

ORDINANCE NO. 2008-033

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE III (ADMINISTRATION), CHAPTER 34 (CITY POLICIES) OF THE CODE OF ORDINANCES BY ADDING A NEW SECTION ENTITLED "IDENTITY THEFT PREVENTION PROGRAM" IN ORDER TO ESTABLISH AN IDENTITY THEFT PREVENTION PROGRAM FOR THE CITY, TO SET OUT DEFINITIONS, POLICIES AND PROCEDURES FOR IMPLEMENTATION OF THE IDENTITY THEFT PREVENTION PROGRAM; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, A SAVINGS AND SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, the Federal Trade Commission adopted rules pertaining to identity theft prevention pursuant to the Red Flags Rule which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003, requiring creditors to adopt an Identity Theft Prevention Program on or before November 1, 2008; and

WHEREAS, the Red Flags Rule defines creditor to include entities that hold any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, and requires the creditor to develop and implement an Identity Theft Prevention Program for combating identity theft in connection with new and existing accounts; and the City is therefore classified as a creditor; and

WHEREAS, the City Council has reviewed the Identity Theft Prevention Program, and believes it fulfills, complies and implements the Red Flags Rule and other requirements outlined by the Federal Trade Commission; and

WHEREAS, the City recognizes its responsibility and authority to impose ordinances and controls that are necessary for the government of the City, its interest, welfare, and good order of the City as a body politic.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment. THAT the City of Wimberley Code of Ordinances, Title III (Administration) Chapter 34 (City Policies) is hereby amended by adding a new section entitled "Identity Theft Prevention Program" to read as follows:

"Section

Identity Theft Prevention Program

§ 34.10 **Program Adoption.**

The City of Wimberley, Texas ("City") developed this Identity Theft Prevention Program ("Program") pursuant to the Federal Trade Commission's Red Flags Rule ("Rule"), which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003. 16 C. F. R. § 681.2. This Program was developed for use by the City with oversight and approval by the City Council. After consideration of the size and complexity of the City's operations and account systems, and the nature and scope of the City's activities, the City Council determined that this Program is appropriate for the City

§ 34.11 Purpose and Definitions.

(A) Establish an Identity Theft Prevention Program

To establish an Identity Theft Prevention Program designed to detect, prevent and mitigate identity theft in connection with the opening of a covered account or an existing covered account and to provide for continued administration of the Program in compliance with Part 681 of Title 16 of the Code of Federal Regulations implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003.

(B) Establishing and Fulfilling Requirements of the Red Flags Rule

(1) The Red Flags Rule ("Rule") defines "Identity Theft" as "fraud committed using the identifying information of another person" and a "Red Flag" ("Red Flag") as a pattern, practice, or specific activity that indicates the possible existence of Identity Theft.

(2) Under the Rule, every financial institution and creditor is required to establish an "Identity Theft Prevention Program" tailored to its size, complexity and the nature of its operation. The Program must contain reasonable policies and procedures to:

- (a) Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
- (b) Detect Red Flags that have been incorporated into the Program;
- (c) Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
- (d) Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

§ 34.12 Red Flags Rule definitions used in this Program.

City: The City of Wimberley, Texas.

Covered Account: Under the Rule, a "covered account" is:

1. Any account the City offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and

2. Any other account the City offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the City from Identity Theft.

Creditors: The Rule defines creditors “to include finance companies, automobile dealers, mortgage brokers, City companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors.”

Identifying Information is defined under the Rule as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific person,” including: name, address, telephone number, social security number, date of birth, government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer’s Internet Protocol address, or routing code.

Program: The Identity Theft Prevention Program for the City.

Program Administrator: The City Administrator, or his/her designee, who shall be at a senior management employee level, is the Program Administrator for the Program.

§ 34.13 Identification Of Red Flags.

In order to identify relevant Red Flags, the City considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The City identifies the following red flags, in each of the listed categories:

- (A) Red Flags: Notifications and Warnings From Consumer Credit Reporting Agencies
 - (1) Report of fraud accompanying a consumer credit report;
 - (2) Notice or report from a consumer credit agency of a credit freeze on a customer or applicant;
 - (3) Notice or report from a consumer credit agency of an active duty alert for an applicant; and
 - (4) Indication from a consumer credit report of activity that is inconsistent with a customer’s usual pattern or activity, including but not limited to:
 - (a) Recent and significant increase in volume of inquiries
 - (b) Unusual number of recent credit applications
 - (c) A material change in use of credit
 - (d) Accounts closed for cause or abuse

(B) Red Flags: Suspicious Documents

- (1) Identification document or card that appears to be forged, altered or inauthentic;
- (2) Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
- (3) Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
- (4) Application for service that appears to have been altered or forged.

(C) Red Flags: Suspicious Personal Identifying Information

- (1) Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates, lack of correlation between Social Security number range and date of birth);
- (2) Identifying information presented that is inconsistent with other sources of information (for instance, Social Security number or an address not matching an address on a credit report);
- (3) Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
- (4) Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
- (5) Social Security number presented that is the same as one given by another customer;
- (6) An address or phone number presented that is the same as that of another person;
- (7) A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law social security numbers must not be required) or an applicant cannot provide information requested beyond what could commonly be found in a purse or wallet; and
- (8) A person's identifying information is not consistent with the information that is on file for the customer.

(D) Red Flags: Suspicious Account Activity or Unusual Use of Account

- (1) Change of address for an account followed by a request to change the account holder's name;
- (2) Payments stop on an otherwise consistently up-to-date account;
- (3) Account used in a way that is not consistent with prior use (example: very high activity);
- (4) Mail sent to the account holder is repeatedly returned as undeliverable;
- (5) Notice to the City that a customer is not receiving mail sent by the City;
- (6) Notice to the City that an account has unauthorized activity;
- (7) Breach in the City's computer system security; and
- (8) Unauthorized access to or use of customer account information.

(E) Red Flag: Alerts from Others

Notice to the City from a customer, identity theft victim, fraud detection service, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

§ 34.14 Detecting Red Flags.

(A) New Accounts

In order to detect any of the Red Flags identified above associated with the opening of a **new account**, City personnel will take the following steps to obtain and verify the identity of the person opening the account:

- (1) Detect
 - (a) Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
 - (b) Verify the customer's identity (for instance, review a driver's license or other identification card);
 - (c) Review documentation showing the existence of a business entity;
 - (d) Request additional documentation to establish identity; and
 - (e) Independently contact the customer or business.

(B) Existing Accounts

In order to detect any of the Red Flags identified above for an **existing account**, City personnel will take the following steps to monitor transactions with an account:

- (1) Detect
 - (a) Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
 - (b) Verify the validity of requests to close accounts or change billing addresses; and
 - (c) Verify changes in banking information given for billing and payment purposes.

§ 34.15 Preventing And Mitigating Identity Theft.

(A) In the event City personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

- (1) Prevent and Mitigate
 - (a) Continue to monitor an account for evidence of Identity Theft;
 - (b) Contact the customer, sometimes through multiple methods;

- (c) Change any passwords or other security devices that permit access to accounts;
- (d) Not open a new account;
- (e) Close an existing account;
- (f) Do not close the account, but monitor or contact authorities;
- (g) Reopen an account with a new number;
- (h) Notify the Program Administrator for determination of the appropriate step(s) to take;
- (i) Notify law enforcement; or
- (j) Determine that no response is warranted under the particular circumstances.

(2) Protect customer identifying information

In order to further prevent the likelihood of identity theft occurring with respect to City accounts, the City will take the following steps with respect to its internal operating procedures to protect customer identifying information:

- (1) Ensure that its website is secure or provide clear notice that the website is not secure;
- (2) Where and when allowed, ensure complete and secure destruction of paper documents and computer files containing customer information;
- (3) Ensure that office computers are password protected and that computer screens lock after a set period of time;
- (4) Change passwords on office computers on a regular basis;
- (5) Ensure all computers are backed up properly and any backup information is secured;
- (6) Keep offices clear of papers containing customer information;
- (7) Request only the last 4 digits of social security numbers (if any);
- (8) Ensure computer virus protection is up to date; and
- (9) Require and keep only the kinds of customer information that are necessary for City purposes.

§ 34.16 Program Updates.

This Program will be periodically reviewed and updated to reflect changes in risks to customers and the soundness of the City from Identity Theft. At least annually, the Program Administrator will consider the City's experiences with Identity Theft situation, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, changes in types of accounts the City maintains and changes in the City's business arrangements with other entities, consult with law enforcement authorities, and consult with other City personnel. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program or present the City Council with his or her recommended changes and the City Council will make a determination of whether to accept, modify or reject those changes to the Program.

§ 34.17

Program Administration.

(A) Oversight

Responsibility for developing, implementing and updating this Program lies with the Program Administrator. The Program Administrator will be responsible for the Program administration, for ensuring appropriate training of City staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program.

(B) Staff Training and Reports

- (1) Initially, all City staff shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected. Thereafter, all City staff shall undergo update training not less than annually. Additionally, all new City employees shall undergo training.
- (2) All City staff shall submit reports annually to the Program Administrator concerning the City's compliance with the Program, the training that has been given and the effectiveness of the policies and procedures in addressing the risk of Identity Theft, including recommendations for changes to the Program. While incidents of Identity Theft are to be reported immediately to the Program Administrator, the monthly reports shall contain a recap of the incident and include the steps taken to assist with resolution of the incident. The Program Administrator shall provide an annual report to the City Council addressing the items identified in this subsection.

(C) Service Provider Arrangements

In the event the City engages a service provider to perform an activity in connection with one or more accounts, including but not limited to franchise utility providers, the City will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

- (1) Require, by contract or contract amendment, that service providers have such policies and procedures in place; and
- (2) Require, by contract or contract amendment, that service providers review the City's Program and report any Red Flags to the Program Administrator.

(D) Specific Program Elements and Confidentiality

For the effectiveness of Identity Theft prevention Programs, the Red Flag Rule envisions a degree of confidentiality regarding the City's specific practices relating to Identity Theft

detection, prevention and mitigation. Therefore, under this Program, knowledge of such specific practices are to be limited to the Identity Theft Committee and those employees who need to know them for purposes of preventing Identity Theft. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general red flag detection, implementation and prevention practices are listed in this document."

Except as expressly amended herein the Wimberley Code of Ordinances shall remain in full force and effect.

Section 3. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

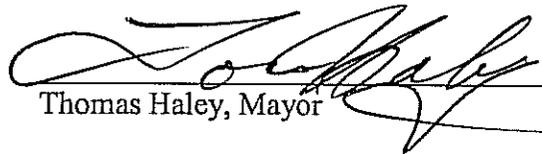
Section 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

Section 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this 27th day of October, 2008.

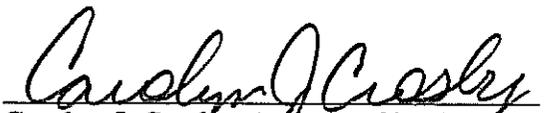
CITY OF WIMBERLEY, TEXAS


Thomas Haley, Mayor

ATTEST:


Cara McPartland, City Secretary

APPROVED AS TO FORM:


Carolyn J. Crosby, Assistant City Attorney

