

DISCLAIMER: Following is a suggested ordinance for implementing the FTC Red Flag Requirements for the prevention of identity theft. This ordinance was prepared by the Georgia Municipal League. The Alabama League of Municipalities strongly encourages municipalities to consult with their municipal attorney prior to adopting any ordinance implementing the new law to address any local issues and concerns unique to your municipality. Users are advised that this information may need to be updated and adapted to local needs and circumstances. Use of this sample is at the sole risk of the user. The Alabama League of Municipalities, its instrumentalities, and their staff disclaim any responsibility or liability which may arise or result from the use or implementation of all or any portion of this sample.

If this document is being adopted by a separately incorporated utility board the language will need to be adjusted accordingly and will be in the form of a board policy or regulation rather than an ordinance.]

ORDINANCE NO: _____

AN ORDINANCE TO PROVIDE FOR AN IDENTITY THEFT PREVENTION PROGRAM; TO COMPLY WITH FEDERAL REGULATIONS RELATING TO ADDRESS DISCREPANCIES; AND TO COMPLY WITH FEDERAL REGULATIONS RELATING TO RED FLAGS AND IDENTITY THEFT.

WHEREAS pursuant to federal law the Federal Trade Commission adopted Identity Theft Rules requiring the creation of certain policies relating to the use of consumer reports, address discrepancy and the detection, prevention and mitigation of identity theft;

WHEREAS the Federal Trade Commission regulations, adopted as 16 CFR § 681.2 require creditors, as defined by 15 U.S.C. § 1681a(r)(5) to adopt red flag policies to prevent and mitigate identity theft with respect to covered accounts;

WHEREAS 15 U.S.C. § 1681a(r)(5) cites 15 U.S.C. § 1691a, which defines a creditor as a person that extends, renews or continues credit, and defines ‘credit’ in part as the right to purchase property or services and defer payment therefore;

WHEREAS the Federal Trade Commission regulations include utility companies in the definition of creditor;

WHEREAS the City of _____ is a creditor with respect to 16 CFR § 681.2 by virtue of providing utility services¹ or by otherwise accepting payment for municipal services in arrears;

¹ References to utility accounts only apply to local governments that actually provide utility services. While the regulations state that utility accounts are “covered accounts” and that “creditors” includes utility companies, it is possible that a city could be a creditor with respect to non-utility covered accounts. In this event, the preamble to this ordinance should be amended accordingly.

WHEREAS the Federal Trade Commission regulations define ‘covered account’ in part as an account that a creditor provides for personal, family or household purposes that is designed to allow multiple payments or transactions and specifies that a utility account is a covered account;

WHEREAS the Federal Trade Commission regulations require each creditor to adopt an Identity Theft Prevention Program which will use red flags to detect, prevent and mitigate identity theft related to information used in covered accounts;

WHEREAS the City provides [list types of utility accounts provided by the city such as water, sewer, electric and natural gas] services for which payment is made after the product is consumed or the service has otherwise been provided which by virtue of being utility accounts are covered accounts;

WHEREAS customer accounts for [list non-utility municipal services that are covered accounts by virtue of meeting the definition of covered accounts] for which payment is made after the product is consumed or the service has otherwise been provided are covered accounts by virtue of being for household purposes and allowing for multiple payments or transactions;

WHEREAS the Federal Trade Commission regulations, adopted as 16 CFR 681.1, require users of consumer credit reports to develop policies and procedures relating to address discrepancies between information provided by a consumer and information provided by a consumer credit company;

WHEREAS the City of _____ uses consumer credit reports to establish various customer accounts; and

WHEREAS the duly elected governing authority of the City of _____ is the Mayor and council thereof;

Now therefore be it ordained that the City of _____ adopts the following Identity Theft Prevention Program:

Section 1

The Code of the City of _____ is hereby amended by adding an Article to be numbered _____, which said Article reads as follows:

“Article _____

Identity Theft Prevention Program

Section ___-1. Short Title.

This article shall be known as the Identity Theft Prevention Program.

Section ____-2. Purpose.

The purpose of this Article is to comply with 16 CFR § 681.2 in order to detect, prevent and mitigate identity theft by identifying and detecting identity theft red flags and by responding to such red flags in a manner that will prevent identity theft.

Section ____-3. Definitions.

For purposes of this Article, the following definitions apply²:

- (a) ‘City’ means the City of _____.
- (b) ‘Covered account’ means (i) An account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account; and (ii) Any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation, or litigation risks.
- (c) ‘Credit’ means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefore.
- (d) ‘Creditor’ means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit and includes utility companies and telecommunications companies.
- (e) ‘Customer’ means a person that has a covered account with a creditor.
- (f) ‘Identity theft’ means a fraud committed or attempted using identifying information of another person without authority.
- (g) ‘Person’ means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.
- (h) ‘Personal Identifying Information’ means a person’s credit card account information, debit card information bank account information and drivers’ license

² Other than “city” and “personal identifying information”, definitions provided in this section are based on the definitions provided in 16 CFR § 681.2.

information and for a natural person includes their social security number, mother's birth name, and date of birth.

- (i) 'Red flag' means a pattern, practice, or specific activity that indicates the possible existence of identity theft.
- (j) 'Service provider' means a person that provides a service directly to the city.

Section ____-4. Findings.

- (1) The city is a creditor pursuant to 16 CFR § 681.2 due to its provision or maintenance of covered accounts for which payment is made in arrears.
- (2) Covered accounts offered to customers for the provision of city services include [list utility accounts and other covered accounts].
- (3) The city's previous experience with identity theft related to covered accounts is as follows:
_____.
- (4) The processes of opening a new covered account, restoring an existing covered account, making payments on such accounts, and [other examples] have been identified as potential processes in which identity theft could occur.
- (5) The city limits access to personal identifying information to those employees responsible for or otherwise involved in opening or restoring covered accounts or accepting payment for use of covered accounts. Information provided to such employees is entered directly into the city's computer system and is not otherwise recorded.
- (6) The city determines that there is a [low, moderate, high] risk of identity theft occurring in the following ways (if any):
 - a. Use by an applicant of another person's personal identifying information to establish a new covered account;
 - b. Use of a previous customer's personal identifying information by another person in an effort to have service restored in the previous customer's name;
 - c. Use of another person's credit card, bank account, or other method of payment by a customer to pay such customer's covered account or accounts;
 - d. Use by a customer desiring to restore such customer's covered account of another person's credit card, bank account, or other method of payment; and
 - e. _____.

Section ____-5. Process of Establishing a Covered Account.

- (1) As a precondition to opening a covered account in the city, each applicant shall provide the city with personal identifying information of the customer [list required information, for example, a valid government issued identification card]

- containing a photograph of the customer or, for customers who are not natural persons, a photograph of the customer's agent opening the account. If applicable to your city the following could also be included: "Such applicant shall also provide any information necessary for the department providing the service for which the covered account is created to access the applicant's consumer credit report".] Such information shall be entered directly into the city's computer system and shall not otherwise be recorded.
- (2) Each account shall be assigned an account number and personal identification number (PIN) which shall be unique to that account. The city may utilize computer software to randomly generate assigned PINs and to encrypt account numbers and PINs.

Section ____-6. Access to Covered Account Information.

- (1) Access to customer accounts shall be password protected and shall be limited to authorized city personnel.
- (2) Such password(s) shall be changed by [for example, the director of the department providing the service for which the covered account is created, or by the director of information technology] on a regular basis, shall be at least 8 characters in length and shall contain letters, numbers and symbols.
- (3) Any unauthorized access to or other breach of customer accounts is to be reported immediately to the City Manager [or other appropriate municipal or board employee] and the password changed immediately.
- (4) Personal identifying information included in customer accounts is considered confidential and any request or demand for such information shall be immediately forwarded to the City Manager and the City Attorney.

Section ____-7. Credit Card Payments.

- (1) In the event that credit card payments that are made over the Internet are processed through a third party service provider, such third party service provider shall certify that it has an adequate identity theft prevention program in place that is applicable to such payments.
- (2) All credit card payments made over the telephone or the city's website shall be entered directly into the customer's account information in the computer data base.
- (3) Account statements and receipts for covered accounts shall include only the last four digits of the credit or debit card or the bank account used for payment of the covered account.

Section ____-8. Sources and Types of Red Flags.

All employees responsible for or involved in the process of opening a covered account, restoring a covered account or accepting payment for a covered account shall check for red flags as indicators of possible identity theft and such red flags may include:

- (1) Alerts from consumer reporting agencies, fraud detection agencies or service providers. Examples of alerts include but are not limited to:
 - a. A fraud or active duty alert that is included with a consumer report;
 - b. A notice of credit freeze in response to a request for a consumer report;
 - c. A notice of address discrepancy provided by a consumer reporting agency;
 - d. Indications of a pattern of activity in a consumer report that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:
 - i. A recent and significant increase in the volume of inquiries;
 - ii. An unusual number of recently established credit relationships;
 - iii. A material change in the use of credit, especially with respect to recently established credit relationships; or
 - iv. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.
- (2) Suspicious documents. Examples of suspicious documents include:
 - a. Documents provided for identification that appear to be altered or forged;
 - b. Identification on which the photograph or physical description is inconsistent with the appearance of the applicant or customer;
 - c. Identification on which the information is inconsistent with information provided by the applicant or customer;
 - d. Identification on which the information is inconsistent with readily accessible information that is on file with the financial institution or creditor, such as a signature card or a recent check; or
 - e. An application that appears to have been altered or forged, or appears to have been destroyed and reassembled.
- (3) Suspicious personal identification, such as suspicious address change. Examples of suspicious identifying information include:
 - a. Personal identifying information that is inconsistent with external information sources used by the financial institution or creditor. For example:
 - i. The address does not match any address in the consumer report; or
 - ii. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.
 - b. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer, such as a lack of correlation between the SSN range and date of birth.
 - c. Personal identifying information or a phone number or address, is associated with known fraudulent applications or activities as indicated by internal or third-party sources used by the financial institution or creditor.
 - d. Other information provided, such as fictitious mailing address, mail drop addresses, jail addresses, invalid phone numbers, pager numbers or answering services, is associated with fraudulent activity.
 - e. The SSN provided is the same as that submitted by other applicants or customers.
 - f. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of applicants or customers.

- g. The applicant or customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
 - h. Personal identifying information is not consistent with personal identifying information that is on file with the financial institution or creditor.
 - i. The applicant or customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.
- (4) Unusual use of or suspicious activity relating to a covered account. Examples of suspicious activity include:
- a. Shortly following the notice of a change of address for an account, city receives a request for the addition of authorized users on the account.
 - b. A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example:
 - i. The customer fails to make the first payment or makes an initial payment but no subsequent payments.
 - c. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:
 - i. Nonpayment when there is no history of late or missed payments;
 - ii. A material change in purchasing or spending patterns;
 - d. An account that has been inactive for a long period of time is used (*taking into consideration the type of account, the expected pattern of usage and other relevant factors*).
 - e. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's account.
 - f. The city is notified that the customer is not receiving paper account statements.
 - g. The city is notified of unauthorized charges or transactions in connection with a customer's account.
 - h. The city is notified by a customer, law enforcement or another person that it has opened a fraudulent account for a person engaged in identity theft.
- (5) Notice from customers, law enforcement, victims or other reliable sources regarding possible identity theft or phishing relating to covered accounts

Section ____-9. Prevention and Mitigation of Identity Theft.

- (1) In the event that any city employee responsible for or involved in restoring an existing covered account or accepting payment for a covered account becomes aware of red flags indicating possible identity theft with respect to existing covered accounts, such employee shall use his or her discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his or her discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to _____. If, in his or her discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to

_____, who may in his or her discretion determine that no further action is necessary. If _____ in his or her discretion determines that further action is necessary, a city employee shall perform one or more of the following responses, as determined to be appropriate by _____:

- a. Contact the customer;
 - b. Make the following changes to the account if, after contacting the customer, it is apparent that someone other than the customer has accessed the customer's covered account:
 - i. change any account numbers, passwords, security codes, or other security devices that permit access to an account; or
 - ii. close the account;
 - c. Cease attempts to collect additional charges from the customer and decline to sell the customer's account to a debt collector in the event that the customer's account has been accessed without authorization and such access has caused additional charges to accrue;
 - d. Notify a debt collector within *[select time frame, for example, 24 hours]* of the discovery of likely or probable identity theft relating to a customer account that has been sold to such debt collector in the event that a customer's account has been sold to a debt collector prior to the discovery of the likelihood or probability of identity theft relating to such account;
 - e. Notify law enforcement, in the event that someone other than the customer has accessed the customer's account causing additional charges to accrue or accessing personal identifying information; or
 - f. Take other appropriate action to prevent or mitigate identity theft.
- (2) In the event that any city employee responsible for or involved in opening a new covered account becomes aware of red flags indicating possible identity theft with respect an application for a new account, such employee shall use his or her discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his or her discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to _____. If, in his or her discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to _____, who may in his or her discretion determine that no further action is necessary. If _____ in his or her discretion determines that further action is necessary, a city employee shall perform one or more of the following responses, as determined to be appropriate by _____:
- a. Request additional identifying information from the applicant;
 - b. Deny the application for the new account;
 - c. Notify law enforcement of possible identity theft; or
 - d. Take other appropriate action to prevent or mitigate identity theft.

Section ____-10. Updating the Program.

The city council [or board as the case may be] shall annually review and, as deemed necessary by the council, update the Identity Theft Prevention Program along with any relevant red flags in order to reflect changes in risks to customers or to the safety and soundness of the city and its covered accounts from identity theft. In so doing, the city council shall consider the following factors and exercise its discretion in amending the program:

- (1) The city's experiences with identity theft;
- (2) Updates in methods of identity theft;
- (3) Updates in customary methods used to detect, prevent, and mitigate identity theft;
- (4) Updates in the types of accounts that the city offers or maintains; and
- (5) Updates in service provider arrangements.

Section ____-11. Program Administration.

[Senior Level Staff] is responsible for oversight of the program and for program implementation. The [_____] is responsible for reviewing reports prepared by staff regarding compliance with red flag requirements and with recommending material changes to the program, as necessary in the opinion of the [_____] , to address changing identity theft risks and to identify new or discontinued types of covered accounts. Any recommended material changes to the program shall be submitted to the city council for consideration by the council.

- (1) The [Senior Level Staff] will report to the [_____] at least annually, on compliance with the red flag requirements. The report will address material matters related to the program and evaluate issues such as:
 - a. The effectiveness of the policies and procedures of city in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts;
 - b. Service provider arrangements;
 - c. Significant incidents involving identity theft and management's response; and
 - d. Recommendations for material changes to the Program.
- (2) The [Senior Level Staff] is responsible for providing training to all employees responsible for or involved in opening a new covered account, restoring an existing covered account or accepting payment for a covered account with respect to the implementation and requirements of the Identity Theft Prevention Program. The [Senior Level Staff] shall exercise his or her discretion in determining the amount and substance of training necessary.

Section ____-12. Outside Service Providers.

In the event that the city engages a service provider to perform an activity in connection with one or more covered accounts the [Senior Level Staff] shall exercise his or her discretion in reviewing such arrangements in order to ensure, to the best of his or her ability, that the service provider's activities are conducted in accordance with policies and procedures, agreed upon by contract, that are designed to detect any red flags that

may arise in the performance of the service provider’s activities and take appropriate steps to prevent or mitigate identity theft.”

Section 2

The Code of the City of _____ is hereby amended by adding an Article to be numbered _____, which said Article reads as follows:

“Article _____

Treatment of Address Discrepancies.

Section _____-1. Short Title.

Treatment of Address Discrepancies.

Section _____-2. Purpose.

Pursuant to 16 CFR § 681.1, the purpose of this Article is to establish a process by which the city will be able to form a reasonable belief that a consumer report relates to the consumer about whom it has requested a consumer credit report when the city has received a notice of address discrepancy.

Section _____-3. Definitions.

For purposes of this article, the following definitions apply:

- (1) ‘Notice of address discrepancy’ means a notice sent to a user by a consumer reporting agency pursuant to 15 U.S.C. § 1681(c)(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the address(es) in the agency’s file for the consumer.³
- (2) ‘City’ means City of _____.

Section _____-4. Policy.

In the event that the city receives a notice of address discrepancy, the city employee responsible for verifying consumer addresses for the purpose of providing the municipal service or account sought by the consumer shall perform one or more of the following activities, as determined to be appropriate by such employee:

- (1) Compare the information in the consumer report with:
 - a. Information the city obtains and uses to verify a consumer’s identity in accordance with the requirements of the Customer Information Program rules implementing 31 U.S.C. § 5318(l);

³ See 16 CFR § 681.1(b).

- b. Information the city maintains in its own records, such as applications for service, change of address notices, other customer account records or tax records; or
 - c. Information the city obtains from third-party sources that are deemed reliable by the relevant city employee; or
- (2) Verify the information in the consumer report with the consumer.

Section ____-5. Furnishing Consumer's Address to Consumer Reporting Agency.

- (1) In the event that the city reasonably confirms that an address provided by a consumer to the city is accurate, the city is required to provide such address to the consumer reporting agency from which the city received a notice of address discrepancy with respect to such consumer. This information is required to be provided to the consumer reporting agency when:
- a. The city is able to form a reasonable belief that the consumer report relates to the consumer about whom the city requested the report;
 - b. The city establishes a continuing relation with the consumer; and
 - c. The city regularly and in the ordinary course of business provides information to the consumer reporting agency from which it received the notice of address discrepancy.
- (2) Such information shall be provided to the consumer reporting agency as part of the information regularly provided by the city to such agency for the reporting period in which the city establishes a relationship with the customer.

Section ____-6. Methods of Confirming Consumer Addresses.

The city employee charged with confirming consumer addresses may, in his or her discretion, confirm the accuracy of an address through one or more of the following methods:

- (1) Verifying the address with the consumer;
- (2) Reviewing the city's records to verify the consumer's address;
- (3) Verifying the address through third party sources; or
- (4) Using other reasonable processes.

Section 3

The preamble to this ordinance is hereby incorporated into this ordinance as if set out fully herein.

Section 4

All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

Section 5

The adoption date of this ordinance is _____, 2008.

Section 6

The effective date of this ordinance is _____, 2008.

ORDAINED by the Mayor and Council of the City of _____ this the _____
day of _____, 2008.

ATTEST:

By _____
City Clerk

Mayor: _____
City of _____