

1 [Prohibition of Predatory Home Mortgage Loans.]

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3 **Ordinance adding a new Chapter 93 to the Administrative Code, prohibiting home**
4 **mortgage lenders from making loans in violation of defined practices, providing for**
5 **good faith compliance and opportunity to cure violations, and for civil penalties and**
6 **injunctive relief.**

7 Note: Entire Chapter is new.

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

10 Section 1. The San Francisco Administrative Code is hereby amended by adding
11 Chapter 93, to read as follows:

12 CHAPTER 93 PROHIBITION OF PREDATORY LENDING

13 SECTION 93.1 LEGISLATIVE POLICY AND FINDINGS

14 WHEREAS, the subprime lending industry has grown rapidly in the last few years,
15 increasing almost ten-fold since 1993, and has increased its share of conventional home loan
16 applications; and,

17 WHEREAS, some subprime lenders seek to fill a void created by redlining, i.e., the
18 practice of mainstream banking institutions avoiding doing business in poor or minority
19 communities; and,

20 WHEREAS, some subprime lenders and other home lenders aggressively market high-
21 cost home loans that borrowers are unable to repay, and engage in other unfair or fraudulent
22 credit practices that may be stripping families and communities of the equity they have in their
23 homes; and,

24 WHEREAS, some of these lenders target those communities with residents least able
25 to afford these loans, particularly the elderly and those on fixed incomes; and,

1 WHEREAS, these practices are commonly referred to as “predatory lending”; and,
2 WHEREAS, the HUD/Treasury Task Force on Predatory Lending, in its recent report
3 Curbing Predatory Home Mortgage Lending (the “HUD/Treasury report”), has documented
4 and analyzed the problem of predatory lending in home mortgage lending; and,

5 WHEREAS, the HUD/Treasury report has concluded that predatory lenders tend to
6 target their efforts at the neighborhood level; and,

7 WHEREAS, predatory lending practices, as documented by the HUD/Treasury Task
8 report and other commentators, include, among other things: repeated refinancing of a loan
9 without any tangible benefit to the borrower; charging excessive prepayment penalties;
10 financing single premium credit insurance; encouraging a borrower to default on his or her
11 other debts; failing to comply with federal requirements with respect to disclosure of loan
12 terms and loan settlement; making a loan for more than the borrower can repay; financing
13 excessive points and fees; requiring advance payments; charging fees to modify a loan or
14 defer payments; permitting acceleration of a loan at lender’s discretion; and increasing the
15 interest rate upon default; and,

16 WHEREAS, the practice of repeatedly refinancing a home loan when there is no
17 tangible benefit to the borrower from the refinancing, commonly known as loan “flipping,”
18 costs borrowers unnecessary up-front fees, prepayment fees, and points, and may lead to the
19 progressive loss of equity in the home; and,

20 WHEREAS, high prepayment penalties can lock a borrower into a higher interest rate
21 even when the borrower qualifies for a better loan, and are generally unjustified because they
22 bear little relationship to any legitimate costs incurred by the lender due to the prepayment,
23 and because they punish the borrower simply because the borrower chooses to pay off debt;
24 and,

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1 WHEREAS, the practice of financing single-premium credit insurance into a home loan
2 usually provides little or no benefit to the borrower, greatly increases loan costs, inhibits or
3 prevents borrowers from shopping for competing insurance products, inhibits or prevents
4 borrowers from canceling coverage when no longer needed, and increases the potential for
5 fraud and abuse; and,

6 WHEREAS, the practice of a lender recommending or encouraging a borrower to
7 default on his or her other debts in order to facilitate refinancing those debts is a widespread
8 practice that can set up borrowers for abusive loan terms that are imposed on borrowers at
9 the last minute, due to the pressure of being in default on other debts; and,

10 WHEREAS, the practice of making a loan for more than the borrower can repay given
11 the borrower's income, non-housing assets, and debt burden, commonly known as "asset-
12 based lending," leads to foreclosure, loss of equity, and displacement, particularly for low-
13 income elderly persons on fixed incomes; and,

14 WHEREAS, financing excessive up-front points and fees into high-cost home loans
15 often disguises the true cost of the loan to the borrower, greatly increases the cost of the loan
16 to the borrower, and inhibits or prevents the borrower from shopping for better loan terms;
17 and,

18 WHEREAS, the practice of requiring advance payments on high-cost home loans is
19 sometimes used to mask unaffordable loans, and unfairly gives the lender free use of the
20 borrower's funds on which the borrower is paying interest; and,

21 WHEREAS, the practice of charging fees to modify a loan or defer payments adds
22 unjustified costs to high-cost loans and creates the potential for abuse; and,

23 WHEREAS, high-cost loan terms that permit acceleration of the loan at the lender's
24 discretion often unfairly force the borrower to refinance at a higher interest rate and incur
25 additional points and fees; and,

1 WHEREAS, high-cost loan terms that allow an increase in the interest rate upon default
2 unfairly prevent the borrower from curing loan defaults, leading to foreclosure and loss of
3 equity; and,

4 WHEREAS, independent counseling of prospective borrowers who are considering
5 high-cost home loans can raise borrower awareness of predatory lending practices and help
6 prevent predatory lending abuses; and,

7 WHEREAS, because of the number of minority and lower-income homeowners in San
8 Francisco, and the pressures of gentrification in certain neighborhoods that increase property
9 values and home equity, San Francisco residents in low-income areas may be perceived to
10 be “house rich and cash poor” and thus prime targets for predatory lending practices; and,

11 WHEREAS, the Association of Community Organizations for Reform Now (“ACORN”)
12 has documented the problem of predatory lending in Oakland in its recent report Stripping the
13 Wealth: An Analysis of Predatory Lending in Oakland (the “ACORN study”); and,

14 WHEREAS, the ACORN study demonstrates that subprime lending is heavily
15 concentrated in lower-income and minority areas of Oakland; and,

16 WHEREAS, this Board is concerned that lower income and minority neighborhoods in
17 San Francisco are likely to be subjected to the same predatory lending practices shown to
18 exist in Oakland, including targeting such neighborhoods through intensive mail campaigns or
19 door-to-door solicitation; and,

20 WHEREAS, predatory lending practices can lead to a significant economic drain on
21 lower-income families and communities in San Francisco; and,

22 WHEREAS, predatory lending practices can contribute to an increase in the number of
23 foreclosures that can result in abandoned houses and blighted neighborhoods and contribute
24 to the physical and economic deterioration of lower-income, minority and inner-city
25 communities in San Francisco; and,

1 WHEREAS, the HUD/Treasury report has concluded that “[f]oreclosed homes are often
2 a primary source of neighborhood instability in terms of depressed property values and
3 increased crime,” and the ACORN study has concluded that in Oakland “predatory lenders
4 have contributed to further deterioration of lower-income and minority communities by
5 stripping homeowners of their equity and charging exorbitant interest rates leading to
6 foreclosures and vacant houses”; and,

7 WHEREAS, predatory lending practices lead may lead to deterioration of San
8 Francisco neighborhoods, to conditions of blight and the loss of affordable housing, increased
9 displacement and economic dislocation, reduced property values, erosion of the tax base, and
10 increased strain on City services; and,

11 WHEREAS, state and federal lending laws and regulations do not adequately address
12 the problem of predatory lending because either the laws do not regulate many common
13 predatory lending practices, regulatory oversight of predatory lenders is lacking, and/or
14 remedies and enforcement provisions are weak or nonexistent;

15 Now therefore the Board of Supervisors makes the following findings:

16 (a) The City of San Francisco as a charter city has the right and power to make and
17 enforce all laws and regulations that are its municipal affair, including the power to regulate
18 business practices to promote the health, morals, safety, property, good order, well-being,
19 general prosperity or general welfare of San Francisco residents.

20 (b) The threat of predatory lending on home loans in San Francisco significantly
21 threatens the well-being and general prosperity of San Francisco residents and the City as a
22 whole. Predatory lending practices, left unchecked, would be a significant economic drain on
23 lower-income families and communities in San Francisco. Predatory lending practices also
24 lead to conditions of blight and the loss of affordable housing, increased displacement and
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1 economic dislocation, reduced property values, erosion of the tax base, and increased the
2 strain on City services.

3 (c) Because of socioeconomic and market conditions in San Francisco which give rise
4 to predatory lending practices, predatory lending is a municipal affair and a matter of unique
5 local interest and concern for the City of San Francisco.

6 (d) Neither state law nor federal law adequately address the predatory lending problem
7 in San Francisco.

8 (e) The regulation of home mortgage lending practices by the City to prevent predatory
9 lending, by prohibiting certain lending practices and requiring independent counseling on high-
10 cost home loans, serves the public interest, is necessary to protect the health, morals, safety,
11 property, general welfare, well being and prosperity of the residents of San Francisco, and is
12 within the Charter and police powers of the City.

13 SECTION 93.2 DEFINITIONS

14 As used in this chapter, the following terms have the following meanings:

15 (a) "Affiliate" means any business entity that controls, is controlled by, or is under
16 common control with, another entity, as set forth in the federal Bank Holding Company Act of
17 1956 (12 U.S.C. §1841, et seq.), as such statute may be amended from time to time, and
18 includes any successors in interest or alter egos to the business entity.

19 (b) "Annual percentage rate" means the annual percentage rate for a home loan
20 calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. §1601, et
21 seq.) and its implementing regulations, as such statute or regulations may be amended from
22 time to time.

23 (c) "Borrower" means singularly or collectively any natural person or persons with an
24 obligation to repay a home loan, including without limitation a coborrower, cosigner, or
25 guarantor.

1 (d) "Business entity" means any individual, domestic corporation, foreign corporation,
2 association, syndicate, joint stock company, partnership, joint venture, limited liability
3 company, sole proprietorship, or unincorporated association engaged in a business or
4 commercial enterprise.

5 (e) "City" means the City and County of San Francisco.

6 (f) "First mortgage" means a home loan secured by a deed of trust or mortgage on real
7 property if the deed of trust or mortgage is senior in priority to any other deed of trust or
8 mortgage on the real property.

9 (g) "High-cost home loan" means a home loan for which the annual percentage rate
10 equals or exceeds any one of the following thresholds:

11 (i) 3 percentage points, if the home loan is a first mortgage, or

12 (ii) 5 percentage points, if the home loan is a junior mortgage, or

13 (iii) the rate set by the required net yield for a 90-day standard mandatory
14 delivery commitment for a first mortgage loan from either the Federal National
15 Mortgage Association or the Federal Home Loan Mortgage Association, whichever is
16 greater, as such yield is reported on the fifteenth day of the month immediately
17 preceding the month in which the application for the home loan is received by the
18 lender; or

19 (iv) the total points and fees on the loan equal or exceed either 5% of the total
20 loan amount or \$800, whichever amount is greater.

21 If the terms of the home loan provide for an initial or introductory period during which the
22 annual percentage rate is lower than that which will apply after the end of such initial or
23 introductory period, then the annual percentage rate to be considered for purposes of this
24 definition is the rate which applies after the initial or introductory period. If the terms of the
25 home loan provide for an annual percentage rate that varies in accordance with an index plus

1 a margin, then the annual percentage rate to be considered for purposes of this definition is
2 the rate that is in effect on the date of loan consummation. In the case of a home loan with a
3 regular interest rate that varies in accordance with an index plus a margin, but with an initial or
4 introductory interest rate established in some other manner, the annual percentage rate to be
5 considered is the rate that would have been in effect on the date of loan consummation were
6 the regular rate determined by the index plus the margin to apply, that is, the fully-indexed
7 rate on the date of loan consummation.

8 (h) "Home loan" means a loan of money, including without limitation a line of credit or
9 an open-end credit plan, if all of the following apply:

10 (i) the principal amount of the loan does not exceed the current conforming first
11 mortgage loan size limit for a single-family dwelling as established by the Federal
12 National Mortgage Association, and

13 (ii) the borrower incurred the loan primarily for his or her personal, family, or
14 household uses, and

15 (iii) the loan is secured in whole or in part by a deed of trust, a mortgage (as defined
16 under California Civil Code §2920 or §2924), or a similar security device or instrument, on real
17 property located within the City of San Francisco, and

18 (iv) this real property contains or will contain either (a) one to four residential units, or
19 (b) individual residential units of condominiums or cooperatives, and

20 (v) one of these residential units is or will be occupied by the borrower as the
21 borrower's principal dwelling.

22 In the case of multiple borrowers, the criteria in subsections (2) and (5) above will be
23 considered satisfied if at least one of the borrowers has met the stated criteria. The term
24 "home loan" does not include a reverse mortgage as defined in California Civil Code §1923.

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1 (i) "Junior mortgage" means a home loan secured by a deed of trust or mortgage on
2 real property if the deed of trust or mortgage is junior in priority to another deed of trust or
3 mortgage on the real property.

4 (j) "Lender" means any person or business entity that extends a home loan or
5 arranges for the extension of a home loan. Notwithstanding the above, a "lender" does not
6 include a bank chartered under the federal National Bank Act (12 U.S.C. §21, et seq.), a credit
7 union chartered under the Federal Credit Union Act (12 U.S.C. §1751, et seq.), or a savings
8 and loan association regulated under the federal Home Owners' Loan Act of 1933 (12 U.S.C.
9 §1461, et seq.); however, an affiliate of any such federally chartered or regulated bank, credit
10 union, or savings and loan association that extends home loans is considered a "lender" if the
11 affiliate itself is not a bank, credit union, or savings and loan association chartered or
12 regulated under the above-referenced federal statutes.

13 (k) "Mortgage broker" means any person who functions as intermediary for a fee
14 between the borrower and the lender in the making of a home loan.

15 (l) "Person" means a natural person or a business entity.

16 (m) "Points and fees" means the following:

17 (i) all items required to be disclosed under §226.4(a) and §226.4(b) of Title 12
18 of the Code of Federal Regulations, as amended from time to time, except interest or
19 the time-price differential;

20 (ii) all charges for items listed under §226.4(c)(7) of Title 12 of the Code of
21 Federal Regulations, as amended from time to time, but only if the lender receives
22 direct or indirect compensation in connection with the charge or the charge is paid to
23 an affiliate of the lender;

24 (iii) all compensation not otherwise specified in this definition paid directly or
25 indirectly to a mortgage broker, including a broker that originates a home loan in its

1 own name through an advance of funds and subsequently assigns the home loan to
2 the person advancing the funds;

3 (iv) the premium of any single premium credit life, credit disability, credit
4 unemployment or other life or health insurance;

5 (v) all prepayment fees or penalties.

6 (n) "Points and fees" does not include any of the following:

7 (i) taxes, filing fees, recording and other charges and fees paid or to be paid to
8 public officials for determining the existence of, or for perfecting, releasing, or satisfying
9 a security interest; or

10 (ii) charges paid to a person other than the lender, an affiliate of the lender, a
11 mortgage broker, or an affiliate of a mortgage broker, as follows: fees for flood
12 certification; fees for pest infestation and flood determinations; appraisal fees, fees for
13 inspections performed prior to loan closing; credit report fees; survey fees; attorneys'
14 fees (if the borrower has the right to select the attorney from an approved list or
15 otherwise); notary fees; escrow charges that are not required to be disclosed under
16 §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations; title insurance
17 premiums; or fire insurance or flood insurance premiums (provided that the conditions
18 in §226.4(d)(2) of Title 12 of the Code of Federal Regulations are met).

19 (o) "Total loan amount" means the total credit received by the borrower as part of the
20 loan, excluding points and fees.

21 SECTION 93.3 PROHIBITED PRACTICES FOR ALL HOME LOANS

22 No lender may make a home loan in violation of any of the following prohibited
23 terms or practices:

24 (a) No excessive prepayment penalties. No lender may charge a prepayment penalty
25 on a home loan, unless the home loan is not a high-cost home loan, and the prepayment

1 penalty is only imposed on prepayments within the first three years of the date of the
2 promissory note for the home loan, and then solely as set forth herein and otherwise allowed
3 by state and federal law. Any such prepayment penalty is limited to 3% of the total loan
4 amount during the first year after the date of the note, 2% of the total loan amount during the
5 second year, and 1% of the total loan amount during the third year. Notwithstanding the
6 above, when a borrower refinances a home loan, at no time may a lender charge a
7 prepayment penalty on the home loan being refinanced if the same lender or an affiliate of
8 that lender will be the holder of the note for the new home loan. For purposes of this
9 paragraph, a “prepayment penalty” means any penalty, fee, or charge imposed on a borrower
10 by the lender or an affiliate of the lender for paying all or part of the principal of the home loan
11 before the date when the principal payment is due.

12 (b) No financing of credit insurance. No lender may finance any credit life, credit
13 disability, credit property, or credit unemployment insurance, or any other life or health
14 insurance premiums when making a home loan. Insurance premiums not included in the
15 home loan principal and calculated and payable on a monthly basis will not be considered
16 financed by the lender for purposes of this paragraph.

17 (c) No recommending default. No lender may recommend or encourage a borrower to
18 default or not to make payment on a home loan or any other debt, when such lender action is
19 in connection with the closing or planned closing of a home loan that refinances all or part of
20 the borrower’s debt.

21 (d) No loans violating federal lending laws. No lender may make a home loan that
22 violates any applicable provision of the federal Truth in Lending Act, as amended by the
23 Home Ownership and Equity Protection Act of 1994 (15 U.S.C. §1601, et seq.), or any
24 applicable provision of the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C.
25 §2601, et seq.), or any regulations implementing these statutes, as these statutes and

1 regulations may be amended from time to time. The City intends that any violation of
2 provisions in these laws pertaining to home loans shall give rise to a cause of action under
3 this chapter independent of federal law, and shall entitle the aggrieved party or the City
4 Attorney to pursue any of the rights and remedies set forth in this chapter.

5 SECTION 93.4 PROHIBITED PRACTICES FOR HIGH-COST HOME LOANS.

6 No lender may make a high-cost home loan in violation of any of the following
7 prohibited terms or practices:

8 (a) No lending without home loan counseling. No lender may make a high-cost home
9 loan without first receiving written certification from an independent housing or credit
10 counselor approved by the United States Department of Housing and Urban Development,
11 the State of California, or the City of San Francisco under the program set forth in Chapter 92
12 of the Administrative Code, that the borrower either has received counseling on the
13 advisability of the loan transaction and the appropriateness of the loan for the borrower, or
14 has waived the counseling option as provided for in this subsection. A borrower may waive
15 the counseling option by contacting an approved independent housing or credit counselor by
16 personal meeting or live telephone conversation at least three days prior to the closing of the
17 home loan and certifying in writing to the counselor that he or she has elected to waive the
18 counseling option. The counselor shall keep any such certification of waiver on file for at least
19 three years following the certification. A lender is not liable for the content of any advice or
20 counseling an independent counselor gives to the borrower, nor is an independent counselor
21 liable to a lender for the content of any advice or counseling the counselor gives to the
22 borrower.

23 (b) No lending without regard for repayment ability. No lender may make a high-cost
24 home loan unless the lender reasonably believes at the time it makes the loan that one or
25 more of the borrowers under the loan will be able to make the scheduled payments on the

1 loan. Such a determination of the lender must be based upon a consideration of the
2 borrower's current and expected income, current obligations, employment status, and other
3 financial resources (other than the borrower's equity in the dwelling which secures repayment
4 of the loan). A borrower is presumed to be able to make the scheduled payments to repay the
5 loan if, at the time the loan is made, the borrower's debt-to-income ratio does not exceed
6 50%. If the borrower's debt-to-income ratio exceeds 50%, the lender must fully justify the
7 decision to approve the high-cost home loan in a written statement provided to the borrower at
8 loan closing that sets forth specific compensating factors, such as the excellent long-term
9 credit history of the borrower, a demonstrated ability in the past by the borrower to make
10 payments under comparable or greater debt-to-income ratios, conservative use of credit
11 standards, significant liquid assets of the borrower, or other factors that reasonably justify the
12 approval of the loan. For purposes of this paragraph, "debt" means the scheduled monthly
13 principal and interest payments on all of the borrower's debts, including amounts owed under
14 the home loan as well as other secured or unsecured debts of the borrower, plus payments
15 associated with the dwelling prorated monthly for property taxes and assessments,
16 homeowners insurance premiums, mortgage insurance premiums, and condominium or
17 homeowners association dues or fees, and "income" means the borrower's monthly gross
18 income as verified by the credit application, the borrower's financial statement, a credit report,
19 financial information provided to the lender by or on behalf of the borrower, or any other
20 reasonable means. In the case of a high-cost home loan offering a lower introductory or initial
21 interest rate, the lender's determination of borrower debt must be based on the borrower's
22 monthly payments on said loan at the interest rate following the introductory or initial rate
23 rather than the monthly payments under the introductory rate. The provisions of this
24 paragraph apply only to a high-cost home loan in which all of the borrowers have an income,
25 as reported on the loan application that the lender relied on in making the credit decision, no

1 greater than 120% of the median family income for the San Francisco Metropolitan Statistical
2 Area (as determined by the United States Department of Housing and Urban Development),
3 adjusted for family size.

4 (c) No excessive financing of points and fees. No lender may finance points and fees
5 in excess of either 5% of the total loan amount or \$800, whichever amount is greater, when
6 making a high-cost home loan.

7 (d) No advance payments. No lender may make a high-cost home loan that includes
8 terms under which more than two periodic payments required under the loan are consolidated
9 and paid in advance from the loan proceeds provided to the borrower.

10 (e) No modification or deferral fees. No lender may charge a borrower any fees or
11 charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment
12 due under the terms of a high-cost home loan, unless after the modification, renewal,
13 extension or amendment, the home loan is no longer a high-cost home loan and the annual
14 percentage rate on the home loan has decreased by at least two percentage points as a result
15 of the modification, renewal, extension or amendment. The prohibition on such fees or
16 charges shall not apply if the high-cost home loan is in default and the modification, renewal,
17 extension, amendment, or deferral is part of a work-out arrangement.

18 (f) No prepayment penalties. No lender may charge a prepayment penalty on a high-
19 cost home loan. For purposes of this paragraph, a “prepayment penalty” means any penalty,
20 fee, or charge imposed on a borrower by the lender or an affiliate of the lender for paying all
21 or part of the principal of the high-cost home loan before the date when the principal payment
22 is due.

23 (g) No call provisions. No lender may make a high-cost home loan that includes terms
24 which permit the lender in its discretion to accelerate the indebtedness. This restriction does
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1 not apply to terms that provide for the acceleration of repayment of the high-cost home loan
2 upon default or pursuant to a due-on-sale clause.

3 (h) No increased interest rate upon default. No lender may make a high-cost home
4 loan that includes any provision increasing the interest rate after default or delinquency. This
5 restriction does not apply to interest rate changes for a variable rate home loan otherwise
6 consistent with the provisions of the loan documents, if the change in the interest rate is not
7 triggered by an event of default, delinquency, or acceleration of the indebtedness.

8 (i) No refinancing without borrower benefit. No lender may make a high- cost home
9 loan if the high-cost home loan pays off all or part of an existing home loan or other debt of
10 the borrower, and the borrower does not receive a reasonable and tangible net benefit from
11 the new high-cost home loan considering all the circumstances, including the terms of both
12 the new home loan and the refinanced debt, the cost of the new home loan, and the
13 borrower's circumstances. A borrower is presumed to receive a reasonable and tangible net
14 benefit from a refinance if any of the following are true: (1) as a result of the refinance there is
15 a net reduction in the borrower's total monthly payments on all debts consolidated into the
16 new home loan combined with the borrower's payments, prorated monthly, for homeowners
17 insurance, mortgage insurance, and property taxes and assessments, whether such
18 insurance and taxes are paid through the lender or not, and this reduction will continue for at
19 least 36 months after the refinance, (2) as a result of the refinance there is a reduction in the
20 borrower's blended interest rate on all debts consolidated into the new home loan, and it will
21 not take more than 5 years for the borrower to recoup the points and fees charged for the
22 refinance, (3) the borrower receives cash proceeds from the refinance, provided that either
23 the amount of the points and fees charged for the refinance is no greater than 5% of the
24 amount of the cash proceeds received by the borrower, or the cash proceeds received by the
25 borrower equals or exceeds the greater of 15% of the total loan amount of the new loan or

1 \$12,000, or (4) the new home loan is necessary to prevent default under an existing home
2 loan or other secured debt of the borrower, provided that the lender for the new home loan is
3 not the same as or an affiliate of the creditor for the existing home loan or other secured debt.

4 (j) No refinancing special mortgages. No lender may make a high-cost home loan if
5 the high-cost home loan pays off all or part of an existing home loan, and such existing loan
6 (1) is originated, subsidized, or guaranteed by the State of California, the City or other unit of
7 local government, or a nonprofit organization, and (2) either has an interest rate at least two
8 percentage points below prevailing market mortgage interest rates, or has one or more
9 nonstandard payment terms beneficial to the borrower, such as deferred payments, loan
10 forgiveness features, or payments that vary with income, that would be lost as a result of the
11 refinance. This restriction shall not apply if an independent housing or credit counselor has
12 reviewed the terms of the refinance of the special mortgage and has determined that the
13 refinance is in the best interests of the borrower.

14 SECTION 93.5 CORRECTIONS

15 A lender who, when acting in good faith, fails to comply with this chapter, will not be
16 considered to have violated this chapter if the lender establishes that, within 30 calendar days
17 of the closing of the home loan and prior to the institution of any action under this chapter, the
18 lender has notified the borrower of the compliance failure, the lender has made appropriate
19 restitution, and the lender has adjusted the terms of the home loan in a manner beneficial to
20 the borrower to make the loan comply with this chapter.

21 SECTION 93.6 INVESTMENTS AND LOAN ASSIGNMENTS

22 A lender may not make investments that are backed by any home loan that violates
23 this chapter. Any person who purchases or is otherwise assigned a home loan is subject to
24 all claims, actions and defenses related to that home loan that the borrower, the City Attorney,
25 or others could assert against the original lender.

1 SECTION 93.7 CIVIL ENFORCEMENT AND REMEDIES

2 An aggrieved borrower or an organization acting on behalf of an aggrieved borrower or
3 borrowers may bring a civil action for injunctive relief or damages in a court of competent
4 jurisdiction for any violation of this chapter. If the court finds that a violation of this chapter
5 has occurred, the court shall award:

6 (a) actual damages sustained by the borrower as a result of the violation; plus

7 (b) exemplary damages to the borrower in the amount of the points and fees charged
8 for the home loan plus 10% of the total loan amount; and

9 (c) reasonable costs and attorneys' fees.

10 In addition the court may, as the court deems appropriate:

11 (d) issue an order or injunction rescinding a home loan contract which violates this
12 chapter, or barring the lender from collecting under any home loan which violates this chapter;

13 (e) issue an order or injunction barring any judicial or nonjudicial foreclosure or other
14 lender action under the mortgage or deed of trust securing any home loan which violates this
15 chapter;

16 (f) issue an order or injunction reforming the terms of the home loan to conform to this
17 chapter;

18 (g) issue an order or injunction enjoining a lender from engaging in any prohibited
19 conduct;

20 (h) award punitive damages as the court may deem appropriate if the court determines
21 by clear and convincing evidence that the lender has shown reckless disregard for the rights
22 of the borrower;

23 (i) impose such other relief, including injunctive relief, as the court may deem just and
24 equitable.

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1 SECTION 93.8 DEFENSES AND COUNTERCLAIMS

2 (a) A borrower may assert a violation of this chapter as a defense, bar, or counterclaim
3 to any default action, collection action or judicial or nonjudicial foreclosure action in connection
4 with a home loan.

5 (b) Any relief granted to a borrower under this chapter under law or equity may not
6 reflect negatively in the credit history of the borrower. A lender may not report any action or
7 relief granted to a borrower under this chapter to any credit agency, and may not consider any
8 such action or relief when considering the making of any future home loans to the borrower.

9 SECTION 93.9 CITY ATTORNEY ENFORCEMENT

10 The City Attorney may bring a civil action for any violation of this chapter. If the court
11 finds in any such action that a lender or other party has violated this chapter, the court shall
12 impose civil penalties of not less than \$500 and not more than \$50,000 per violation, and shall
13 award reasonable costs and attorneys' fees to the City Attorney. For purposes of this
14 paragraph, each home loan made in violation of this chapter is considered a separate
15 violation.

16 SECTION 93.10 CUMULATIVE REMEDIES

17 The remedies provide under this chapter are cumulative. The protections and
18 remedies provided under this chapter are in addition to other protections and remedies that
19 may be otherwise available under law. Nothing in this chapter is intended to limit the rights of
20 any injured person to recover damages or pursue any other legal or equitable action under
21 any other applicable law or legal theory.

22 SECTION 93.11 LIMITATIONS ON ACTIONS

23 A borrower must file any civil action brought under this chapter within three years after
24 the discovery of the violation by the borrower. This limitation does not apply in the case of a
25 borrower asserting a violation of this chapter as a defense, bar, or counterclaim to any default

1 action, collection action or judicial or nonjudicial foreclosure action. The City Attorney must file
2 any action brought under this chapter within six years after the violation.

3 SECTION 93.12 CRIMINAL LIABILITY

4 Any person who willfully violates this chapter is guilty of an infraction.

5 SECTION 93.13 WAIVERS DECLARED VOID

6 Any written or oral agreement in which a borrower purports to waive any rights or
7 remedies that he or she may have under this chapter is against public policy and is void and
8 unenforceable.

9 SECTION 93.14 APPLICABILITY

10 The provisions of this chapter apply to home loans made on or after January 1, 2002.
11 For purposes of this paragraph, a home loan is considered “made” on the date the promissory
12 note for the loan is signed by the borrower.

13 (a) The record before this Board relating to this Ordinance and supporting the findings
14 made herein includes, without limitation, the following:

15 All documentation and information attached to or cited in Board File No. _____;

16 (b) The recitals contained in this Ordinance are true and correct and are an integral
17 part of the Board’s decision.

18 SECTION 93.15 REGULATIONS AND ADMINISTRATION

19 All City Departments are hereby authorized to adopt rules and regulations consistent
20 with this Ordinance as needed to implement this Ordinance, and to make such interpretations
21 of this Ordinance as necessary to achieve the purposes of this Ordinance.

22 SECTION 93.16 SEVERABILITY

23 The provisions of this Ordinance are severable, and if any clause, sentence,
24 paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any
25 person, is held to be invalid or preempted by state or federal law, such holding shall not impair

1 or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be
2 inapplicable to any specific category, type, or kind of loan or points and fees, or category of
3 lender, the provisions of this Ordinance shall nonetheless continue to apply with respect to all
4 other covered loans, points and fees, and lenders. It is hereby declared to be the legislative
5 intent of the Board of Supervisors that this Ordinance would have been adopted had such
6 provisions not been included or such persons or circumstances been expressly excluded from
7 its coverage.

8

9 APPROVED AS TO FORM:
10 LOUISE H. RENNE, City Attorney

11 By: _____
12 JOHN D. COOPER
13 Deputy City Attorney

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