

1 [Financial Information Privacy.]

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3 **Ordinance amending the San Francisco Business and Tax Regulations Code to enact a**
4 **new Article 20 to provide for the protection of private financial information.**

5 Note: Additions are *single-underline italics Times New Roman*;
6 deletions are *strikethrough italics Times New Roman*.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough normal~~.

8 Be it ordained by the People of the City and County of San Francisco:

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10 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
11 by adding a new Article 20 thereto, to read as follows:

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13 SEC. 2000. This Article shall be known and may be cited as the "San Francisco Financial
14 Information Privacy Ordinance of 2002." This Article shall become operative on January 1, 2003.

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16 SEC. 2001. (a) The intent of this Ordinance is to require for financial institutions engaging in
17 business in San Francisco to provide their customers notice and meaningful choice about how
18 consumers' personal information is shared or sold by their financial institutions.

19 (b) The intent of this Ordinance is to afford persons greater privacy protection than that
20 provided in Public Law 106-102, the federal Gramm, Leach, and Bliley Act, and that the provisions of
21 this Article be interpreted to be consistent with that purpose.

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23 SEC. 2002. For the purposes of this Article:

24 (a) "Confidential consumer information" means personally identifiable financial information
25 (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the

1 consumer or any service performed for the consumer, or (3) otherwise obtained by the financial
2 institution. Confidential consumer information does not include publicly available information that is
3 lawfully made available to the general public from (1) federal, state, or local government records, (2)
4 widely distributed media, or (3) disclosures to the general public that are required to be made by
5 federal, state, or local law. Confidential consumer information shall include any list, description, or
6 other grouping of consumers, and publicly available information pertaining to them that is derived
7 using any nonpublic personal information other than publicly available information, but shall not
8 include any list, description, or other grouping of consumers, and publicly available information
9 pertaining to them that is derived without using any confidential consumer information.

10 (b) "Personally identifiable financial information" means information (1) that a consumer
11 provides to a financial institution to obtain a product or service from the financial institution, (2) about
12 a consumer resulting from any transaction involving a product or service between the financial
13 institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in
14 connection with providing a product or service to that consumer. Any personally identifiable
15 information is financial if it was obtained by a financial institution in connection with providing a
16 financial product or service to a consumer, including the fact that a consumer is a customer of a
17 financial institution or has obtained a financial product or service from a financial institution.

18 Personally identifiable financial information includes all of the following:

19 (1) Information a consumer provides to a financial institution on an application to
20 obtain a loan, credit card, or other financial product or service.

21 (2) Account balance information, payment history, overdraft history and credit or debit
22 card purchase information.

23 (3) The fact that an individual is or has been a customer of a financial institution or has
24 obtained a financial product or service from a financial institution.

1 (4) Any information about a financial institution's consumer if it is disclosed in a
2 manner that indicates that the individual is or has been the financial institution's consumer.

3 (5) Any information that a consumer provides to a financial institution or that a
4 financial institution or its agent otherwise obtains in connection with collecting on a loan or
5 servicing a loan.

6 (6) Any information collected through an Internet cookie or any information collecting
7 device from a Web server.

8 (7) Information from a consumer report.

9 (c) "Financial institution" generally means any institution engaging in financial activities as
10 described in Section 1843(k) of Title 12 of the United States Code and doing business in the City and
11 County of San Francisco. An institution that is significantly engaged in financial activities is a
12 financial institution. The term "financial institution" does not include the Federal Agricultural
13 Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12
14 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell or transfer confidential consumer
15 information to a nonaffiliated third party. The term "financial institution" does not include institutions
16 chartered by Congress specifically to engage in a proposed or actual securitization, secondary market
17 sale, including sales of servicing rights, or similar transactions related to a transaction of the
18 consumer, as long as those institutions do not sell or transfer confidential consumer information to a
19 nonaffiliated third party. The term "financial institution" does not include any person licensed as a
20 dealer under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code
21 that enters into contracts for the installment sale or lease of motor vehicles pursuant to the
22 requirements of Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7)
23 of Title 14 of Part 4 of Division 3 of the Civil Code and assigns substantially all of those contracts to
24 financial institutions within 30 days. The term "financial institution" does not include any provider of
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1 professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional
2 ethics or applicable law from voluntarily disclosing confidential client information without the
3 consent of the client.

4 (d) "Affiliate" means any person or entity that, directly or indirectly, controls, is controlled by,
5 or is under common control with another person or entity. A franchisor, including any affiliate
6 thereof, shall be deemed an affiliate of the franchisee for purposes of this Article.

7 (e) "Nonaffiliated third party" means any entity that is not an affiliate of, or related by common
8 ownership or affiliated by corporate control with, the financial institution.

9 (f) "Consumer" means an individual resident of this state who obtains or has obtained a
10 financial product or service from a financial institution that is to be used primarily for personal, family,
11 or household purposes, or that individual's legal representative. For purposes of this Article, an
12 individual is not a consumer of a financial institution solely because he or she is (1) a participant or
13 beneficiary of an employee benefit plan that a financial institution administers or sponsors, or for
14 which the financial institution acts as a trustee, insurer, or fiduciary, (2) covered under a group or
15 blanket insurance policy or group annuity contract issued by the financial institution, or (3) a
16 beneficiary in a workers' compensation plan provided that (A) the financial institution provides all
17 required notices and rights required by this Article to the plan sponsor, group or blanket insurance
18 policyholder, or group annuity contractholder and (B) the financial institution does not disclose to any
19 affiliate or any nonaffiliated third-party confidential consumer information about the individual except
20 as authorized in Section 2005. A consumer does not include an individual who obtains products or
21 services for business, commercial, or agricultural purposes.

22 (g) "Control" means the direct or indirect possession of the power to direct or cause the
23 direction of the management and policies of another entity. Control includes any of the following: (1)
24 ownership or power to vote 25 percent or more of the outstanding shares of any class of voting security
25 of a company, acting through one or more persons, (2) power in any manner over the election of a

1 majority of the directors, or of individuals exercising similar functions, or (3) the power to exercise a
2 directing influence over the management of policies of a company.

3 (h) "Necessary to effect, administer, or enforce" means the following:

4 (1) The disclosure is required, or is a usual, appropriate, or acceptable method to carry
5 out the transaction or the product or service business of which the transaction is a part, and
6 record or service or maintain the consumer's account in the ordinary course of providing the
7 financial service or financial product, or to administer or service benefits or claims relating to
8 the transaction or the product or service business of which it is a part, and includes the
9 following:

10 (A) Providing the consumer or the consumer's agent or broker with a
11 confirmation, statement, or other record of the transaction, or information on the status
12 or value of the financial service or financial product.

13 (B) The accrual or recognition of incentives or bonuses associated with the
14 transaction that are provided by the financial institution or another party involved in
15 providing the financial service or product.

16 (2) The disclosure is required or is a lawful method to enforce the rights of the financial
17 institution or of other persons engaged in carrying out the financial transaction or providing
18 the product or service.

19 (3) The disclosure is required, or is a usual, appropriate, or acceptable method for
20 insurance underwriting at the consumer's request, for reinsurance purposes, or for any of the
21 following purposes as they relate to a consumer's insurance:

22 (A) Account administration.

23 (B) Reporting, investigating, or preventing fraud or material misrepresentation.

24 (C) Processing premium payments.

25 (D) Processing insurance claims.

1 (E) Administering insurance benefits, including utilization review activities.

2 (F) For internal research purposes.

3 (G) As otherwise required or specifically permitted by federal or state law.

4 (4) The disclosure is required, or is a usual, appropriate, or acceptable method, in
5 connection with the following:

6 (A) The authorization, settlement, billing, processing, clearing, transferring,
7 reconciling, or collection of amounts charged, debited, or otherwise paid using a debit,
8 credit or other payment card, check, or account number, or by other payment means.

9 (B) The transfer of receivables, accounts, or interests therein.

10 (C) The audit of debit, credit, or other payment information.

11 (i) "Financial product or service" means any product or service that a financial holding
12 company could offer by engaging in an activity that is financial in nature or incidental to financial
13 activity under subsection (k) of Section 1843 of Title 12 of the United States Code (the United States
14 Bank Holding Company Act of 1956). Financial service includes a financial institution's evaluation or
15 brokerage of information that the financial institution collects in connection with a request or an
16 application from a consumer for a financial product or service.

17 (j) "Clearly and conspicuously" means displayed in a manner that is readily noticeable,
18 readable, and understandable to consumers. Factors to be considered in determining whether a notice
19 or disclosure is clear and conspicuous include prominence, proximity, absence of distracting elements,
20 and clarity and understanding of the text disclosure.

21 (k) "Widely distributed media" means publicly available information from a telephone book, a
22 television or radio program, a newspaper or a Web site that is available to the general public on an
23 unrestricted basis.

1 SEC. 2002. This Article shall be applicable to residents of the City and County of San
2 Francisco. For purposes of this Article, a person shall be considered a resident of the City and County
3 of San Francisco if the person's last known mailing address, as shown in the records of the financial
4 institution, is located in the City and County of San Francisco.

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6 SEC. 2003. (a) A financial institution shall not disclose to, or share a consumer's confidential
7 consumer information with, any nonaffiliated third party or affiliate unless the financial institution has
8 provided written notice to the consumer to whom the confidential consumer information relates and
9 unless the financial institution has obtained a written or electronic consent acknowledgment from the
10 consumer that authorizes the financial institution to disclose or share the confidential consumer
11 information. A financial institution shall not deny a consumer a financial product or a financial service
12 because the consumer has not provided the consent required by this Article to authorize the financial
13 institution to disclose or share his or her confidential consumer information with any nonaffiliated
14 third-party or affiliate provided that nothing in this section shall prohibit the disclosure of
15 confidential consumer information as provided in Section 2005.

16 (b) Nothing in this Article shall prohibit a financial institution from marketing its own products
17 and services or the products and services of others to the financial institution's own customers,
18 provided no confidential consumer information is disclosed except as permitted by Section 2005.

19 (c) Except as otherwise provided in this Article, an entity that receives confidential consumer
20 information from a financial institution under this Article shall not disclose this information to any
21 other entity, unless the disclosure would be lawful if made directly to the other entity by the financial
22 institution.

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24 SEC. 2004. (a) Nothing in this Article shall require a financial institution to provide a written
25 notice to a consumer pursuant to Section 2003 if the financial institution does not disclose confidential

1 consumer information to any nonaffiliated third-party or to any affiliate, except as provided in Section
2 2005.

3 (b) A financial institution shall provide notices and consent acknowledgments to consumers as
4 separate documents that are easily identifiable and distinguishable from other documents that
5 otherwise may be provided to a consumer. A notice provided to a member of a household pursuant to
6 Section 2003 shall be considered notice to all members of that household unless that household
7 contains another individual who also has a separate account with the financial institution.

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9 SEC. 2005. (a) This Article shall not apply to information that is not personally identifiable to
10 a particular person.

11 (b) Sections 2003 and 2004 shall not prohibit the release of confidential consumer information
12 under the following circumstances:

13 (1) The confidential consumer information is necessary to effect, administer, or enforce
14 a transaction requested or authorized by the consumer, or in connection with servicing or
15 processing a financial product or service requested or authorized by the consumer, or in
16 connection with maintaining or servicing the consumer's account with the financial institution,
17 or with another entity as part of a private label credit card program or other extension of credit
18 on behalf of such entity, or in connection with a proposed or actual securitization or secondary
19 market sale, including sales of servicing rights, related to a transaction of the consumer.

20 (2) The confidential consumer information is released with the consent of or at the
21 direction of the consumer.

22 (3) The confidential consumer information is:

23 (A) Released to protect the confidentiality or security of the financial
24 institution's records pertaining to the consumer, the service or product, or the
25 transaction therein.

1 (B) Released to protect against or prevent actual or potential fraud, identity
2 theft, unauthorized transactions, claims, or other liability.

3 (C) Released for required institutional risk control, or for resolving customer
4 disputes or inquiries.

5 (D) Released to persons holding a legal or beneficial interest relating to the
6 consumer.

7 (E) Released to persons acting in a fiduciary or representative capacity on
8 behalf of the consumer.

9 (4) The confidential consumer information is released to provide information to
10 insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies
11 of the financial institution, persons assessing the institution's compliance with industry
12 standards, and the institution's attorneys, accountants, and auditors.

13 (5) The confidential consumer information is released to the extent specifically required
14 or specifically permitted under other provisions of law and in accordance with the Right to
15 Financial Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law enforcement agencies,
16 including a federal functional regulator, the Secretary of the Treasury with respect to
17 subchapter II of Chapter 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12
18 U.S.C. Secs. 1951-1959), the California Department of Insurance, or the Federal Trade
19 Commission, and self-regulatory organizations.

20 (6) The confidential consumer information is released (A) to a consumer reporting
21 agency in accordance with the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.); or (B)
22 from a consumer report reported by a consumer reporting agency.

23 (7) The confidential consumer information is released in connection with a proposed or
24 actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if
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1 the disclosure of confidential consumer information concerns solely consumers of the business
2 or unit.

3 (8) The confidential consumer information is released to comply with federal, state, or
4 local laws, rules, and other applicable legal requirements; to comply with a properly authorized
5 civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local
6 authorities; or to respond to judicial process or government regulatory authorities having
7 jurisdiction over the financial institution for examination, compliance, or other purposes as
8 authorized by law.

9 (9) When a financial institution is reporting a known or suspected instance of elder or
10 dependent adult financial abuse or is cooperating with a local adult protective services agency
11 investigation of known or suspected elder or dependent adult financial abuse pursuant to Article
12 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and
13 Institutions Code.

14 (10) The confidential consumer information is released to a nonaffiliated third party in
15 order for the nonaffiliated third party to perform services for or functions on behalf of, the
16 financial institution in connection with the financial institution's products and services, such as
17 mailing services, data processing or analysis, or customer surveys, provided that all of the
18 following requirements are met:

19 (A) The services to be performed by the nonaffiliated third party would be lawful
20 if performed by the financial institution.

21 (B) There is a written contract between the nonaffiliated third party and the
22 financial institution that prohibits the nonaffiliated third party from disclosing or using
23 the confidential consumer information other than to carry out the purpose for which the
24 financial institution disclosed the information, as set forth in the written contract.

1 (C) The confidential consumer information provided to the nonaffiliated third
2 party is limited to that which is reasonably necessary for the nonaffiliated third party to
3 perform the services contracted for on behalf of the financial institution..

4 (11) The confidential consumer information is released to identify or locate missing and
5 abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in
6 child support payments, organ and bone marrow donors, pension fund beneficiaries, and
7 missing heirs.

8 (c) Nothing in this Article is intended to change existing law relating to access by law
9 enforcement agencies to information held by financial institutions.

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11 SEC. 2006. (a) The restrictions on disclosure and use of confidential consumer information,
12 and the requirement for notification, disclosure, and opportunity for the consumer to either direct that
13 the confidential consumer information not be disclosed or provided prior written consent, as provided
14 in this Article, do not apply to any person or entity that meets paragraph (1) or (2) except when
15 confidential consumer information is or will be shared with an affiliate or nonaffiliated third party.

16 (1) The person or entity is licensed in one or both of the following categories and is
17 acting within the scope of the respective license:

18 (A) As an insurance producer licensed pursuant to Chapter 5 (commencing with
19 Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing
20 with Section 1831) of Division 1 of the Insurance Code.

21 (B) Is duly licensed to sell securities.

22 (2) The person or entity meets the requirements in paragraph (1) and has a written
23 contractual agreement with another person or entity described in paragraph (1) and the
24 contract clearly and explicitly includes the following:

1 (A) The rights and obligations between the licensees arising out of the business
2 relationship relating to insurance or securities transactions.

3 (B) An explicit limitation on the use of confidential consumer information about
4 a consumer to transactions authorized by the contract and permitted pursuant to this
5 Article.

6 (C) A requirement that transactions specified in the contract fall within the
7 scope of activities permitted by the licenses of the parties.

8 (b) The restrictions on disclosure and use of confidential consumer information, and the
9 requirement for notification and disclosure provided in this Article, shall not limit the ability of
10 insurance producers and brokers to respond to written or electronic, including telephone, requests
11 from consumers seeking price quotes on insurance products and services.

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13 SEC. 2007. (a) Any financial institution that negligently discloses or shares confidential
14 consumer information in violation of this Article shall be liable, irrespective of the amount of damages
15 suffered by the consumer as a result of that violation, for an administrative fine or civil penalty not to
16 exceed two thousand five hundred dollars (\$2,500) per violation.

17 (b) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential
18 consumer information in violation of this Article shall be liable upon a first violation, for an
19 administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per
20 violation, or upon a second violation for an administrative fine or civil penalty not to exceed ten
21 thousand dollars (\$10,000) per violation, or upon a third or subsequent violation for an administrative
22 fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

23 (c) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential
24 consumer information in violation of this Article for financial gain shall be liable upon a first violation
25 for an administrative fine or civil penalty not to exceed five thousand dollars (\$5,000) per violation, or

1 upon a second violation for an administrative fine or civil penalty not to exceed twenty-five thousand
2 dollars (\$25,000) per violation, or upon a third or subsequent violation for an administrative fine or
3 civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per violation and shall be
4 subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

5 (d) Nothing in this Article shall be construed as authorizing an administrative fine or civil
6 penalty under both paragraphs (2) and (3) for the same violation.

7 (e) This section shall become operative on and after January 1, 2004.

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9 SEC. 2008. This Article shall not be construed in a manner that is inconsistent with the federal
10 Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

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12 SEC. 2009. The provisions of this Article shall be severable, and if any phrase, clause,
13 sentence, or provision is declared to be invalid or is preempted by federal or state law or regulation,
14 the validity of the remainder of this Article shall not be affected thereby.

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16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

18
19 By: _____
20 Dorji Roberts
21 Deputy City Attorney