

AN ORDINANCE **2006-03-23-0370**

**REQUIRING TAX RETURN PREPARERS WHO FACILITATE INCOME TAX REFUND ANTICIPATION LOANS (RALs) TO POST AND GIVE FAIR DISCLOSURE, VERBALLY AND IN WRITING, OF CERTAIN INFORMATION RELATED TO RALS; PROHIBITING CERTAIN PRACTICES RELATED TO RALS; IMPOSING PENALTIES FOR VIOLATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE, AS REQUESTED BY COUNCILMAN FLORES, DISTRICT 1.**

\* \* \* \* \*

**WHEREAS**, income tax refund anticipation loans (RALs) are high cost, short-term loans secured by, and repaid directly from, the taxpayer's Internal Revenue Service (IRS) refund; and

**WHEREAS**, RALs drain millions of dollars from the taxpayers' refunds and low income working families' pockets; and

**WHEREAS**, according to IRS data, 78% of RAL users in 2004 had adjusted gross incomes of \$35,000 or less; and

**WHEREAS**, in 2004, RALs cost San Antonio taxpayers an estimated \$13 million in interest and processing costs; and

**WHEREAS**, RALs are often advertised erroneously as "fast cash" or "instant money" rather than as loans, with an average annualized interest rate of 178%;  
**NOW THEREFORE:**

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

**Section 1.** Chapter 16 of the San Antonio City Code, entitled "Licenses and Business Regulations" is hereby amended by the addition of Article XVII entitled "Refund Anticipation Loan Regulation" in form and content as set out and incorporated herein for all purposes as Attachment I.

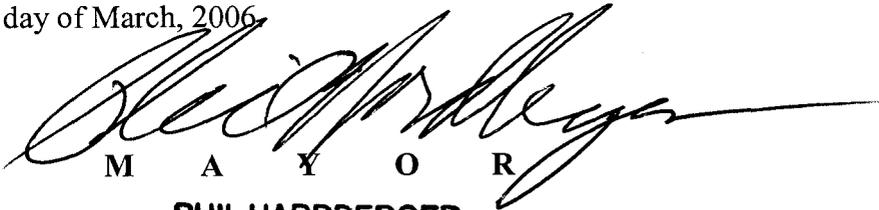
**Section 2.** The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the Charter of the City of San Antonio.

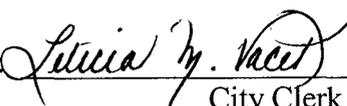
SW/mgc  
03/23/06  
Item No # 6

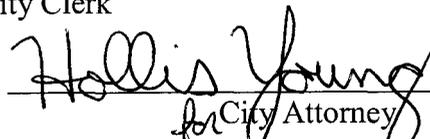
**Section 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, SAP GL Account Numbers as necessary to carry out the purpose of this Ordinance.

**Section 4.** This ordinance shall take effect on March 23, 2006, if approved by eight (8) or more affirmative votes; otherwise, this ordinance shall be effective on and after the tenth (10<sup>th</sup>) day from the date of passage hereof.

PASSED AND APPROVED this 23 day of March, 2006

  
M A Y O R  
PHIL HARDBERGER

Attest:   
City Clerk

Approved As To Form:   
for City Attorney

ARTICLE XVII. REFUND ANTICIPATION LOAN REGULATION

- Sec. 16-901 Short title and purpose.
- Sec. 16-902 Definitions.
- Sec. 16-903 Prohibited practices.
- Sec. 16-904 Required disclosures and practices.
- Sec. 16-905 Required posting.
- Sec. 16-906 Administration and enforcement.
- Sec. 16-907 Remedies.

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

A. This Article may be known and be cited as "Refund Anticipation Loan Regulation." This entire chapter shall be deemed an exercise of the police power of the City for the protection of the public economic and social welfare, health, peace and morals, and for the protection of consumers who are offered and/or enter into refund anticipation loans, refund anticipation checks, assisted direct deposits, and other similar transactions facilitated in the City of San Antonio, and shall be liberally construed to effectuate its purpose.

B. Nothing in this chapter shall be construed to regulate the practices of lending institutions governed by federal and/or state banking laws.

C. Nothing in this chapter shall be construed to relieve a facilitator as defined herein of complying with any legal or regulatory obligation(s) that may apply to it under federal, state, or other local law, including but not limited to the federal Truth-in-Lending Act.

**Sec. 902 Definitions.**

As used in this chapter

A. "Assisted direct deposit" or "ADD" means a mechanism or agreement through which a taxpayer's refund is deposited in a bank account other than the taxpayer's, and then the remaining portion of the refund, minus fees to the facilitator and the lender, is deposited in the taxpayer's own account.

B. "Bank Product" means a RAL, RAC, ADD, or other similar mechanism, agreement, or transaction that allows a taxpayer to receive an income tax refund or a loan against an anticipated refund from an entity other than the IRS, and/or allows the facilitator to collect fees for its non-Bank Product services or products, Bank Product Fees, and other similar fees from the proceeds of the taxpayer's income tax refund.

C. "Bank Product Fee" means all charges, fees, or other consideration charged or imposed by the facilitator and the lender for the making of or in connection with a Bank Product, and includes (i) any charge, fee, or other consideration for a deposit account used for receipt of the taxpayer's tax refund; (ii) processing or administrative fees for

Bank Products that are not charged to taxpayers who receive their refunds directly from the IRS via mail or direct deposit to the taxpayer's bank account; and (iii) in the case of a RAL, the charges, fees or other consideration charged or imposed by the lender for making the loan. This term does not include any charge, fee, or other consideration usually charged or imposed by the facilitator in the ordinary course of business, such as fees for tax return preparation and fees for electronic filing of tax returns, if the same fees in the same amount are charged to the facilitator's customers who do not use Bank Products.

D. "Disclosure" means complete and accurate information, presented in a clear, concise, and understandable manner in all written and oral notices, documents, and explanations required under this chapter.

E. "Facilitator" means a person, partnership, corporation or other business entity that, for compensation or other financial benefit from a taxpayer or any other person, assists the taxpayer in applying for or obtaining a Bank Product. The term does not include a lender that provides a Bank Product, a servicer for the lender that operates under the lender's name or any person who does not have direct contact with a borrower in connection with applying for or obtaining a Bank Product.

F. "Refund anticipation loan" or "RAL" means any loan a taxpayer may receive against his or her anticipated income tax refund.

G. "Refund anticipation check" or "RAC" means a check or other payment mechanism: (i) representing proceeds of the taxpayer's tax refund; (ii) which was issued by a depository institution or other person that received a direct deposit of the taxpayer's tax refund; and (iii) for which the taxpayer has paid a fee or other consideration.

H. "RAL Annual Percentage Rate" or "APR" is the annualized interest rate for the RAL as determined in accordance with the federal Truth in Lending Act.

I. "Taxpayer" means any natural person who, singly or jointly with another natural person, is solicited for, receives information about, applies for, and/or receives the proceeds of a Bank Product.

#### **16-903 Prohibited practices.**

A facilitator shall not:

- A. Offer or facilitate a Bank Product except as expressly provided in this chapter;
- B. Require a client to use a Bank Product in order to receive non-Bank Product services or products from the facilitator;
- C. Obtain the signature of a taxpayer on a disclosure required under this chapter that contains blank spaces to be filled in after the taxpayer has signed the disclosure;

D. For any Bank Product application that has been approved under the facilitator's usual and customary approval procedures, fail to arrange for a Bank Product promptly after the taxpayer applies for the Bank Product and approval is granted; or

E. Facilitate a Bank Product for which the Bank Product Fee, is greater than the fee stated in the disclosure, or facilitate a RAL for which the APR is greater than the interest rate stated in the disclosure, provided, however, that an increase in an APR on a RAL above the interest stated in the disclosure brought about by a lender's decision to fund a RAL at an amount less than the taxpayer's anticipated refund shall not constitute a violation of this subsection.

#### **Sec. 16-904 Required disclosures and practices.**

A. As set forth more specifically in subsections B through D of this section, if a facilitator offers to make or facilitate a Bank Product for the taxpayer, the facilitator must explain that the taxpayer has a choice of methods for receiving a tax refund, must first disclose the availability and timing of receiving a refund directly from the IRS without using a Bank Product before describing any available Bank Products, and must provide clear, complete, and accurate information about each available option, including receiving a refund directly from the IRS. All such disclosures shall be provided to the taxpayer in written forms which have been pre-approved by the Director of the Department of Community Initiatives and which, at a minimum shall be in 14-point type and must be offered to the taxpayer in either English or Spanish language written versions, as requested by the taxpayer. The facilitator must simultaneously provide a point-by-point oral explanation of the disclosures in English or Spanish as appropriate, or in a language understood by the taxpayer in the event that the taxpayer does not understand the disclosures in English or Spanish (which may be provided using a translator provided by the taxpayer).

B. Before the facilitator allows the taxpayer to enter into a Bank Product arrangement, the facilitator must (i) complete the disclosures required under Subsection A accurately with all relevant information for each taxpayer, (ii) provide the required point-by-point oral explanation in English, Spanish, or other language understood by the taxpayer (which may be provided using a translator provided by the taxpayer), and (iii) complete all blanks in the disclosure form and, only after all blanks are filled, have the form signed and dated by the taxpayer and the facilitator. The facilitator must provide the taxpayer with a copy of the signed disclosures, and must keep a copy of the signed disclosures on file with the taxpayer's records (e.g., tax return or other records of service) in accordance with the facilitator's usual retention procedures.

C. At the conclusion of providing services or products, a facilitator must provide an itemized statement of the charges for services, at least separately stating the fees and charges for any of the following charged to the taxpayer: (1) preparing the return; (2) filing the return; (3) providing other services (which services shall be separately itemized); and (4) providing or facilitating a Bank Product, which shall be broken down

by provider fees and, where applicable, lender fees. The itemized statement shall also clearly indicate that these are charges for services rendered and do not include interest owed or to be owed on the Bank Product; and (5) the itemized statement shall also clearly indicate the APR for any Bank Product used by the taxpayer.

D. The disclosures and practices required in this Section apply to all facilitators that offer to provide or facilitate Bank Products in the City of San Antonio, regardless of (i) the medium or means by which they communicate that offer, (ii) the medium or means by which they provide or facilitate the Bank Products, and (iii) whether the facilitator offers to provide or facilitate Bank Products from its own office or premises, or at the taxpayer's office, premises, or residence.

#### **Section 16-905 Required posting.**

A. Every facilitator shall post, in a prominent location on its premises, a written schedule showing separately its current fees for each service or product offered such as preparing the tax return, Bank Products offered or facilitated by the facilitator, the electronic filing of the taxpayer's tax return, and any other service or product.

B. Every facilitator shall post, in a prominent location on its premises, the written disclosures required under Subsection 16-904, all of which shall contain the following or a substantially similar legend, centered at the top of the page, in bold, capitalized, one-inch high letters, stating:

NOTICE CONCERNING REFUND ANTICIPATION LOANS, REFUND ANTICIPATION CHECKS, AND OTHER BANK PRODUCTS.

C. The postings required by this section shall be made in no less than 28-point type and, in the case of a paper disclosure, on a document measuring no less than 16 inches by 20 inches. The postings required in this section shall be displayed in a prominent location at each office, premise, or location where the facilitator is offering or facilitating Bank Products.

D. No facilitator may offer or facilitate a Bank Product unless the notices required by this section are displayed, and the interest rate and fees (as applicable) actually charged for the Bank Product are the same as or less than the interest rate or fees displayed in the notices.

#### **Section 16-906 Administration and enforcement.**

The Director of the Department of Community Initiatives ("Director") shall enforce and administer this chapter, and is hereby authorized to adopt procedures for its implementation. The Director and the Director's designee are authorized to enter the premises of any facilitator and inspect all disclosures, postings, and other relevant documents for the purpose of determining compliance with this chapter. The Director and his designees shall limit their inspections to examining only those documents necessary

for the enforcement of the provisions of this Article. The Director and the Director's designees are authorized to issue citations for violations of this chapter to any facilitator, the office manager of any facilitator's business office where Bank Products are facilitated or any other person engaged in actions in violation of this Article.

**Section 16-907 Remedies.**

A. Any person violating the provisions of this section shall be guilty of a class C misdemeanor and shall be subject to a maximum monetary penalty of Five Hundred Dollars (\$500.00) for each infraction. Each day of noncompliance and each specific failure to provide the required oral and written disclosures shall be a separate violation and the monetary penalties shall accumulate.

# Agenda Voting Results

**Name:** 6.

**Date:** 03/23/06

**Time:** 10:13:46 AM

**Vote Type:** Multiple selection

**Description:** An Ordinance requiring Tax Return Preparers who facilitate income tax Refund Anticipation Loans (RALs) to post and give fair disclosure, verbally and in writing, of certain information related to RALS; prohibiting certain practices related to RALS; imposing penalties for violation of this ordinance; and providing for an effective date, as requested by Councilman Flores, District 1. [Presented by Dennis Campa, Director, Community Initiatives; Frances A. Gonzalez, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		