Sec. 28-491. Registration required.

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

Sec. 28-492. 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 Construction Code.

(6) The non-refundable application fee stated for this provision in the city fee schedule.

(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. 28-493. 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 28-492 of this Code.

(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. 28-494. 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 28-492 of this Code. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

Sec. 28-495. Non-transferability.

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

Secs. 28-496—28-500. Reserved.

Subdivision C. Miscellaneous Requirements for Credit Access Businesses

Sec. 28-501. 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; and

(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 29-502 of this Code.

(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.

Sec. 28-502. 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 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. 28-503. 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. 28-504. Referral to consumer credit counseling.

A credit access business shall provide a form, to be prescribed by the director, to each consumer seeking assistance in obtaining an extension of consumer credit which references non-profit agencies that provide financial education and training programs and agencies with cash assistance programs. The form will also contain information regarding extensions of consumer credit, and must include the information required by section 28-501 of this ordinance specific to the loan agreement with the consumer. If the director has prescribed a form in the consumer’s language of preference, the form must be provided in the consumer’s language of preference.”

Section 3. That the City Council hereby approves the application fee promulgated in Section 28-492, as added to the Code of Ordinances by this Ordinance, in the initial amount of $50.00 The Director of Finance shall incorporate this new approved fee in the City Fee Schedule.

Section 4. That the Director of the Department of Administration and Regulatory Affairs shall commence accepting, processing, and issuing certificates of registration required under Article XV of Chapter 28 of the Code of Ordinances, Houston, Texas, on
the ninetieth day following the date of passage and approval of this Ordinance. Any certificates issued prior to the effective date of this Ordinance shall be postdated to become effective on the effective date of this Ordinance.

Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on July 1, 2014.

PASSED AND APPROVED this ___ day of __________________, 2013.

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Mayor of the City of Houston

Prepared by Legal Dept. _______________________________________
TNE: jmb 11/20/2013 Assistant City Attorney
Requested by Honorable Annise D. Parker, Mayor
L.D. File No. 0421300166001