



Legislation Text

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**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.

**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:

## TITLE 6 - REVENUE AND FINANCE

### CHAPTER 6.29 - ESTABLISHMENT OF PROGRAM TO FINANCE AND ENCOURAGE ENERGY EFFICIENCY IMPROVEMENTS AND RENEWABLE ENERGY PRODUCTION EQUIPMENT PROJECTS AND RENEWABLE ENERGY PROJECTS.

#### Section 6.29.010 - Establishment of ~~program to encourage energy efficiency improvements and renewable energy production equipment~~ CLEAN ENERGY LOAN PROGRAM.

- A. A Clean Energy Loan Program (“Program”), as authorized ~~under Article 24, Sections 9-1501 through 9-1507~~ PURSUANT TO THE LOCAL GOVERNMENT ARTICLE, SECTIONS 1-1101 ET SEQ. of the Annotated Code of Maryland, is hereby established to FINANCE AND encourage energy efficiency ~~improvements and/or the use of renewable energy production equipment in the City (the “Program”)~~ PROJECTS AND RENEWABLE ENERGY PROJECTS WITH AN ELECTRIC GENERATING CAPACITY OF NOT MORE THAN 100 KILOWATTS.
- B. THE CITY MAY ENTER INTO AN AGREEMENT WITH A PRIVATE ENTITY TO ADMINISTER THE CLEAN ENERGY LOAN PROGRAM.
- C. ALL POLICIES GOVERNING THE MANAGEMENT OF THE PROGRAM SHALL BE DETERMINED BY THE DIRECTOR OF THE OFFICE OF ENVIRONMENTAL POLICY IN COLLABORATION WITH THE DIRECTOR OF FINANCE.

#### SECTION 6.29.020 - DEFINITIONS

IN THIS CHAPTER THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

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

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

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

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

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

“**COMMERCIAL PROPERTY**” MEANS REAL PROPERTY THAT IS:

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

**“PROPERTY OWNER”** MEANS AN OWNER OF COMMERCIAL PROPERTY AS DEFINED IN THIS SECTION.

#### **SECTION 6.29.030 - SCOPE**

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

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

#### **SECTION 6.29.040 - ELIGIBILITY**

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

1. Have a one hundred percent ownership interest in real property located within the City OF ANNAPOLIS FOR WHICH IMPROVEMENTS ARE PROPOSED;
2. Obtain an acceptable energy audit APPROVED UNDER PROGRAM GUIDELINES DEMONSTRATING for the property which shows that the annual energy savings PROJECTED to be obtained by the proposed energy efficiency improvements and/or renewable energy production equipment FROM THE IMPROVEMENTS OVER THE LIFE OF THE CLEAN ENERGY LOAN equal or exceed the annual repayment amount PRINCIPAL AND AGGREGATE INTEREST TO BE PAID OVER THE TERM OF THE LOAN for the loan from the Program;
3. Agree to repay the loan through a surcharge assessed as additional charges on the owner's real property tax bill to be collected by the City or its delegated agent, which surcharge shall not exceed the amount that equates to the total loan repayment obligation of the owner, including principal and interest and any other fees or charges owed DEMONSTRATE THAT THE MOST RECENT PROPERTY TAX BILL HAS BEEN PAID FOR THE PROPERTY;
4. Provide the City with a notarized statement and documentation of the owner's assets, income and liabilities, which shall include at a minimum the owner's most recent federal tax return, IRS form W-2, payroll statement, credit report, and any other documentation required by the City PROVIDE A COPY OF WRITTEN NOTICE TO ALL CURRENT HOLDERS OF A MORTGAGE OR DEED OF TRUST WHO HAVE A PRIORITY RECORDED LIEN ON THE PROPERTY AND WRITTEN PROOF OF EXPRESS CONSENT TO THE LOAN AS A PRIORITY LIEN BY ALL CURRENT HOLDERS OF A MORTGAGE OR DEED OF TRUST ON THE PROPERTY; AND
5. Provide the City with copies of the owner's most recent property tax bill and documentation that it has been paid, and the owner's homeowner's insurance policy and documentation that it is currently in force ESTABLISH THAT THE OWNER OF THE COMMERCIAL PROPERTY IS ABLE TO REPAY THE LOAN BASED ON CRITERIA AND METHODS SET FORTH IN SECTIONS 12-127, 12-311, 12-409.1, 12-925 AND 12-1029 OF THE COMMERCIAL LAW ARTICLE OF THE ANNOTATED

CODE OF MARYLAND.

6. Have a debt to income ratio of not greater than forty three percent;
7. Otherwise establish, if the City requests, that the owner has the ability to repay the loan from the Program;
8. Obtain and provide to the City the written consent of all lenders with prior recorded liens or other interests governing the property which consent establishes that the lender permits the owner to accept the loan with the surcharge added to the real property tax bill for the property;
9. Sign a lien or surcharge statement or other such document in favor of the City, in recordable form, with language that the loan and surcharge establish a lien on the property in favor of the City, and that the lien and surcharge are binding on the owner and the owner's heirs, personal representatives, successors and assigns, including but not limited to subsequent purchasers of the property, and that the lien and surcharge shall run with the property, which statement or document shall be recorded among the land records of Anne Arundel County at the expense of the owner.

**SECTION 6.29.050 - QUALIFYING IMPROVEMENTS AND COSTS**

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

- (1) SOLAR ENERGY EQUIPMENT;
- (2) GEOTHERMAL ENERGY DEVICES;
- (3) WIND ENERGY SYSTEMS;
- (4) WATER CONSERVATION DEVICES NOT REQUIRED BY LAW; AND
- (5) ANY CONSTRUCTION, RENOVATION OR RETROFITTING OF COMMERCIAL PROPERTY TO REDUCE ENERGY CONSUMPTION, INCLUDING, HIGH EFFICIENCY LIGHTING AND BUILDING SYSTEMS, HEATING VENTILATION AIR CONDITIONING (HVAC) UPGRADES, HIGH EFFICIENCY BOILERS AND FURNACES, HIGH EFFICIENCY HOT WATER HEATING SYSTEMS, COMBUSTION AND BURNER UPGRADES, FUEL SWITCHING, HEAT RECOVERY AND STEAM TRAPS, BUILDING SHELL OR ENVELOPE IMPROVEMENTS, FENESTRATION IMPROVEMENTS, BUILDING ENERGY MANAGEMENT SYSTEMS, AND PROCESS EQUIPMENT UPGRADES.

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

~~D.~~ Loans under the Program:

1. Must be for at least two thousand five hundred dollars, and may not exceed ten thousand dollars;
2. Bear interest at a preferred rate, which may vary from time to time depending on market conditions, taking into consideration the owner's credit standing;

3. Shall be repayable over a period of between ten and fifteen years, unless repaid earlier from proceeds of settlement resulting from a sale or other transfer of the property for cash consideration.
- E. A loan under the Program, together with accrued interest and related charges, shall, as a surcharge to the owner's real property tax assessment, constitute a first lien on the property and have priority over other liens on the property in favor of private parties, whether prior or subsequent, unless contrary to State law, provided that the City, in its sole discretion, may accept its lien as subservient to other prior recorded liens. Any unpaid surcharge amount and accrued interest and related charges, or any unpaid amount thereof, are collectable by suit or tax sale in the same manner as all other real property taxes payable to the City, to the extent permitted by State law. If the owner does not pay the surcharge or other related charges as required, the City shall be entitled to take all lawful actions to have the property sold at a tax sale conducted by Anne Arundel County, Maryland.
- F. A loan under the Program shall be facilitated by the City directly with the owner. Each owner shall enter into a contract with the City which shall contain the terms of the loan from the Program and its repayment, and such other terms as the City may deem advisable, including but not limited to the following terms;
1. The consent of the owner that the City shall be authorized to collect repayment of the loan by adding a surcharge on the owner's real property tax bill for the property, which surcharge shall continue and not be released until the loan, and accrued interest and related charges are fully repaid, regardless of any change in ownership of the subject property;
  2. A requirement that the owner notify any existing lenders who hold a prior recorded lien governing the property of the loan made under the Program and the amount of the annual loan payment, and obtain the written consent of all such lenders to the loan, and to the surcharge to be placed on the owner's real property tax bill to secure the repayment of the loan, and to the establishment of a first lien on the property in favor of the City to which the prior recorded lien is subordinate; and
  3. A requirement that the owner notify all prospective purchasers of the property of the existence of the loan and its terms, including the surcharge added to the real property tax bill for the property, the obligation repay the loan on the same to which the owner is subject, and the fact that the loan and surcharge run with the property and that the prospective purchaser would be conveyed the property subject to the loan, and surcharge procedure, unless the loan is repaid in full from proceeds of settlement of the sale of the property.
- G. All loan repayments and related charges collected under the Program shall be shall be remitted to the appropriate financier along with remittance details.
- H. The City may enter into one or more agreements with private or public funding entities to provide financing for the Program. In addition, the City may delegate the management of the Program to a public or private entity.
- I. The City shall not finance nor fund any loan pursuant to the Program. The City's only responsibility under the Program shall be to sponsor the Program and to send the property owner the surcharge notice on the property owner's real property tax assessment bill. The City shall not incur or agree to incur any liability to others in the event of a default in the repayment of the loan.
- J. All policies governing the management of the Program shall be determined by the Director of Office of Environmental Policy in collaboration with the Director of Finance.

## SECTION 6.29.060 - REAL PROPERTY TAX SURCHARGE

- A. **REPAYMENT OF LOANS.** A PROPERTY OWNER PARTICIPATING IN THE CLEAN ENERGY LOAN PROGRAM SHALL REPAY THE LOAN THROUGH A SURCHARGE ON THEIR REAL PROPERTY TAX BILL.
- B. **CALCULATION.** THE SURCHARGE FOR A CLEAN ENERGY LOAN SHALL INCLUDE THE CLEAN ENERGY LOAN OBLIGATION AND ANY ADMINISTRATIVE COSTS INCURRED BY THE CITY WHICH SHALL BE THE ACTUAL EXPENSES INCURRED TO ADMINISTER THE PROGRAM.
- C. **AGREEMENT.** THE PROPERTY OWNER SHALL EXECUTE AN AGREEMENT WITH THE CITY AND THE CLEAN ENERGY LENDER THAT WILL BE RECORDED IN LAND RECORDS, AT THE EXPENSE OF THE OWNER, WHICH SHALL INCLUDE:
- (1) THE DATE THE CLEAN ENERGY LOAN WAS MADE TO THE PROPERTY OWNER AND THE PROPERTY BECAME SUBJECT TO THE SURCHARGE;
  - (2) THE TERM OF THE CLEAN ENERGY LOAN AND OVER WHICH THE SURCHARGE WILL APPLY TO THE PROPERTY;
  - (3) THE CLEAN ENERGY LOAN OBLIGATION AND ESTIMATED CITY ADMINISTRATIVE COSTS FOR THE FIRST YEAR;
  - (4) THE ANNUAL PRINCIPAL AND INTEREST AMOUNT FOR EACH YEAR OF THE TERM OF THE LOAN, INCLUDING ANY PARTIAL YEAR PRORATED AMOUNTS;
  - (5) PREPAYMENT REQUIREMENTS AND ANY PREPAYMENT PREMIUM THAT MAY APPLY TO A PREPAYABLE CLEAN ENERGY LOAN;
  - (6) AGREEMENT BY THE PROPERTY OWNER TO REPAY ALL CLEAN ENERGY LOAN OBLIGATIONS AND THE CITY'S ADMINISTRATIVE COSTS THROUGH A SURCHARGE INCLUDED ON THE OWNER'S REAL PROPERTY TAX BILL DUE AND PAYABLE ON THE SAME DATE AS THE REAL PROPERTY TAX BILL;
  - (7) ACKNOWLEDGEMENT BY THE PROPERTY OWNER THAT AN UNPAID CLEAN ENERGY LOAN SURCHARGE CONSTITUTES A FIRST LIEN ON THE PROPERTY THAT HAS PRIORITY OVER PRIOR OR SUBSEQUENT LIENS IN FAVOR OF PRIVATE PARTIES AND THAT THE SURCHARGE WILL CONTINUE AS A LIEN ON THE PROPERTY FROM THE DATE IT BECOMES PAYABLE UNTIL THE UNPAID SURCHARGE AND INTEREST AND PENALTIES ON THE SURCHARGE ARE PAID IN FULL, REGARDLESS OF A CHANGE IN OWNERSHIP OF THE PROPERTY, WHETHER VOLUNTARY OR INVOLUNTARY;
  - (8) ACKNOWLEDGEMENT BY THE PROPERTY OWNER AND THE LENDER THAT THE CITY HAS NO LIABILITY FOR THE CLEAN ENERGY OBLIGATION OR ANY COSTS ASSOCIATED WITH THE COLLECTION OF AMOUNTS DUE UNDER THE CLEAN ENERGY FINANCING AGREEMENT; AND

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

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

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

#### **SECTION 6.29.070 - FINANCING**

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

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

#### **EXPLANATION**

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments