

San Francisco Administrative Code

CHAPTER 50 NONPROFIT PERFORMING ARTS LOAN PROGRAM

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NONPROFIT PERFORMING ARTS LOAN PROGRAM**

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**SEC. 50.1. PURPOSE AND FINDINGS.**

The Board of Supervisors hereby finds and declares that nonprofit performing arts organizations are an important cultural element of the quality of life in San Francisco. The Board also finds and declares that numerous arts organizations either operate out of facilities which do not meet the standards imposed by City and State fire, building, earthquake and other safety codes or are unable to acquire adequate operating space. Many of these arts organizations are financially unable to maintain their facilities or make the capital improvements needed to bring their facilities into compliance with these codes. This Chapter is therefore enacted in order to make low-cost loans available to qualified arts organizations for facilities maintenance, renovation and capital improvements so that they may carry on their work in facilities which are in full compliance with all applicable code requirements and with all other requirements which enable the facilities to be used for performing arts. In addition, this Chapter is enacted in order that low-cost loans may be made to these arts organizations for the acquisition or renovation of adequate operating space, to the extent that funds are available for this purpose.

The Board of Supervisors expressly finds and declares that the appropriation and expenditure of public funds for the purposes set forth above will serve a public purpose and will benefit the residents of San Francisco as a whole. Nonprofit arts organizations which work in substandard facilities are currently faced with the choice of either continuing to work in environments that are unsafe for their members and audiences alike, or of interrupting their work while they seek new and adequate facilities. The loans to be provided under this Chapter will assure that these arts organizations carry on their efforts in facilities which enhance the health, safety and welfare of the artists and of those who come to view their work. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91)

## **SEC. 50.2. DEFINITIONS.**

Unless otherwise indicated by the context, the following definitions shall govern the construction of this Chapter:

(a) "Arts organization" shall mean a nonprofit performing arts organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is otherwise eligible for loans under this Chapter.

(b) "Director" shall mean the Director of the Mayor's Office of Housing, or his or her designee.

(c) "Fund" shall mean the Nonprofit Performing Arts Loan Fund, established pursuant to Administrative Code Section 10.117-41.

(d) "Incipient code violation" shall mean a physical condition of property which may reasonably be expected to deteriorate into a code violation within two years. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91)

## **ARTICLE II LOAN ADMINISTRATION**

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## **SEC. 50.10. DUTIES OF CITY AND COUNTY AGENCIES.**

The Director shall be responsible for administration of all aspects of the Nonprofit Performing Arts Loan Program. The Director and each City and County agency assigned responsibilities under this Chapter shall have all

such authority as may be reasonably necessary to carry out those responsibilities. While retaining the overall responsibility for the administration of the program, the Director may utilize the services of the Department of Public Works and the Fire Department in connection with the code enforcement aspects of the program, and the services of the Real Estate Department in connection with the loan financing aspects of the program. The Director may also request the assistance of any other City and County agency in meeting his or her responsibilities under this program. (Added by Ord. 69-84, App. 2/15/84)

#### **SEC. 50.11. RULES AND REGULATIONS.**

The Director shall promulgate such rules and regulations as he or she may deem appropriate to carry out the provisions of this Chapter. Said rules and regulations shall be developed in consultation with pertinent City and County agencies and any other appropriate organizations which the Director in his or her discretion may choose to consult. The Board of Supervisors shall by resolution approve all such rules and regulations prior to their effective date. A copy of all such rules and regulations shall be available for review by the public during regular business hours in the office of the Director, the office of the Clerk of the Board of Supervisors, the Fire Prevention Bureau of the Fire Department, the Department of Public Works and in every other office which is assigned responsibilities for carrying out this program. (Added by Ord. 69-84, App. 2/15/84)

#### **SEC. 50.12. REPORTS TO THE BOARD OF SUPERVISORS.**

The Director shall submit a semi-annual report to the Board of Supervisors, within 90 days following the completion of each six-month period, setting forth a description of all loans made under this Chapter and an accounting of the uses made of all monies appropriated to the fund for the period in question. The Director's report shall include the fees, interest rates and other charges levied for each loan. The semi-annual reports shall also include the following information:

(a) For loans subsequent to the date of the last semi-annual report, the primary purpose of the loan, the principal amount, interest rate, and any fees which have been charged on the loan in excess of regularly scheduled interest payments; and

(b) For loans outstanding as of the date of the last semi-annual report, the outstanding principal balance, the current status of principal and interest, repayments made, if any, any current or potential default under the loan documents and any potential administrative action to be taken with respect thereto. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91)

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## **SEC. 50.20. APPLICANT'S PLAN FOR FACILITIES MAINTENANCE AND CAPITAL IMPROVEMENTS.**

Each loan applicant shall submit a proposed plan for facilities maintenance and capital improvements or acquisition as part of the loan application process. The proposed plan shall include provisions designed to correct all code violations and incipient code violations of applicable City and State fire, building, earthquake and other safety codes, and any other provisions which the Director in his or her discretion may require. In consultation with the Department of Public Works, the Fire Department and other relevant City and County agencies, the Director shall review the proposed plan to ensure that it meets all applicable code requirements for the subject property. (Added by Ord. 69-84, App. 2/15/84)

## **SEC. 50.21. ELIGIBILITY FOR LOANS.**

Each arts organization working in a facility in San Francisco which has been or is subject to being cited for code violations or incipient code violations or that intends to acquire or renovate a facility in San Francisco shall be eligible for a loan under this Chapter. Loans under this Chapter shall be available only to arts organizations with annual budgets of less than \$1,000,000, and only for the repair and maintenance or acquisition of facilities containing 50 to 499 seats. Each arts organization shall apply for a loan in compliance with all applicable rules and regulations as promulgated by the Director; shall demonstrate to the satisfaction of the Director the ability to repay such a loan; and shall meet all applicable requirements as set forth in this Chapter.

Priority for loans shall be given to arts organizations seeking funds to correct life safety code violations in the facility where they are presently

working or acquisitions necessitated by life safety code defects. It is the intent of the Board of Supervisors that the maximum degree of cultural and ethnic diversity be achieved among loan recipients, to insure that minority, disabled, lesbian/gay and other arts organizations may share in the benefits of this program. In administering this loan program, the Director shall give priority to this intent and shall insure that sufficient funds are available to achieve this purpose. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91)

#### **SEC. 50.22. MAXIMUM LOAN AMOUNT; FACTORS IN DETERMINING TERMS AND CONDITIONS.**

The maximum amount of a loan under this Chapter shall be \$200,000. The Director shall determine the terms and conditions of each loan, based upon the following factors:

- (a) Whether the arts organization owns the subject property or holds a longterm lease the life of which exceeds the anticipated repayment period;
- (b) The size, age, value and condition of the subject property;
- (c) The nature and extent of all code and incipient code violations;
- (d) The type of security to be given for the loan;
- (e) The verifiable financial soundness of the arts organization and its ability to complete the project for which the loan application is made;
- (f) The degree to which an arts organization can demonstrate community interest in and support for its artistic programs; and
- (g) Any other factors that the Director shall, by rule and regulation, establish. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91; Ord. 280-99, File No. 991737, App. 10/29/99)

#### **SEC. 50.23. LOAN FEES AND INTEREST RATES; DEFERRALS AND WAIVERS.**

A one percent loan fee on the principal of the loan shall be levied for all loans made under this Chapter. An interest rate of three percent simple interest shall also be levied by the Director.

In individual cases of documented hardship, the Director may either waive payment of the loan fee or defer it until the termination of the loan. The Director shall promulgate rules and regulations which shall be applied in making determinations of such waivers and deferrals. (Added by Ord. 69-84, App. 2/15/84)

#### **SEC. 50.24. SECURITY FOR LOANS.**

The owner of the subject property shall agree in writing to all alterations to the property to be financed by the loan as a prerequisite to granting a loan to any arts organization which is a tenant in the subject property. A copy of the arts organization's lease shall also be filed with the Director.

Every loan made under this Chapter shall be fully secured. The Director shall evaluate the types of security offered by each loan applicant and shall give preference to those types and amounts of security that in his or her opinion will provide the greatest protection for the City's funds. Further, the Director shall determine that the liquidation value of any security equals or exceeds the full value of the loan and the expected costs of proceeding on such security and obtaining the proceeds of any collateral. Those types of security shall include, but are not limited to:

(a) A deed of trust on the subject property, naming the City and County as beneficiary;

(b) The guarantee of the owner of the subject property, in cases where the arts organization is the tenant of the property to be improved;

(c) The independent, joint and several, collateral guarantee of the Board of Directors of an arts organization;

(d) A chattel mortgage or financing statement on equipment or other personal property owned by the arts organization. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91)

#### **SEC. 50.25. INSURANCE.**

All loans made under this Chapter shall provide that the loan applicant shall maintain, throughout the term of the loan, fire and lightning insurance with an extended coverage endorsement and a vandalism and malicious mischief endorsement. Such insurance shall be in an amount equal to 100 percent of the replacement cost of the improvements or other work to be financed by the proceeds of the loan. If a loss occurs which results in the total destruction of the subject structure, the insurance policy shall provide payment to the City in the amount of the then outstanding loan balance. The Director shall promulgate regulations, in consultation with the Risk Manager, to determine the circumstances in which any additional insurance requirements may be imposed. (Added by Ord. 69-84, App. 2/15/84)

#### **SEC. 50.26. TRANSFER AND ASSIGNMENT OF LOANS.**

(a) The unpaid amount of any loan shall be due and payable upon the occurrence of any of the following events:

(1) Sale or transfer of ownership of the property, if the arts organization is the owner of the subject property.

(2) The vacation of the property by the arts organization, if the organization is the tenant of the subject property.

(3) Cessation of activities by the borrower as a nonprofit performing arts organization, whether or not the property is transferred or vacated.

(4) Cessation of use of the property as a performing arts facility.

(b) Assignment of the unpaid amount of such a loan to a purchaser or transferee may be permitted where the Director determines that the purchaser or transferee is an arts organization which qualifies for a loan under current loan eligibility standards. The Director shall promulgate rules and regulations which shall be applied in making the determinations required under this subsection. (Added by Ord. 69-84, App. 2/15/84; amended by Ord. 160-91, App. 4/25/91)

#### **ARTICLE IV MISCELLANEOUS PROVISIONS**

Sec. 50.30.

Severability.

#### **SEC. 50.30. SEVERABILITY.**

The provisions of this ordinance shall not apply to any person, association, corporation or to any property as to whom or which it is beyond the power of the City and County to legislate. If any sentence, clause, section or part of this ordinance is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this ordinance, or person or entity; and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance, or its effect on other persons or entities. It is hereby declared to be the intention of the Board of Supervisors of the City and County that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part of this ordinance not been included herein; or had such person or entity been expressly exempted from the application of this ordinance. To this end the provisions of this ordinance are severable. (Added by Ord. 69-84, App. 2/15/84)

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