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..Title
Clean Energy Loan Program and Property Tax Surcharge – For the purpose of defining certain terms; amending the scope of and eligibility for the Clean Energy Loan Program; amending qualifying criteria; establishing a calculation of the clean energy loan surcharge; providing for a recorded agreement and certain notices; and matters generally related to the Clean Energy Loan Program and real property taxes.

..Body

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 39-17

Introduced by: Mayor Pantelides

Referred to
Environmental Matters Committee
Finance Committee

AN ORDINANCE concerning

Clean Energy Loan Program and Property Tax Surcharge

FOR the purpose of defining certain terms; amending the scope of and eligibility for the Clean Energy Loan Program; amending qualifying criteria; establishing a calculation of the clean energy loan surcharge; providing for a recorded agreement and certain notices; and matters generally related to the Clean Energy Loan Program and real property taxes.

BY repealing and re-enacting with amendments the following portions of the Code of the City of Annapolis, 2017 Edition
6.29.010

BY adding the following portions to the Code of the City of Annapolis, 2017 Edition
6.29.020
6.29.030
6.29.040
6.29.050
6.29.060
6.29.070

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall be amended to read as follows:

1 **TITLE 6 – REVENUE AND FINANCE**

2
3 **CHAPTER 6.29 – ESTABLISHMENT OF PROGRAM TO FINANCE AND**
4 **ENCOURAGE ENERGY EFFICIENCY ~~IMPROVEMENTS AND RENEWABLE~~**
5 **~~ENERGY PRODUCTION EQUIPMENT~~ PROJECTS AND RENEWABLE**
6 **ENERGY PROJECTS.**

7
8 **Section 6.29.010 - Establishment of ~~program to encourage energy efficiency~~**
9 **~~improvements and renewable energy production equipment~~ CLEAN ENERGY**
10 **LOAN PROGRAM.**

11
12 A. A Clean Energy Loan Program (“Program”), as authorized ~~under Article 24, Sections~~
13 ~~9-1501 through 9-1507~~ PURSUANT TO THE LOCAL GOVERNMENT ARTICLE,
14 SECTIONS 1-1101 ET SEQ. of the Annotated Code of Maryland, is hereby
15 established to FINANCE AND encourage energy efficiency ~~improvements and/or~~
16 ~~the use of renewable energy production equipment in the City (the “Program”)~~
17 PROJECTS AND RENEWABLE ENERGY PROJECTS WITH AN ELECTRIC
18 GENERATING CAPACITY OF NOT MORE THAN 100 KILOWATTS.

19
20 B. THE CITY MAY ENTER INTO AN AGREEMENT WITH A PRIVATE ENTITY
21 TO ADMINISTER THE CLEAN ENERGY LOAN PROGRAM.

22
23 C. ALL POLICIES GOVERNING THE MANAGEMENT OF THE PROGRAM
24 SHALL BE DETERMINED BY THE DIRECTOR OF THE OFFICE OF
25 ENVIRONMENTAL POLICY IN COLLABORATION WITH THE DIRECTOR
26 OF FINANCE.

27
28 **SECTION 6.29.020 – DEFINITIONS**

29
30 IN THIS CHAPTER THE FOLLOWING WORDS HAVE THE MEANINGS
31 INDICATED:

32
33 **“CLEAN ENERGY FINANCING AGREEMENT”** MEANS AN AGREEMENT
34 BETWEEN A PROPERTY OWNER AND A CLEAN ENERGY LENDER
35 PROVIDING FOR THE TERMS AND CONDITIONS OF A CLEAN ENERGY LOAN.

36
37 **“CLEAN ENERGY LENDER”** MEANS A PRIVATE LENDER PROVIDING A
38 CLEAN ENERGY LOAN.

39
40 **“CLEAN ENERGY LOAN”** MEANS ANY LOAN MADE BY A PRIVATE LENDER
41 TO A PROPERTY OWNER UNDER THE CLEAN ENERGY PROGRAM.

42
43 **“CLEAN ENERGY LOAN PROGRAM ADMINISTRATOR”** MEANS ANY
44 PERSON OR ENTITY SELECTED BY THE CITY TO MANAGE THE CLEAN
45 ENERGY LOAN PROGRAM.

46

1 “CLEAN ENERGY LOAN OBLIGATION” MEANS ALL INDEBTEDNESS AND
2 OBLIGATIONS OF A PROPERTY OWNER TO A CLEAN ENERGY LENDER
3 UNDER A CLEAN ENERGY FINANCING AGREEMENT.

4
5 “COMMERCIAL PROPERTY” MEANS REAL PROPERTY THAT IS:

- 6
7 (1) NOT DESIGNED PRINCIPALLY OR INTENDED FOR HUMAN
8 HABITATION; OR
9 (2) USED FOR HUMAN HABITATION AND IS IMPROVED BY MORE THAN
10 FOUR SINGLE FAMILY DWELLING UNITS.

11
12 “PROPERTY OWNER” MEANS AN OWNER OF COMMERCIAL PROPERTY AS
13 DEFINED IN THIS SECTION.

14
15 **SECTION 6.29.030 – SCOPE**

16
17 COMMERCIAL PROPERTY OWNERS ARE ELIGIBLE TO PARTICIPATE
18 IN THE CLEAN ENERGY LOAN PROGRAM FOR LOANS GREATER THAN
19 \$25,000 FOR A TERM OF UP TO 20 YEARS.

20
21 ~~B. The only loans administered by the Program are loans that are for energy efficiency~~
22 ~~improvements or renewable energy production equipment.~~

23
24 **SECTION 6.29.040 – ELIGIBILITY**

25
26 ~~C. In order to be able to participate in the Program and obtain a loan through the~~
27 ~~Program, the person or entity receiving the loan must meet the following~~
28 ~~requirements~~ TO BE ELIGIBLE FOR A CLEAN ENERGY LOAN, THE
29 PROPERTY OWNER SHALL:

- 30
31 1. Have a one hundred percent ownership interest in real property located within
32 the City OF ANNAPOLIS FOR WHICH IMPROVEMENTS ARE
33 PROPOSED;
34 2. Obtain an acceptable energy audit APPROVED UNDER PROGRAM
35 GUIDELINES DEMONSTRATING ~~for the property which shows that the~~
36 ~~annual~~ energy savings PROJECTED to be obtained by the proposed energy
37 ~~efficiency improvements and/or renewable energy production equipment~~ FROM
38 THE IMPROVEMENTS OVER THE LIFE OF THE CLEAN ENERGY LOAN
39 equal or exceed the ~~annual repayment amount~~ PRINCIPAL AND
40 AGGREGATE INTEREST TO BE PAID OVER THE TERM OF THE LOAN
41 for the loan from the Program;
42 3. ~~Agree to repay the loan through a surcharge assessed as additional charges on~~
43 ~~the owner's real property tax bill to be collected by the City or its delegated~~
44 ~~agent, which surcharge shall not exceed the amount that equates to the total loan~~
45 ~~repayment obligation of the owner, including principal and interest and any~~

1 ~~other fees or charges owed~~ DEMONSTRATE THAT THE MOST RECENT
2 PROPERTY TAX BILL HAS BEEN PAID FOR THE PROPERTY;

- 3 4. ~~Provide the City with a notarized statement and documentation of the owner's~~
4 ~~assets, income and liabilities, which shall include at a minimum the owner's~~
5 ~~most recent federal tax return, IRS form W 2, payroll statement, credit report,~~
6 ~~and any other documentation required by the City~~ PROVIDE A COPY OF
7 WRITTEN NOTICE TO ALL CURRENT HOLDERS OF A MORTGAGE OR
8 DEED OF TRUST WHO HAVE A PRIORITY RECORDED LIEN ON THE
9 PROPERTY AND WRITTEN PROOF OF EXPRESS CONSENT TO THE
10 LOAN AS A PRIORITY LIEN BY ALL CURRENT HOLDERS OF A
11 MORTGAGE OR DEED OF TRUST ON THE PROPERTY; AND
- 12 5. ~~Provide the City with copies of the owner's most recent property tax bill and~~
13 ~~documentation that it has been paid, and the owner's homeowner's insurance~~
14 ~~policy and documentation that it is currently in force~~ ESTABLISH THAT THE
15 OWNER OF THE COMMERCIAL PROPERTY IS ABLE TO REPAY THE
16 LOAN BASED ON CRITERIA AND METHODS SET FORTH IN SECTIONS
17 12-127, 12-311, 12-409.1, 12-925 AND 12-1029 OF THE COMMERCIAL
18 LAW ARTICLE OF THE ANNOTATED CODE OF MARYLAND.
- 19 ~~6. Have a debt to income ratio of not greater than forty three percent;~~
20 ~~7. Otherwise establish, if the City requests, that the owner has the ability to repay~~
21 ~~the loan from the Program;~~
- 22 ~~8. Obtain and provide to the City the written consent of all lenders with prior~~
23 ~~recorded liens or other interests governing the property which consent~~
24 ~~establishes that the lender permits the owner to accept the loan with the~~
25 ~~surcharge added to the real property tax bill for the property;~~
- 26 9. ~~Sign a lien or surcharge statement or other such document in favor of the City,~~
27 ~~in recordable form, with language that the loan and surcharge establish a lien on~~
28 ~~the property in favor of the City, and that the lien and surcharge are binding on~~
29 ~~the owner and the owner's heirs, personal representatives, successors and~~
30 ~~assigns, including but not limited to subsequent purchasers of the property, and~~
31 ~~that the lien and surcharge shall run with the property, which statement or~~
32 ~~document shall be recorded among the land records of Anne Arundel County at~~
33 ~~the expense of the owner.~~

34
35 **SECTION 6.29.050 – QUALIFYING IMPROVEMENTS AND COSTS**

36
37 A. THE FOLLOWING IMPROVEMENTS, EITHER NEW OR REPLACEMENT,
38 QUALIFY AS ENERGY EFFICIENCY OR RENEWABLE ENERGY PROJECTS
39 UNDER THE CLEAN ENERGY LOAN PROGRAM:

- 40
41 (1) SOLAR ENERGY EQUIPMENT;
42
43 (2) GEOTHERMAL ENERGY DEVICES;
44
45 (3) WIND ENERGY SYSTEMS;
46

1 (4) WATER CONSERVATION DEVICES NOT REQUIRED BY LAW; AND

2
3 (5) ANY CONSTRUCTION, RENOVATION OR RETROFITTING OF
4 COMMERCIAL PROPERTY TO REDUCE ENERGY CONSUMPTION,
5 INCLUDING, HIGH EFFICIENCY LIGHTING AND BUILDING SYSTEMS,
6 HEATING VENTILATION AIR CONDITIONING (HVAC) UPGRADES,
7 HIGH EFFICIENCY BOILERS AND FURNACES, HIGH EFFICIENCY HOT
8 WATER HEATING SYSTEMS, COMBUSTION AND BURNER
9 UPGRADES, FUEL SWITCHING, HEAT RECOVERY AND STEAM
10 TRAPS, BUILDING SHELL OR ENVELOPE IMPROVEMENTS,
11 FENESTRATION IMPROVEMENTS, BUILDING ENERGY
12 MANAGEMENT SYSTEMS, AND PROCESS EQUIPMENT UPGRADES.
13

14 B. A CLEAN ENERGY LOAN MAY BE USED TO PAY FOR ALL COSTS
15 INCURRED BY A PROPERTY OWNER IN CONNECTION WITH THE
16 QUALIFYING IMPROVEMENTS, INCLUDING THE COST OF THE ENERGY
17 AUDIT; THE DESIGN, INSTALLATION, AND CONSTRUCTION OF THE
18 QUALIFYING IMPROVEMENTS; ENERGY SAVINGS OR PERFORMANCE
19 GUARANTY OR INSURANCE; AND CLOSING COSTS OF THE CLEAN
20 ENERGY LOAN.
21

22 ~~D. Loans under the Program:~~

- 23
24 ~~1. Must be for at least two thousand five hundred dollars, and may not exceed ten~~
25 ~~thousand dollars;~~
26 ~~2. Bear interest at a preferred rate, which may vary from time to time depending on~~
27 ~~market conditions, taking into consideration the owner's credit standing;~~
28 ~~3. Shall be repayable over a period of between ten and fifteen years, unless repaid~~
29 ~~earlier from proceeds of settlement resulting from a sale or other transfer of the~~
30 ~~property for cash consideration.~~
31

32 ~~E. A loan under the Program, together with accrued interest and related charges, shall,~~
33 ~~as a surcharge to the owner's real property tax assessment, constitute a first lien on~~
34 ~~the property and have priority over other liens on the property in favor of private~~
35 ~~parties, whether prior or subsequent, unless contrary to State law, provided that the~~
36 ~~City, in its sole discretion, may accept its lien as subservient to other prior recorded~~
37 ~~liens. Any unpaid surcharge amount and accrued interest and related charges, or any~~
38 ~~unpaid amount thereof, are collectable by suit or tax sale in the same manner as all~~
39 ~~other real property taxes payable to the City, to the extent permitted by State law. If~~
40 ~~the owner does not pay the surcharge or other related charges as required, the City~~
41 ~~shall be entitled to take all lawful actions to have the property sold at a tax sale~~
42 ~~conducted by Anne Arundel County, Maryland.~~
43

44 ~~F. A loan under the Program shall be facilitated by the City directly with the owner.~~
45 ~~Each owner shall enter into a contract with the City which shall contain the terms of~~

1 the loan from the Program and its repayment, and such other terms as the City may
2 deem advisable, including but not limited to the following terms;

3
4 ~~1. The consent of the owner that the City shall be authorized to collect repayment~~
5 ~~of the loan by adding a surcharge on the owner's real property tax bill for the~~
6 ~~property, which surcharge shall continue and not be released until the loan, and~~
7 ~~accrued interest and related charges are fully repaid, regardless of any change in~~
8 ~~ownership of the subject property;~~

9 ~~2. A requirement that the owner notify any existing lenders who hold a prior~~
10 ~~recorded lien governing the property of the loan made under the Program and~~
11 ~~the amount of the annual loan payment, and obtain the written consent of all~~
12 ~~such lenders to the loan, and to the surcharge to be placed on the owner's real~~
13 ~~property tax bill to secure the repayment of the loan, and to the establishment of~~
14 ~~a first lien on the property in favor of the City to which the prior recorded lien is~~
15 ~~subordinate; and~~

16 ~~3. A requirement that the owner notify all prospective purchasers of the property of~~
17 ~~the existence of the loan and its terms, including the surcharge added to the real~~
18 ~~property tax bill for the property, the obligation repay the loan on the same to~~
19 ~~which the owner is subject, and the fact that the loan and surcharge run with the~~
20 ~~property and that the prospective purchaser would be conveyed the property~~
21 ~~subject to the loan, and surcharge procedure, unless the loan is repaid in full~~
22 ~~from proceeds of settlement of the sale of the property.~~

23
24 ~~G. All loan repayments and related charges collected under the Program shall be shall~~
25 ~~be remitted to the appropriate financier along with remittance details.~~

26
27 ~~H. The City may enter into one or more agreements with private or public funding~~
28 ~~entities to provide financing for the Program. In addition, the City may delegate the~~
29 ~~management of the Program to a public or private entity.~~

30
31 ~~I. The City shall not finance nor fund any loan pursuant to the Program. The City's~~
32 ~~only responsibility under the Program shall be to sponsor the Program and to send~~
33 ~~the property owner the surcharge notice on the property owner's real property tax~~
34 ~~assessment bill. The City shall not incur or agree to incur any liability to others in the~~
35 ~~event of a default in the repayment of the loan.~~

36
37 ~~J. All policies governing the management of the Program shall be determined by the~~
38 ~~Director of Office of Environmental Policy in collaboration with the Director of Finance.~~

39 40 **SECTION 6.29.060 – REAL PROPERTY TAX SURCHARGE**

41
42 **A. REPAYMENT OF LOANS.** A PROPERTY OWNER PARTICIPATING IN THE
43 CLEAN ENERGY LOAN PROGRAM SHALL REPAY THE LOAN THROUGH A
44 SURCHARGE ON THEIR REAL PROPERTY TAX BILL.
45

1 B. **CALCULATION.** THE SURCHARGE FOR A CLEAN ENERGY LOAN SHALL
2 INCLUDE THE CLEAN ENERGY LOAN OBLIGATION AND ANY
3 ADMINISTRATIVE COSTS INCURRED BY THE CITY WHICH SHALL BE
4 THE ACTUAL EXPENSES INCURRED TO ADMINISTER THE PROGRAM.

5
6 C. **AGREEMENT.** THE PROPERTY OWNER SHALL EXECUTE AN
7 AGREEMENT WITH THE CITY AND THE CLEAN ENERGY LENDER THAT
8 WILL BE RECORDED IN LAND RECORDS, AT THE EXPENSE OF THE
9 OWNER, WHICH SHALL INCLUDE:

10
11 (1) THE DATE THE CLEAN ENERGY LOAN WAS MADE TO THE
12 PROPERTY OWNER AND THE PROPERTY BECAME SUBJECT TO THE
13 SURCHARGE;

14
15 (2) THE TERM OF THE CLEAN ENERGY LOAN AND OVER WHICH THE
16 SURCHARGE WILL APPLY TO THE PROPERTY;

17
18 (3) THE CLEAN ENERGY LOAN OBLIGATION AND ESTIMATED CITY
19 ADMINISTRATIVE COSTS FOR THE FIRST YEAR;

20
21 (4) THE ANNUAL PRINCIPAL AND INTEREST AMOUNT FOR EACH YEAR
22 OF THE TERM OF THE LOAN, INCLUDING ANY PARTIAL YEAR
23 PRORATED AMOUNTS;

24
25 (5) PREPAYMENT REQUIREMENTS AND ANY PREPAYMENT PREMIUM
26 THAT MAY APPLY TO A PREPAYABLE CLEAN ENERGY LOAN;

27
28 (6) AGREEMENT BY THE PROPERTY OWNER TO REPAY ALL CLEAN
29 ENERGY LOAN OBLIGATIONS AND THE CITY'S ADMINISTRATIVE
30 COSTS THROUGH A SURCHARGE INCLUDED ON THE OWNER'S
31 REAL PROPERTY TAX BILL DUE AND PAYABLE ON THE SAME DATE
32 AS THE REAL PROPERTY TAX BILL;

33
34 (7) ACKNOWLEDGEMENT BY THE PROPERTY OWNER THAT AN UNPAID
35 CLEAN ENERGY LOAN SURCHARGE CONSTITUTES A FIRST LIEN ON
36 THE PROPERTY THAT HAS PRIORITY OVER PRIOR OR SUBSEQUENT
37 LIENS IN FAVOR OF PRIVATE PARTIES AND THAT THE SURCHARGE
38 WILL CONTINUE AS A LIEN ON THE PROPERTY FROM THE DATE IT
39 BECOMES PAYABLE UNTIL THE UNPAID SURCHARGE AND
40 INTEREST AND PENALTIES ON THE SURCHARGE ARE PAID IN FULL,
41 REGARDLESS OF A CHANGE IN OWNERSHIP OF THE PROPERTY,
42 WHETHER VOLUNTARY OR INVOLUNTARY;

43
44 (8) ACKNOWLEDGEMENT BY THE PROPERTY OWNER AND THE
45 LENDER THAT THE CITY HAS NO LIABILITY FOR THE CLEAN
46 ENERGY OBLIGATION OR ANY COSTS ASSOCIATED WITH THE

1 COLLECTION OF AMOUNTS DUE UNDER THE CLEAN ENERGY
2 FINANCING AGREEMENT; AND

3
4 (9) ACKNOWLEDGEMENT BY THE PROPERTY OWNER THAT AN
5 OVERDUE SURCHARGE SHALL BE COLLECTED PURSUANT TO THE
6 DEFAULT PROVISIONS SET FORTH IN PARAGRAPH D BELOW.

7
8 D. **DEFAULT.** THE CITY SHALL BE ENTITLED TO TAKE ALL LAWFUL
9 ACTIONS TO HAVE THE PROPERTY SOLD AT A TAX SALE CONDUCTED
10 BY ANNE ARUNDEL COUNTY, MARYLAND, IN THE EVENT OF DEFAULT
11 ON THE CLEAN ENERGY LOAN SURCHARGE.

12
13 E. **PAYMENT TO CLEAN ENERGY LENDER.** THE CITY SHALL HAVE NO
14 OWNERSHIP OF THE SURCHARGES COLLECTED EXCEPT FOR
15 ADMINISTRATIVE COSTS PROVIDED UNDER THIS CHAPTER. THE CITY
16 SHALL HAVE NO OBLIGATION TO MAKE PAYMENTS TO ANY CLEAN
17 ENERGY LENDER WITH RESPECT TO ANY CLEAN ENERGY LOAN
18 OBLIGATION OTHER THAN THAT PORTION OF SURCHARGE ACTUALLY
19 COLLECTED FROM A PROPERTY OWNER FOR THE REPAYMENT OF A
20 CLEAN ENERGY LOAN. PAYMENTS RECEIVED FROM A PROPERTY
21 OWNER SHALL BE CREDITED FIRST TO ALL CITY TAXES,
22 ASSESSMENTS, AND CHARGES.

23
24 **SECTION 6.29.070 – FINANCING**

25
26 CLEAN ENERGY LOANS MAY BE PROVIDED BY ANY PRIVATE
27 LENDER AND A CLEAN ENERGY FINANCING AGREEMENT MAY CONTAIN
28 ANY TERMS AGREED TO BY THE CLEAN ENERGY LENDER AND THE
29 PROPERTY OWNER, AS PERMITTED BY LAW, FOR THE FINANCING OF
30 CLEAN ENERGY LOANS. THE CITY MAY NOT FINANCE OR FUND ANY
31 LOAN UNDER THE PROGRAM, SHALL SERVE ONLY AS A PROGRAM
32 SPONSOR TO FACILITATE LOAN REPAYMENT BY INCLUDING THE
33 SURCHARGE ON THE ANNUAL CITY REAL PROPERTY TAX BILL FOR THE
34 PROPERTY, AND SHALL INCUR NO LIABILITY FOR THE LOAN.

35
36
37 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY**
38 **THE ANNAPOLIS CITY COUNCIL** that this ordinance shall take effect on the date of
39 its passage.

40
41
42 **EXPLANATION**

43 CAPITAL LETTERS indicate matter added to existing law.

44 ~~Strikethrough~~ indicates matter stricken from existing law.

45 Underlining indicates amendments

46