



NOTICE OF A REGULAR MEETING
OF THE ZONING COMMISSION
OF THE CITY OF SUNSET VALLEY, TEXAS
WEDNESDAY, JUNE 16, 2021
6:00 P.M.

Notice is hereby given that the Zoning Commission of the City of Sunset Valley, Texas will hold a Regular Meeting on Wednesday the 16th day of June 2021 at 6:00 P.M. virtually via GoToTraining.

To actively participate in the meeting, please register using the following information:

Registration URL: <https://attendee.gototraining.com/r/2852179757515660546>

Training ID: 563-596-156

To participate using audio only, please call the following:

Long Distance: +1 (510) 365-3331

Access Code: 250-981-293

On this date, the following items will be discussed, to-wit:

1. Call to order of the Zoning Commission.
2. Consider approval of the minutes from the April 21, 2021 called meeting.
3. Discussion of proposed changes to Chapter 2 of the Land Development Code and a new chapter within the Code of Ordinances regarding Credit Access Business.
4. Discussion and possible recommendation to the City Council of proposed changes to Chapter 10 of the Land Development Code – Parking and Fire Lanes regarding the difference between Gross Floor Area and Net Floor Area.
5. Adjourn

A quorum of the City Council may attend the meeting, however, no official action by the City Council shall be taken.

I certify that the above notice of meeting was posted at City Hall, 3205 Jones Road, Sunset Valley, Texas, on Thursday the 11th day of June 2021 at 6:00 P.M.


Matt Lingafelter
City Secretary

The City of Sunset Valley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.



MINUTES OF A CALLED MEETING
OF THE ZONING COMMISSION
OF THE CITY OF SUNSET VALLEY, TEXAS
WEDNESDAY, APRIL 21, 2021
6:00 P.M.

This meeting was held virtually at: <https://attendee.gototraining.com/r/4888171825664453633>
Training ID: 540-930-604

Members Present:

Robert Skewis, Chair
Miguel Huerta, Vice Chair
Brant Boozer
John Frick
Robert Reetz

Staff Present:

Matt Lingafelter, Asst. to the City Administrator
Gary Freeland, Engineer

1. Call to order of the Zoning Commission

Chair Skewis called the meeting to Order at 6:02 P.M.

2. Citizen/Public Comments

None

3. Consider approval of the minutes from the March 24, 2021 regular meeting.

Robert Reetz made a motion to approve the minutes, seconded by Brant Boozer. Four Commissioners voted in favor (Vice Chair Huerta had not yet arrived) and the motion carried.

4. Public Hearing to consider a request for a Special Use Permit for a Medical-related Professional Office within the Highway Commercial District by Central Austin Management Group at 4715 South Lamar Boulevard.

Chair Skewis opened the Public Hearing at 6:10 P.M.

Matt Lingafelter, Assistant to the City Administrator, gave a presentation. The applicant and representatives from WellMed were available for questions.

The Commission asked questions regarding the Special Use Permit and the site plan,

answered by the applicant and staff.

There were no citizen or public comments.

Chair Skewis closed the Public Hearing at 6:30 P.M.

5. Zoning Commission recommendation to the City Council regarding a request for a Special Use Permit for a Medical-related Professional Office within the Highway Commercial District by Central Austin Management Group at 4715 South Lamar Boulevard.

Vice Chair Huerta made a motion to recommend approval of the Special Use Permit to the City Council, seconded by Robert Reetz. All voted in favor and the motion carried.

6. Adjourn

Robert Reetz made a motion to adjourn, seconded by John Frick. All voted in favor, and the meeting adjourned at 6:32 P.M.

DRAFT

MEETING DATE: JUNE 16, 2021



ZONING COMMISSION AGENDA ITEM # 3

STAFF PREPARER/CONTACT INFORMATION: Sylvia Carrillo, City Administrator
scarrillo@sunsetvalley.org

SUBJECT: SPECIAL USE PERMIT APPLICATION

DESCRIPTION: Discussion of proposed changes to Chapter 2 of the Land Development Code and a new chapter within the Code of Ordinances regarding Credit Access Businesses.

BACKGROUND: Credit Access Businesses are not currently addressed by the City's Land Development Code or Code of Ordinances. The proposal is to create a new chapter within the Code of Ordinances to adopt regulations for these businesses. Additionally, a change to Chapter 2 of the Land Development Code will be necessary to create a special use permit for this type of business.

The Planning and Environmental Committee recommended this item to the Zoning Commission after discussion at their May 10, 2021 meeting.

An amendment to Chapter 2 and a new chapter within the Code of Ordinances would require a Public Hearing and a recommendation from the Zoning Commission to City Council.

STAFF RECOMMENDATION: Recommend an amendment to Chapter 2 of the Code of Ordinances to regulate Credit Access businesses within Sunset Valley.

SUPPORTING MATERIALS PROVIDED: YES / NO

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF _____ SETTING FORTH
REGISTRATION REQUIRMENTS AND CREDIT EXTENSION GUIDELINES
FOR CREDIT ACCESS BUSINESSES AND PROVIDING A PENALTY.**

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 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.” 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, 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, states 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

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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____ :

Section 1. Chapter ____ - CREDIT ACCESS BUSINESSES

____.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 _____ 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.

____.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 Council, City Manager, or City Councilor 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.

____.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 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.

____.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.

____.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.

____.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 _____ Code.
- (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.

____.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 ____ .060

(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.

____.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 _____.060. A registrant shall apply for renewal at least 30 days before the expiration of the registration.

_____.090- Non-transferability.

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

_____.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.

(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 _____.110 of this ordinance.

(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.

____.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.

(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.

____.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.

____.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 ____ .100(a)(1)-(5) 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 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 _____, 2013

ADOPTED THIS _____ day of _____ 2013.

CITY OF _____

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney

EXAMPLE ORDINANCE

EXAMPLE ORDINANCE DISCLAIMER

In response to the state legislature's failure to adopt any substantive statewide regulation of credit access businesses, a handful of cities have adopted ordinances aimed at ending the cycle of debt and helping borrowers to be successful in paying back their loans. As of the spring of 2013, the cities that adopted ordinances were:

- Austin
- Balcones Heights
- Dallas
- Denton
- El Paso
- San Antonio

There are likely to be more at the time of this publication. All of these cities - except for Balcones Heights - have been sued by the credit access business industry, with the industry claiming that the cities are preempted from regulating credit access businesses since the legislature gave the Office of Consumer Credit Commissioner (OCCC) some authority to regulate in 2011. (Balcones Heights has suspended enforcement of its ordinance pending the outcome of the San Antonio lawsuit.)

KEY FEATURES OF ORDINANCE

When payday and auto title lenders argued before the legislature for preemption of all city ordinances regulating credit access businesses, chief among their policy arguments was the notion that it would be too administratively difficult to keep track of the different "patchwork of regulation" that exists from city to city. This argument falls flat in two ways. First, only six out of roughly 1,200 Texas cities have adopted ordinances. Second, the ordinances adopted by these six cities are all but identical in how they regulate the lending practices of credit access businesses. Key features of all six ordinances include the following provisions:

- A credit access business must apply for and receive a certificate of registration from the city.
- A credit access business must maintain complete records of all loans made by the business for at least three years and make the records available to the city for inspection upon request.
- The amount of a payday loan may not exceed 20% of the consumer's gross monthly income.

- The amount of an auto title loan may not exceed the lesser of three % of the consumer's gross annual income or 70% of the retail value of the motor vehicle.
- Any loan from a credit access business that provides for repayment in installments may not be payable in more than four installments, and the proceeds from each installment must be used to repay at least 25% of the principal amount of the loan. No renewals or refinancing of installment-payment loans are permitted.
- Any loan from a credit access business that provides for a single lump sum repayment may not be refinanced or renewed more than three times, and the proceeds from each refinancing or renewal must be used to repay at least 25% of the principal amount of the loan.
- Any loan made to a consumer within seven days of a previous loan has been paid by the consumer constitutes a refinancing or renewal.

Cities contemplating the adoption of an ordinance regulating the lending practices of credit access businesses should consider adopting substantially similar regulations to those adopted by the six cities mentioned on this page. If Texas cities that wish to regulate in this area continue to adopt essentially uniform ordinances, credit access businesses will not be able to use the argument that city ordinances vary from city-to-city if they seek preemption legislation in 2015.

LAWSUITS & LEGAL COUNSEL

City officials should be aware that adoption of any ordinance regulating credit access businesses will likely cause stakeholders representing the payday and auto title lending industry to file a lawsuit.

Each city should consult with local legal counsel prior to adopting any ordinance. That is particularly true in this instance.

VIEW EXAMPLE ORDINANCE

View and download the [Example Credit Access Businesses Ordinance \(DOC\)](#).



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2019

The Honorable Jim Murphy
Chair, Committee on Pensions, Investments,
and Financial Services
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0277

Re: Authority of a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or a motor vehicle title loan (RQ-0300-KP)

Dear Representative Murphy:

You ask whether chapter 393 of the Finance Code permits a credit services organization to assist a consumer with obtaining an extension of consumer credit in a form other than a deferred presentment transaction or a motor vehicle title loan.¹

Chapter 393 governs credit services organizations, and a review of the full context of that chapter is necessary to answer your question. TEX. FIN. CODE §§ 393.001–.628; *see Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004) (“We must read the statute as a whole and not just isolated portions.”). In construing the meaning of a statute, our primary goal “is to give effect to the Legislature’s intent.” *Gunn v. McCoy*, 554 S.W.3d 645, 672 (Tex. 2018). In doing so, courts “rely on the plain meaning of the text as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results.” *Id.* Thus, we look to the Legislature’s chosen language.

Chapter 393 defines “credit services organization” as

a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

- (A) improving a consumer’s credit history or rating;
- (B) obtaining an extension of consumer credit for a consumer; or

¹See Letter from Honorable Jim Murphy, Chair, House Comm. on Pensions, Invs. & Fin. Servs., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 30, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

- (C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

TEX. FIN. CODE § 393.001(3).² Chapter 393 places multiple requirements on credit services organizations, including registering with the Secretary of State, providing disclosure statements to consumers, incorporating specific contract language in their contracts with consumers, and obtaining a surety bond, among other requirements. *Id.* §§ 393.101(a) (“Registration Statement”), 393.105 (“Disclosure Statement”), 393.201 (“Form and Terms of Contract”), 393.401 (“Surety Bond”).

In 2011, the Legislature amended chapter 393 by adding subchapters C-1 and G, which place additional requirements on “*certain* credit services organizations,” namely credit access businesses. *Id.* §§ 393.221–.224 (Subchapter C-1, titled “Notice and Disclosure Requirements for Certain Credit Services Organizations”), 393.601–.628 (Subchapter G, titled “Licensing and Regulation of Certain Credit Services Organizations”) (emphasis added).³ The Legislature defined “credit access business” as “a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.” *Id.* §§ 393.221(1), .601(2). It also defined “deferred presentment transaction,” also called “a payday loan,” as:

a transaction in which:

- (A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;
- (B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and
- (C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

Id. § 341.001(6); *see also id.* § 393.221(2) (defining “deferred presentment transaction” by reference to section 341.001 and referring to the term as “a payday loan”). And it defined “motor vehicle title loan” as “a loan in which an unencumbered motor vehicle is given as security for the loan.” *Id.* § 393.221(3). Thus, through the 2011 amendments, the Legislature identified a specific type of credit services organization—a credit access business—that obtains for a consumer or

²The Legislature originally enacted the predecessor to chapter 393 in 1987. Act of May 30, 1987, 70th Leg., R.S., ch. 764, § 1, 1987 Tex. Gen. Laws 2716, 2716–20. It made non-substantive recodifications in 1997 and has not amended the definition of “credit services organization” since that time. Act of May 24, 1997, 75th Leg., R.S., ch. 1008, § 1, sec. 393.001, 1997 Tex. Gen. Laws 3091, 3568.

³Act of May 26, 2011, 82d Leg., R.S., ch. 1301, § 1, 2011 Tex. Gen. Laws 3717, 3717–18 (adding subchapter C-1); Act of May 26, 2011, 82d Leg., R.S., ch. 1302, § 2, 2011 Tex. Gen. Laws 3719, 3719–24 (adding subchapter G).

assists a consumer in obtaining a payday loan or a motor vehicle title loan. And the Legislature augmented the regulations applicable to a credit services organization when operating as a credit access business.

But those amendments did not otherwise amend the definition of credit services organization or evidence an intent to revoke the authority of a credit services organization when not operating as a credit access business. To the contrary, throughout chapter 393, the plain language recognizes the continuing existence of credit services organizations beyond credit access businesses. The definition of “credit access business” identifies the term as a type of credit services organization. *See id.* § 393.221(1). Furthermore, when the Legislature added the subchapters in 2011 related to credit access businesses, it described the subchapters as applying to “certain” credit services organizations, implying that the new provisions applied to “some but not all” credit services organizations. *Id.* §§ 393.221–.224, 393.601–.628; *see also* NEW OXFORD AMERICAN DICTIONARY 284 (3d ed. 2010) (defining “certain” in this context to mean “some but not all”).

The Legislature maintained the definition of credit services organization to include one who obtains for a consumer or assists in obtaining an extension of consumer credit without limiting that credit to certain forms as it did with credit access businesses. *Compare* TEX. FIN. CODE § 393.001(3) (defining “credit services organization”), *with id.* §§ 393.221(1), .601(2) (defining “credit access business”).⁴ “Extension of consumer credit” is defined broadly to include “the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.” *Id.* § 393.001(4). Payday loans and motor vehicle title loans are two methods for deferring payment of debt that would qualify as extensions of consumer credit. But the plain language of chapter 393 does not restrict credit services organizations, other than when operating as credit access businesses, from obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in another form.

The Office of the Consumer Credit Commissioner (“the Commissioner”) takes the position that because the Legislature expressly referenced only payday loans and motor vehicle title loans, chapter 393 does not authorize extensions of credit through other forms of debt. OCCC Brief at 1.⁵ The Legislature granted the Commissioner authority to enforce “Chapter 393 *with respect to a credit access business.*” TEX. FIN. CODE § 14.101 (emphasis added). “An administrative agency’s construction of a statute it implements ordinarily warrants deference when: (1) the agency’s interpretation has been formally adopted; (2) the statutory language at issue is

⁴Briefing submitted in response to your request contends that testimony about the amendments suggests that the Legislature intended in 2011 to distinguish between credit services organizations that provide credit repair services and credit services organizations that provide extensions of credit, renaming the latter credit access businesses. *See* Brief from Michael Rigby, Gen. Counsel, Office of Consumer Credit Comm’r, to Virginia K. Hoelscher, Chair, Op. Comm. at 5 (Sept. 6, 2019) (“OCCC Brief”). However, the Legislature did not remove the latter service from the definition of credit services organization. Furthermore, “a single statement by a single legislator does not evidence legislative intent” nor determine legislative intent. *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 191–92 (Tex. 2010).

⁵*See also* Brief from Jennifer Allmon, Exec. Dir., Tex. Catholic Conf. of Bishops, & Gus Reyes, Exec. Dir., Tex. Christian Life Comm’n, to Op. Comm. at 2 (Sept. 5, 2019) (arguing that “credit services organization” and “credit access business” should be read interchangeably); Brief from Christina Kaeini, Sr. Intergov’tl Relations Coordinator, City of Austin, to Op. Comm. at 1 (Sept. 5, 2019) (all briefs on file with the Op. Comm.).

ambiguous; and (3) the agency's construction is reasonable." *Tex. Dep't of Ins. v. Am. Nat'l Ins. Co.*, 410 S.W.3d 843, 853–54 (Tex. 2012).

In a 2012 bulletin, the Commissioner concluded that while the "Texas Finance Code does not specifically prohibit" a credit services organization from assisting a consumer in obtaining credit without taking a post-dated check or a motor vehicle title, "the legislature intended that the bills cover transactions . . . even where the CSO does not require the consumer to provide a post-dated check, debit authorization, or motor vehicle title."⁶ As this office previously recognized, a Texas state court "would give significantly less deference to an agency bulletin than to a formal rule on the same issue." *Tex. Att'y Gen. Op. No. KP-0115* (2016) at 4; *see also R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011); *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 747 (Tex. 2006). Given the Texas Supreme Court's comments in *Fiess* and *Texas Citizens*, a Texas court may not give any deference to an informal agency bulletin. *Id.* Particularly when, as here, the statutory language is unambiguous, a court likely will not look beyond the plain language of the statute to construe its meaning. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). The Legislature may regulate obtaining extensions of credit using specific forms of debt other than payday and motor vehicle title loans, as the Commissioner cautioned in the 2012 bulletin. *See Lowe v. Tex. Liquor Control Bd.*, 255 S.W.2d 252, 256 (Tex. App.—Amarillo 1952, no writ) ("In the interest of public health, morals, or general welfare, the State has the authority under its police power to regulate a business, profession or occupation."); *see also* OCCC Bulletin ("If the legislature finds that this business practice conflicts with its intent, it could consider passing additional legislation that would put further regulatory restrictions on CSOs that obtain extensions of credit for consumers."). But the Legislature has not done so, and chapter 393 does not limit credit services organizations to obtaining extensions of credit for consumers in the form of payday or motor vehicle title loans.

You also ask whether chapter 393 allows a credit services organization to assist a consumer with obtaining an extension of credit through a "signature loan," whereby no security is obtained from the consumer in exchange for the extension of consumer credit or cash advance and no personal check or authorization to debit a deposit account is obtained from the consumer. Request Letter at 1.⁷ A determination about whether any specific service complies with the requirements of chapter 393 will involve a factual inquiry into the specific offering, and such questions are beyond the scope of an attorney general opinion. *See Tex. Att'y Gen. Op. No. KP-0128* (2017) at 1 (advising that this office cannot approve of the proposed transactions as a matter of law through the opinion process due to the necessary factual determinations). However, we can provide general guidance regarding the requirements in chapter 393.

⁶Available at <https://occc.texas.gov/sites/default/files/uploads/disclosures/b12-5-cab-accepting-check-title.pdf> ("OCCC Bulletin").

⁷We understand your question to refer to a credit services organization assisting a consumer with obtaining an extension of credit from a third-party lender. *See* Request Letter at 1. Under the statutory definition, a credit services organization provides certain "services with respect to the extension of consumer credit *by others*." TEX. FIN. CODE § 393.001(3) (emphasis added). Only licensed, regulated lenders can make consumer loans under chapter 342 of the Finance Code. *See id.* § 342.051(a) (requiring a license to make, transact, or negotiate loans under chapter 342).

As discussed above, chapter 393 defines “extension of consumer credit” as “the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.” TEX. FIN. CODE § 393.001(4). While the Legislature identified two forms of debt that qualify as extensions of consumer credit in connection with the regulation of a credit services organization—payday loans and motor vehicle title loans—it did not create an exhaustive list of the types of debt a credit services organization may assist a consumer in obtaining under chapter 393. Furthermore, nothing in chapter 393 requires that the extension of credit be secured in order for a credit services organization to assist a consumer in obtaining it. However, the statute does prohibit a credit services organization from assisting in obtaining an extension of credit that is substantially the same as that available to the public:

A credit services organization or a representative of the organization may not charge or receive from a consumer valuable consideration solely for referring the consumer to a retail seller who will or may extend to the consumer credit that is substantially the same as that available to the public.

Id. § 393.303. And the Legislature prohibited the use of “a device, subterfuge, or pretense to evade the application” of the regulations for credit access businesses. *Id.* § 393.602(c). Whether any specific extension of credit is substantially the same as that available to the public, or uses a device, subterfuge, or pretense to evade regulation as a credit access business, are fact questions that this office cannot decide through an attorney general opinion.

S U M M A R Y

Chapter 393 of the Finance Code does not restrict credit services organizations, other than when operating as credit access businesses, from obtaining for a consumer or assisting in obtaining an extension of consumer credit in a form other than a deferred presentment transaction or motor vehicle title loan.

A determination about whether any specific extension of credit complies with the requirements of chapter 393 will involve a factual inquiry into the precise offering, and such questions are beyond the scope of an attorney general opinion.

Very truly yours,



KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

ORDINANCE NO. 20200730-004

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

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

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

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

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

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

- (A) CERTIFICATE OF REGISTRATION means a certificate of registration issued by the director [~~Director~~] under this chapter to the owner or operator of a credit services organization or a credit access business.
- (B) CONSUMER means an individual who is solicited to purchase or who purchases the services of a credit services organization or a credit access business.
- (C) CREDIT ACCESS BUSINESS means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of

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

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

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

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

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

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

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

§ 4-12-2 PURPOSE.

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

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

§ 4-12-10 REGISTRATION REQUIRED.

- (A) A person may not operate or conduct business as a credit services organization or as a credit access business without a valid certificate of registration.
- (B) A certificate of registration is required for each credit services organization or each credit access business at each location where the credit services organization or credit access business operates or conducts business.
- (C) A person operating or conducting a business as both a credit services organization and a credit access business at the same location may obtain one certificate of registration per location.

§ 4-12-11 REGISTRATION APPLICATION.

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

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

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

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

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

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

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

- (5) a copy of a current, valid certificate of occupancy showing that the credit services organization or the credit access business complies [~~is in compliance~~] with City Code Title 25 (Land Development Code) [~~of the City Code of Ordinances~~];
- (6) a non-refundable application fee that is set by separate ordinance [~~of \$50~~];
and
- (7) if a publicly traded company, the name of the registered agent for service of process in Texas.

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

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

- (A) The director [~~Director~~] shall issue to a credit services organization or a credit access business [~~the Registrant~~] a certificate of registration for each location upon receiving a completed application under Section 4-12-11 (*Registration Application*).
- (B) A certificate of registration issued under this section must be conspicuously displayed to the public in the credit services organization or the credit access business. The certificate of registration must be presented upon request to the director [~~Director~~] or the director's [~~Director's~~] designee for examination.

§ 4-12-13 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) if the certificate of registration is held by a credit access business, on the date of expiration, revocation, or termination of the credit access business's [registrant's] state license.
- (B) A certificate of registration may be renewed by making application in accordance with Section 4-12-11 (*Registration Application*). A credit services organization or credit access business [registrant] shall apply for renewal at least 30 days before the registration expires [expiration of the registration].

§ 4-12-14 NONTRANSFERABLEILITY.

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

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

- (A) The director [Director] may revoke a certificate of registration if the director [Director] determines that a person [has]:
- (1) made a false statement, in writing or orally, related to [an] an application for a certificate of registration [has made a false oral statement relating to an application for a certificate of registration,];
 - (2) used a device, subterfuge, or pretense to evade the requirements of this chapter; or
 - (3) engaged in serious or repeated violations of this chapter.
- (B) ~~[If t]~~The director [Director] must give notice of the revocation to [revokes a certificate of registration, the Director shall notify] the credit services organization or the credit access business [whose certificate of registration has been revoked] by regular mail and by certified mail, return receipt requested, at the address on the application for a certificate of registration. If the certified letter is returned as undelivered, the director [Director] must post the notice of revocation on the front door of the location of the [shall notify] credit services organization or the credit access business [by providing the notice to the credit access business by hand delivery] that is the subject of the revocation.
- (C) Not later than the 10th day after the credit services organization or the credit access business receives notice of the revocation by the director [Director], the credit services organization or the credit access business may file a notice of

appeal with the director [~~Director~~]. The notice of appeal must be in writing, describe the decision being appealed, and state the reason why the revocation should be reversed. Failure to timely file the notice of appeal results in the revocation [~~Director's action~~] becoming final.

- (D) If a credit services organization or a credit access business timely files a notice of appeal under this section, the revocation [~~Director's action~~] is stayed.
- (E) The city manager or the city manager's designee shall act as a hearing officer and hear the appeal. The Texas Rules of Evidence [~~formal rules of evidence~~] do not apply at a hearing under this section.
- (F) The hearing officer shall hold the hearing not later than the 10th day after the date the notice of the appeal is filed and shall render a written decision not later than 30 days after the hearing.
- (G) The hearing officer shall make a decision based on the preponderance of the evidence submitted and may affirm, reverse, or modify the action of the director [~~Director~~].
- (H) The decision of the hearing officer is final.

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

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

§ 4-12-20 MAINTENANCE OF RECORDS.

- (A) A credit services organization and a credit access business shall maintain a complete set of records of all extensions of consumer credit transactions:
 - (1) that the credit services organization or credit access business arranged or obtained for a consumer; and
 - (2) on which the credit services organization or credit access business provided advice or assistance to a consumer.
- (B) A complete set of records must include the following information:
 - (1) the name and address of the consumer;

- (2) the principal amount of cash actually advanced;
 - (3) the fees charged to arrange or obtain an extension of consumer credit;
 - (4) the fees charged to advise or assist a consumer in obtaining an extension of consumer credit;
 - (5) the documentation used to establish a consumer's income under Section 4-12-22 (*Restrictions on Extensions of Consumer Credit Transactions*);
 - (6) a copy of each written agreement, between the credit services organization or credit access business and a consumer, evidencing an extension of consumer credit including, but not limited to, any refinancing or renewal agreement with the consumer;
 - (7) whether any part of the extension of consumer credit transaction has been refinanced or renewed and, if any part of the extension of consumer credit transaction has been refinanced or renewed, the number of refinances or renewals made; and
 - (8) a copy of each written agreement between the lender and consumer.
- (C) A credit access business shall also maintain, and file with the director, copies, in a format prescribed by the director, of all annual reports, quarterly reports, and all revisions and updates to those reports filed with the Texas Consumer Credit Commissioner as required by Chapter 393, Texas Finance Code. The reports, revisions, and updates must be submitted to the City within five business days of being submitted to the Texas Consumer Credit Commissioner.
- (D) The records required to be maintained under this section:
- (1) must be retained for at least three years; and
 - (2) to the extent not filed with the director, made available for inspection and copying by the City upon request during usual and customary business hours.

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

- (A) A credit services organization and a credit access business shall give to the consumer, upon request, a printed copy of a signed contract, and any other

document the credit services organization or credit access business requires a consumer to sign or acknowledge reading.

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

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

- (A) A credit services organization or credit access business shall not obtain for a consumer, or advise or assist a consumer in obtaining, a cash advance, under an extension of consumer credit transaction, that exceeds more than 20 percent of the consumer's gross monthly income.
- (B) A credit services organization or credit access business shall not obtain for a consumer, or advise or assist a consumer in obtaining, a cash advance in the form of a motor vehicle title loan that exceeds 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 services organization or credit access business shall use a paycheck, bank statement, IRS Form W-2 from the previous tax year, the previous year's tax return, a signed letter from an employer, or other similar documentation establishing income to determine a consumer's income.
- (D) A credit services organization or credit access business that obtains for a consumer or advises or assists a consumer in obtaining an extension of consumer credit shall by the terms of the extension of consumer credit transaction:
 - (1) require payment of the total amount of the extension of consumer credit transaction, including any principal, interest, fees, valuable consideration, credit access business fees, and any other charges or costs, in four or fewer payments; and
 - (2) reduce by at least 25 percent per payment the total amount of the extension of consumer credit transaction, including any principal,

interest, fees, valuable consideration, credit access business fees, and any other charges or costs.

- (E) A credit services organization or credit access business shall not refinance or renew any part of an extension of consumer credit transaction, unless the total amount of the extension of consumer credit transaction, including any principal, interest, fees, valuable consideration, credit access business fees, and any other charges or costs, is due in a single payment.
- (F) A credit services organization or credit access business that refinances or renews an extension of consumer credit transaction under Subsection (E):
 - (1) may not refinance or renew the extension of consumer credit transaction more than three times; and
 - (2) the minimum payment amount due to refinance or renew such extension of consumer credit transaction must reduce by at least 25 percent the total amount of the extension of consumer credit transaction, including any principal, interest, fees, valuable consideration, credit access business fees, and any other charges or costs, such that the total amount owed by the consumer is paid in full after a maximum of three refinances or renewals.
- (G) For purposes of this section, an extension of consumer credit transaction that is made to a consumer within seven business days after a previous extension of consumer credit transaction has been paid by the consumer constitutes a refinancing or renewal.

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

- (A) A credit services organization and a credit access business shall provide a list of non-profit agencies that provide financial education, training programs, or cash assistance programs to each consumer who seeks to obtain or seeks advice or assistance on obtaining an extension of consumer credit. The list must be on a form approved by the director and contain information regarding extensions of consumer credit.
- (B) A credit services organization and a credit access business must conspicuously display a poster, or other similar document, that contains information regarding extensions of consumer credit, as prescribed by the director. The organization or business must display the poster or similar document so that it is clearly visible to each consumer who enters the facility.

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

- (A) This section applies to an extension of consumer credit transaction that a credit services organization obtains or arranges for a consumer or provides advice or assistance to obtain and that is not a deferred presentment transaction or a motor vehicle title loan.
- (B) The sum of all valuable consideration, fees, or other charges owed by the consumer to the credit services organization may not exceed 0.1 percent per day of the outstanding balance of the extension of consumer credit.

§ 4-12-25 COMPLIANCE REQUIRED.

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

§ 4-12-26 OFFENSE AND PENALTY.

- (A) A person who violates any section of this chapter commits a Class C misdemeanor punishable by a fine not to exceed \$500.
- (B) Except as provided in Subsection (C), each day that a violation occurs is a separate offense.
- (C) Each extension of consumer credit transaction is a separate offense if the extension of consumer credit transaction violates:
 - (1) Section 4-12-22 (*Restrictions on Extensions of Consumer Credit Transactions*); or
 - (2) Section 4-12-24 (*Restrictions on Non-Deferred Presentment or Motor Vehicle Title Loan Extensions of Consumer Credit*).
- (D) The penalties provided for in Subsection (A) are in addition to any other remedies available under City ordinance or state law.
- (E) Except for an offense under Section 4-12-25 (*Compliance Required*), a culpable mental state is not required for a violation of this chapter and need not be proved.

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

Fee Notes

Telecommunications and Regulatory Affairs

PROFESSIONAL SERVICES/ANALYSIS

PC Community Program Software License Fee \$6 per license

CREDIT SERVICE ORGANIZATIONS/CREDIT ACCESS BUSINESSES

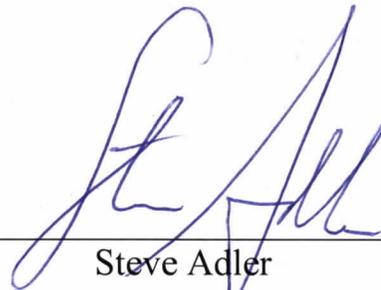
Registration Application Fee \$50 per application

PART 7. This ordinance takes effect on August 10, 2020.

PASSED AND APPROVED

_____ July 30 _____, 2020

§
§
§



Steve Adler
Mayor

APPROVED: Anne L. Morgan
Anne L. Morgan
City Attorney

by
Thomas

ATTEST:



Jannette S. Goodall
City Clerk

MEETING DATE: JUNE 16, 2021



ZONING COMMISSION AGENDA ITEM # 4

STAFF PREPARER/CONTACT INFORMATION: Sylvia Carrillo, City Administrator
scarrillo@sunsetvalley.org

SUBJECT: SPECIAL USE PERMIT APPLICATION

DESCRIPTION: Discussion and recommendation to the City Council of proposed changes to Chapter 10 of the Land Development Code – Parking and Fire Lanes regarding the difference between Gross Floor Area (GFA) and Net Floor Area (NFA).

BACKGROUND:

Rather than amending the ratios required for parking in all or some of the zoning designations, the City Administrator recommended a review of net floor area (NFA) as opposed to gross floor area (GFA).

The existing Land Development Code requires parking calculation based on gross floor area. This means areas that will not be occupied such as the mechanical room, electrical room, server room, etc. are calculated as overall occupiable square footage and the required parking count is determined. Using GFA results in a higher number of parking spaces (over parking), which often results in a request for variances for an increase in impervious cover, usually accompanied by a request to remove protected trees or pay into the Tree Fund. Overparking leads to more unused impervious cover, requires the removal of more vegetation and trees, and creates more pollutant runoff potential. By reducing to NFA, the City can potentially reduce the impervious cover footprint and be more sensitive to the environment.

After discussion by Planning & Environmental, the Committee is in favor of protecting green space and limiting the number of variances granted.

The change to NFA would provide consistent results throughout the code parking requirements without impacting those uses that are not based on square footage.

Other cities in our area, calculate based on gross floor area, but their required ratio is lower. For comparison, assume a 10,000 GFA office building in various cities in Texas.

- Houston - 2.75/1,000 NFA = 21 parking spaces required (assumes NFA is 75% of GFA)
- Dallas - 2.75/1,000 GFA = 28 parking spaces required (lower ratio than Sunset Valley)
- San Antonio – 1/300 GFA = 33 parking spaces required

- Austin – 1/275 GFA = 30 (after applying 20% reduction allowed by Austin LDC 25-6-478) (lower ratio than Sunset Valley)
- Arlington – 2.5/1,000 GFA = 25 parking spaces required (lower ratio than Sunset Valley)
- **CoSV – 1/300 GFA = 33 parking spaces required – CURRENT CODE**
- **CoSV – 1/300 NFA = 27 parking spaces required (assumes NFA is 75% of GFA) – PROPOSED CODE**

As demonstrated with the example above, changing the parking ratios to only include NFA would result in a reasonable number of parking spaces, consistent with other populous cities.

STAFF RECOMMENDATION:

Recommend to Council to adopt Net Floor Area to calculate parking requirements, while keeping the existing parking ratios.

SUPPORTING MATERIALS PROVIDED: YES / NO

From: [Gary Freeland](#)
To: [Sylvia Carrillo](#)
Cc: [Thomas Turk](#)
Subject: Parking Floor Areas
Date: Friday, May 7, 2021 3:09:43 PM
Attachments: [image001.png](#)

Sylvia,

Regarding parking.

The CoSV UDC parking table currently requires parking based on Gross Floor Area (GFA), which includes the entire building footprint. This is being considered to be changed to Net Floor Area (NFA), which would not count unusable, or unoccupiable space within the building.

For the purpose of comparison, we will restrict the use to office only. The CoSV currently requires one parking space for every 300 square foot of GFA. In reviewing jurisdictional requirements in other populous cities, parking area is calculated in many different ways to include GFA and NFA. Many other populous areas have a parking ratios less than 1/300sf GFA, requiring fewer parking spaces than the current CoSV requirements. Other methods of transportation can also impact this requirement with the availability of mass transit, ride share programs, and bicycles. The CoSV UDC requires bicycle parking in office uses, so the Code appears to encourage and support this alternate method of transportation. To create a parking standard more consistent with other populous areas that match today's standards, the CoSV could adopt a NFA ratio approach.

Using GFA can lead to an overparked situation when the ratios are too low, which appears to be the case for the CoSV. Overparking leads to more unused impervious cover, requires the removal of more vegetation and trees, and creates more pollutant runoff potential. By not overparking developments, the City can reduce the impervious cover footprint and be more sensitive to the environment. The City could reevaluate the ratios of each parking category, or change the evaluation to only consider NFA. It appears the change to NFA would provide consistent results throughout the code parking requirements without impacting those uses that are not based on square footage.

For comparison, assume a 10,000 GFA office building in various cities in Texas.

Houston - $2.75/1,000$ NFA = 21 parking spaces required (assumes NFA is 75% of GFA)

Dallas - $2.75/1,000$ GFA = 28 parking spaces required

San Antonio – $1/300$ GFA = 33 parking spaces required

Austin – $1/275$ GFA = 30 (after applying 20% reduction allowed by Austin LDC 25-6-478)

Arlington – $2.5/1,000$ GFA = 25 parking spaces required

CoSV – $1/300$ GFA = 33 parking spaces required – CURRENT CODE

CoSV – $1/300$ NFA = 27 parking spaces required (assumes NFA is 75% of GFA) – PROPOSED CODE

As demonstrated with the example above, changing the parking ratios to only include NFA would result in a reasonable number of parking spaces, consistent with other populous cities.

Sincerely,



Gary Freeland, P.E., CFM

Freeland Turk Engineering Group, LLC

TBPE Firm Registration Number F-21047

160 Creekside Park Rd, Suite 200

Spring Branch, TX 78070

Cell: (830) 377-4555

Email: gfreeland@freelandturk.com

Website: www.freelandturk.com

CHAPTER 10: PARKING AND FIRE LANES

Division 10.1: Parking

Sec. 10.100 Parking Regulations, in General

These regulations require off-street parking and loading facilities proportional to the need created by each use in order to ensure functionally adequate, aesthetically pleasing, and secure off-street parking and loading facilities. Development regulations and design standards are intended to ensure the usefulness of parking and loading facilities, protect the public safety, and, where appropriate, to mitigate potential adverse impacts on adjacent land uses.

Sec. 10.101 Basic Regulations - Vehicle Parking (*Amended Nov. 4, 1996*)

- (a) Off-street parking facilities shall be provided for any new building constructed and for any new use established. Off-street parking facilities shall be provided for any addition or enlargement of an existing building or use, or any change of occupancy or manner of operation that would result in additional parking spaces being required, provided that the additional parking shall be required only for such addition, enlargement, or change.
- (b) Existing facilities being used for off-street parking shall not be reduced in capacity to less than the number of spaces then required by this Code, or altered in design or function to less than the minimum standards then prescribed by this Code.
- (c) Parking facilities constructed or substantially reconstructed, whether or not required, shall conform to the Design Standards in effect at the times as set forth in Section 10.108 as amended from time to time.
- (d) All required parking facilities shall be maintained for the duration of the use requiring such areas. Such facilities shall be used exclusively for the temporary parking of passenger automobiles, motor vehicles, or light trucks not exceeding one ton in capacity, and shall not be used for the sale, display, or storage of merchandise, or for the storage or repair of vehicles or equipment.
- (e) All required parking facilities shall be located on the same site as the use for which such facilities are required.
- (f) No use shall be required to provide more spaces than prescribed by these regulations.
- (g) Except for residential areas, head-in parking adjacent to a public street or driveway is prohibited. In addition, head-in parking shall be prohibited where, in the judgment of the City, it may endanger the public health, safety and welfare.
- (h) deleted 6/10/2008
- (i) No parking facility shall be located and no parking shall be permitted between the front and side of the building and the front and side setback lines on property located in an O-Neighborhood Office District.
- (j) Parking next to or against buildings is prohibited.

Sec. 10.102 Schedule of Off-street Parking Requirements (Amended 03/21/00)

- (a) Parking facilities for each use shall be provided in accord with the minimum requirements prescribed in Table 1.
 - (1) Where the application of Table 1 results in a fractional requirement, a fraction of 0.5 or greater shall be resolved to the higher whole number.
 - (2) For purposes of this Section, requirements shall be based on gross floor area unless specific designations exist based on rooms, units, seat or person capacity, but shall not include enclosed or covered areas used for off-street parking or loading.
 - (3) Where requirements are established on the basis of seats or person capacity, the Uniform Building Code provisions applicable at the time of determination shall be used to define capacity.

TABLE 1

OFF STREET PARKING REQUIREMENTS
(All requirements based on gross square feet)

ZONING DISTRICTS	MINIMUM OFF-STREET PARKING
SF	2 Spaces per dwelling unit plus ½ parking space per bedroom
O	1 space per 300 square feet of floor area
NC and HC except medical-related services, veterinary services, restaurants, and day care facilities	1 space per 250 square feet of floor area
Medical-related services	1 space for each 300 square feet of floor area
Day Care Services	1 space per teacher, administrator and day care support and staff
Residential Inn	For the 50 rooms, a minimum of 1.25 parking spaces per room. Each room thereafter must provide a minimum of 1 space per room. In the event the Residential Inn includes a restaurant, bar, and/or assembly room(s), off street parking as specifically outlined for such use shall be in addition to the parking requirements outlined above.
Veterinary services	1 space per 500 square feet of floor area
Restaurants	1 space per 3 person capacity
GUI: Government building	1 space per 300 square feet of floor area
Schools	1 space per teacher, administrator, and support staff
Churches	1 space per 3 person capacity

Sec. 10.103 Parking for Compact Cars

In each parking facility of 30 or more spaces, a maximum of 10 percent (10%) of the spaces may be designed and reserved for small or compact cars. Spaces for compact vehicles shall be located in a manner affording desirability and use ability equivalent to standard spaces. Compact parking spaces shall be located in groups of not less than 5 contiguous spaces, and shall be identified by appropriate directions and markings.

Sec. 10.104 Handicapped Facilities

In each parking facility, a portion of the total parking spaces should be specifically designed, located, and reserved for vehicles licensed by the State for use by the handicapped, according to the following schedule:

<u>Total Spaces</u>	<u>Minimum Number of Handicapped Spaces Required</u>
19 or less	1
20-50	2
51-100	3
101-150	4
151 or greater	2% of total in excess of 50 or ADA requirements, whichever are more restrictive

Sec. 10.105 Bicycle Parking

- (a) Off-street parking for bicycles for each use except residential shall be provided with a minimum 5% of vehicle parking spaces.
- (b) Type, Size and Location of Spaces.
 - (1) Bicycle spaces shall be racks or lockers anchored so that they cannot be easily removed. Each space allocated for this kind of parking shall be a minimum of 2 feet wide and 6 feet long. Bicycle parking facilities shall be a bike rack with the ability for the user to lock one wheel and the frame, with the user providing the chain and lock.
 - (2) The location of the bicycle facility shall be at least as convenient as the most convenient auto parking and as close to the desired entrances as possible without interfering with pedestrian traffic.

Sec. 10.106 Basic Regulations - Off-street Loading

- (a) Off-street loading facilities shall be provided for any new building constructed and for any new use established. Off-street loading facilities shall be provided for any addition or enlargement of an existing use, or any change of occupancy or manner of operation that would result in additional

loading space being required, provided that the additional loading space shall be required only for such addition, enlargement, or change.

- (b) Facilities being used for off-street loading on the date of this Chapter is adopted shall not be reduced in capacity to less than the number of spaces prescribed, or altered in design or function to less than the minimum standards prescribed.
- (c) All required loading facilities shall be maintained for the duration of the use or building requiring such facility, and shall be used exclusively for the purpose of loading and unloading goods, materials, and supplies, and shall not be used for the sale, display, or storage of merchandise, or for the storage or repair of vehicles or equipment.

Sec. 10.107 Schedule of Off-street Loading Requirements

- (a) Off-street loading facilities for each use shall be provided in accord with the minimum requirements prescribed in Table 2.

TABLE 2

<u>Sq. Feet Floor Area</u>	<u>Off Street Loading Spaces (min. 12 X 45)</u>
Under 10,000	0
10,000 - 50,000	1

- (1) For purposes of this Section, requirements shall be based on gross floor area, but shall not include enclosed or covered areas used for off-street parking or loading.
- (2) Where mixed uses or multiple occupancies are located in the same building, or are situated on the same site in such a manner that all uses can be equally and conveniently served by a common loading space, the schedule may be applied to the entire building and to the combination of buildings or uses so situated, in lieu of application of the schedule to each individual use or occupancy. For this purpose, the schedule applicable to the use having the greatest requirement shall be utilized.
- (3) For purposes of this Section, each two square feet of exterior site area used by commercial uses shall be considered equivalent to one square foot of enclosed area.

Sec. 10.108 Design Standards (Amended Nov. 4, 1996)

- (a) Standards. Design standards are established by this Section to set basic minimum dimensions and guidelines for design, construction, and maintenance of parking and loading facilities.
- (b) Parking and loading space dimensions. The following basic dimensions shall be observed for parking spaces and loading spaces.

- (1) Each standard parking space shall consist of a rectangular area not less than 9.0 feet wide by 18.5 feet long. Each compact parking space shall consist of a rectangular area not less than 7.5 feet wide by 15.0 feet long. Each space shall have a vertical clearance of not less than 7.5 feet. Each space shall be independently accessible.
 - (2) Each parking space designated for use by the handicapped shall consist of a rectangular area not less than 13.0 feet wide by 18.5 feet long, with a vertical clearance of 7.5 feet, shall be located in an area not exceeding a 2-percent slope, and shall be located near and convenient to a level or ramped entrance accessible to handicapped persons. Parking spaces for the handicapped shall be signed and restricted for use by the handicapped only.
 - (3) Each off-street loading space shall consist of a rectangular area not less than 12 feet wide and 45 feet long, with a vertical clearance of not less than 15 feet.
 - (4) Each parking and loading space shall have adequate drives, aisles, and turning and maneuvering areas for access and usability, and shall at all times have access to a public street or alley.
 - (5) Each loading zone shall have a minimum design outside turning radius of 45 feet and a minimum inside turning radius of 19 feet and 2 inches.
- (c) Parking facility design. Minimum parking facility design standards are illustrated in Table 3. Additional supplemental guidelines and standards for parking facility design, internal layout, acceptable turning radii and pavement slope, vehicular and pedestrian circulation, and other design features may be adopted by ordinance of the Council.

TABLE 3

MINIMUM PARKING FACILITY STANDARDS

A	B	C	D	E	F
<u>Angle of Parking (Degrees)</u>	<u>Width of Stall</u>	<u>Depth of Stall 90 Degrees to Aisle</u>	<u>Width of Aisle</u>	<u>Width of Stall Parallel to Aisle</u>	<u>Module Width</u>
Standard Parking Spaces					
30	9.0	17.3	12.5	18.0	47
30	9.5	17.8	12.5	19.0	48
30	10.0	18.3	12.5	20.0	49
45	9.0	17.5	12.5	12.7	48
45	9.5	17.5	12.5	13.4	48
45	10.0	17.5	12.5	14.1	48
60	9.0	19.0	16.0	10.4	54
60	9.5	19.0	15.0	11.0	53
60	10.0	19.0	15.0	11.6	53
75	9.0	19.5	23.0	9.3	62
75	9.5	19.5	22.0	9.8	61
75	10.0	19.5	22.0	10.3	61
90	9.0	18.5	26.0	9.0	63
90	9.5	18.5	25.0	9.5	62
90	10.0	18.5	25.0	10.0	62
Compact Parking Spaces					
30	7.5	14.0	12.5	15.0	41
45	7.5	15.9	13.0	10.6	45
60	7.5	16.7	18.0	8.7	52
75	7.5	16.4	18.0	7.8	51
90	7.5	15.0	18.0	7.5	48
Parallel Parking Spaces					
0	8.5	8.5 (width)	12.5	22.0	30 (length)

- (d) **PARKING FACILITY STANDARDS:** In accordance with the landscaping provisions of this Code, planting zones shall be provided which utilize design and landscaping concepts within the area where vehicles are parked to enhance the visual attractiveness of the parking area and to reduce the amount of heat and other adverse conditions which occur in parking lots.
- (e) **PARKING LOTS:**
- (1) For Districts zoned O, NC, or HC, all parking lots for 10 or more cars shall provide for safe pedestrian access from car to destination, and vice versa. Parking lots shall be designed and constructed with origin-destination routes and sensible pedestrian pathways. Parking areas up to 2 parking bays (maximum of 10 cars per bay) deep shall be located perpendicular to the final destination. If additional parking bay sets (up to 2 bays per set) are required, they shall be positioned at an angle (minimum of 20 degrees) to adjacent bays. Sidewalks shall be installed between parking bays.
 - (2) All parking lots for 10 or more cars shall have sidewalks or planter strips to lead pedestrians from their cars to shopping or business areas. Sidewalks or planter strips shall be placed in front of all parking spaces.
 - (3) If sidewalks are provided, they shall be a minimum of 5.5 feet wide or meet minimum ADA requirements, whichever are more restrictive, and allow for auto overhang of 15-inches on each side. Parking bay sidewalks shall contain attractive bench or seating/resting areas (minimum of one bench or seating/resting area per 50 parking spaces). Bench or seating/resting areas shall contain shade trees or other vegetation meeting the City's Landscape Code. Bench/seating areas shall contain litter receptacles and shall be continuously maintained by the owner.
 - (4) In lieu of parking lot sidewalks, planter strips shall be provided as informal pedestrian walkways and to shade and screen cars. Planter strips shall be a minimum of 5.5-feet wide, shall be planted with trees meeting the landscape provisions of this Code, and shall contain bench or seating/resting areas (minimum of one bench or seating/resting area per 50 parking spaces).
 - (5) Parking lot sidewalks and planter strips shall be designed to integrate with lighting requirements to provide for pedestrian safety and visual appearance.

Parking Illustration. See Table 1.

- (f) Paving and drainage. The following basic standards shall be observed:
- (1) In all districts, parking and loading facilities shall be surfaced and maintained with asphaltic, concrete, or other permanent hard surfacing material sufficient to prevent mud, dust, loose material, and other nuisances. Materials may be pervious.
 - (2) All parking and loading facilities shall be graded and provided with permanent storm drainage facilities, meeting the construction specifications set by the City. Surfacing, curbing, and drainage improvements shall be sufficient to preclude free flow of water onto adjacent properties or public streets, and to provide adequate drainage.
- (g) Safety features. Parking and loading facilities shall meet the following standards:
- (1) Safety barriers, protective bumpers or curbing, and directional markers shall be provided to assure safety, efficient utilization, protection to landscaping, and to prevent encroachment onto adjoining public or private property.
 - (2) Visibility of and between pedestrians, bicyclists, and motorists shall be assured when entering individual parking spaces, when circulating within a parking facility, and when entering and exiting a parking facility.
 - (3) Internal circulation patterns, and the location and traffic direction of all access drives, shall be designed and maintained in accord with accepted principles of traffic engineering and traffic safety.
- (h) Lighting. Lights provided to illuminate any parking facility or paved area shall, to the maximum extent feasible, be designed to reflect away from any residential use. See Table B following section 51 of this Code.
- (i) Fencing and Screening. A parking facility in any nonresidential district which adjoins or abuts property in a residential district shall have a wall or fence or vegetation screen not less than 4 feet in height located for the length of the common boundary.
- (j) Noise. Areas used for primary circulation, for frequent idling of vehicle engines, or for loading activities shall be designed and located to minimize impacts on adjoining properties, including provisions for screening or sound baffling. See Table C following section 51 of this Code.
- (k) Maintenance. All parking and loading facilities shall be maintained to assure desirability and usefulness of the facility. Such facilities shall be maintained free of refuse, debris, or other accumulated matter and shall at all times be available for the off-street parking or loading use for which they are required or intended.
- (l) Adjustments. For a use or a site subject to Site Plan Review or a Special Use Permit, the minimum requirements of this Section may be adjusted in their application, provided such change is determined by the Council to provide improved design,

usability, attractiveness, and protection to adjoining uses, in a manner equal to or greater than the specific requirements of this Section.

- (m) Striping. Crosswalk lines shall be painted on the surface of the parking lot from handicapped parking areas to the building. Crosswalk lines shall be solid white lines, marking both edges of the crosswalk. They shall be not less than six (6) inches in width and should be spaced less than six (6) feet, but more than four (4) feet apart. For added visibility, the area of the crosswalk may be marked with white diagonal lines at a forty-five degree angle or with white longitudinal lines at a ninety degree angle to the line of the crosswalk. These lines should be approximately twelve inches to twenty-four inches wide and spaced twelve inches to twenty-four inches apart. Warning signs should be installed to notify drivers that the crosswalk areas may be used by persons with disabilities.

Division 10.2: Fire Lanes

Sec. 10.200 Purpose

The requirement that Fire Lanes be established in certain parking areas and the enforcement of restrictions on parking in such Fire Lanes established in this Chapter are designed to ensure adequate access to commercial, office, multi-family, and other high density use facilities by fire-fighting and other emergency vehicles.

Sec. 10.201 Basic Regulations

- (a) A Fire Lane shall be provided in any off-street parking facility constructed or reconstructed subsequent to the effective date of this Chapter, when such parking facility is required by the zoning provisions of this Code to include five or more parking spaces.
- (b) Whenever a person or entity applies for a building or construction permit for construction that will necessitate the provision of a fire lane according to the terms of this Chapter, such person or entity shall include in all plans and specifications submitted to the City Council the location and dimensions of all proposed fire lanes required by this Chapter.
- (c) City Council approval of any proposed fire lane required by this Chapter shall be based on the adequacy of access to structures on the subject property provided by the proposed fire lane. A fire lane may be provided in an off-loading roadway on the subject property in lieu of providing a fire lane in a parking facility, if the City Council, in its discretion, determines that the off-loading roadway provides adequate access by emergency vehicles to structures on the subject property.
- (d) All required fire lanes shall be delineated by a red stripe on the pavement marking the outside boundary from the curb of the fire lane. In addition, signs shall be conspicuously placed along the curb nearest the fire lane indicating the existence of the fire lane, and indicating that parking therein is prohibited.

Sec. 10.202 Variances

All requests for a variance from the requirements of this Chapter must be submitted in writing to the City Council. The City Council may authorize a variance from the requirements imposed by this Chapter when, in its opinion, undue hardship will result from requiring strict compliance or when alternative compliance will satisfy the purpose of this Chapter.