

ORDINANCE NO: 10-16-2008 c

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF ELKINS, ARKANSAS TO PROVIDE A NEW TITLE 16, IDENTITY THEFT PREVENTION PROGRAM; TO COMPLY WITH FEDERAL REGULATIONS RELATING TO ADDRESS DISCREPANCIES; TO COMPLY WITH FEDERAL REGULATIONS RELATING TO RED FLAGS AND IDENTITY THEFT; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN ADOPTION DATE; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES ALLOWED BY LAW.

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 specifically include utility companies in the definition of creditor;

WHEREAS the City of Elkins is a creditor with respect to 16 CFR § 681.2 by virtue of providing utility services<sup>1</sup> or by otherwise accepting payment for municipal services in arrears;

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;

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<sup>1</sup> 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, for instance, local court system(s). In this event, the preamble to this ordinance should be amended accordingly.