

ORDINANCE NO. 1295

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY
REQUIRING NOTICE AND CONSENT PRIOR TO DISCLOSURE OF
CONFIDENTIAL CONSUMER INFORMATION BY FINANCIAL INSTITUTIONS
Chapter 5.92 of the Daly City Municipal Code**

The City Council of the City of Daly City DOES ORDAIN as follows:

SECTION 1. The City of Daly City does hereby adopt this Ordinance prohibiting, with exceptions, the disclosure of confidential consumer information, as defined below, by financial institutions located within the City of Daly City without first securing the consumer's consent; for the purposes of this Ordinance, a consumer includes a business entity in addition to a natural person.

SECTION 2. The purpose of this Ordinance is to require local financial institutions to provide their customers notice and meaningful choice about how consumers' personal information is shared or sold by their financial institutions.

SECTION 3. It is the purpose and intent of the Daly City City Council in enacting this ordinance to afford persons greater financial privacy protection than as provided in Public Law 106-102, the federal *Gramm-Leach-Bliley Act*, and that this ordinance be interpreted to be consistent with that purpose.

SECTION 4. Chapter 5.92 of the Daly City Municipal Code is hereafter added to the Daly City Municipal Code to read as follows:

CHAPTER 5.92

**DISCLOSURE OF CONFIDENTIAL CONSUMER INFORMATION
BY LOCAL FINANCIAL INSTITUTIONS**

Sections:

- 5.92.010** **Definitions.**
- 5.92.020** **Non-Disclosure of Confidential Consumer Information.**
- 5.92.030** **Notice and Consent.**
- 5.92.040** **Exempt Disclosures.**
- 5.92.050** **Insurance and Securities Disclosures.**
- 5.92.060** **Administrative Penalties and Civil Remedies.**
- 5.92.070** **Fair Credit Reporting Act or Federal or State Conflict.**

5.92.010 **Definitions**

For the purposes of this Chapter, the following definitions apply:

(a) "Confidential consumer information" means personally identifiable financial information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with

providing a financial product or service to a consumer, including the fact that a consumer is a customer of a financial institution located within the City of Daly City. Confidential consumer information does not include publicly available information that is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made of federal, state, or local law, except that confidential consumer information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them that is derived without using any confidential consumer information.

(b) "Personally identifiable financial information" includes all of the following:

(1) Information a consumer provides to a financial institution located within the City of Daly City on an application to obtain a loan, credit card, or other financial product or service.

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

(3) The fact that an individual or business entity is or has been a customer of a financial institution located within the City of Daly City or has obtained a financial product or service from a financial institution located within the City of Daly City.

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

(5) Any information that a consumer provides to a financial institution or that a financial institution located within the City of Daly City or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

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

(7) Information from a consumer report.

(c) "Financial institution" generally means any institution located in the City of Daly City that is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code and doing business in the City of Daly City. The term "financial institution" does include a commercial bank, trust company, savings association, industrial loan company, credit union, insurance company, securities brokerage or person to the extent, and only to the extent that the business or person is engaged in the business of lending money or engaging in financial activities as defined above in the City of Daly City. The term "financial institution" does not include the Federal Agricultural Mortgage Company, any entity chartered and operating under the Farm Credit Act of 1971; or any institution chartered by Congress specifically to engage in securitization, secondary market sale, or similar transactions related to a transaction of the consumer; or any person licensed as a dealer under Article 1, (commencing with §11700 of Chapter 4 of Division 5 of the Vehicle Act that enters into contracts for the installment sale or lease of motor vehicles pursuant to Chapter 2b or 2d of Title 14, Part 4 of Division 3 of the Civil Code.

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

(e) "Consumer" means an individual or business who obtains or has obtained a financial product or service from a financial institution located within the City of Daly City that is to be used primarily for personal, family, or household purposes, or that individual's legal representative. An individual does not become a "consumer" solely because he or she (1) is a participant or beneficiary of an employee benefit plan administered or sponsored by a financial institution, (2) covered by a blanket or group insurance policy or group annuity; or (3) is a beneficiary of a worker's compensation plan.

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

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

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

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

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

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

(A) Account administration.

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

(C) Processing premium payments.

(D) Processing insurance claims.

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

(F) For internal research purposes.

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

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

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

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

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

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

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

5.92.020 Non-Disclosure of Confidential Consumer Information

(a) A financial institution located with the City of Daly City shall not disclose to, or share a confidential consumer information with, any third party, including an affiliate or agent of that financial institution, or a subsidiary, unless the financial institution has provided written notice to the consumer to whom the confidential consumer information relates and unless the financial institution has obtained a written or electronic consent acknowledgment from the consumer that authorizes the financial institution to disclose or share the confidential consumer information.

(b) A financial institution located within the City of Daly City shall not deny a consumer a financial product or a financial service because the consumer has not provided the consent required by this subdivision to authorize the financial institution to disclose or share his or her confidential consumer information with any third-party or affiliate.

(c) If the consumer declines to affirmatively consent that confidential consumer information may be disclosed, then a financial institution located in the City of Daly City shall not be allowed to provide that consumer's confidential information to or with any third party, business, agent or entity, except as provided in the *Exempt Disclosures* of Subsection 5.92.040, below.

(d) Nothing in this Chapter shall prohibit a financial institution from marketing or offering its own products and services, or the products and services of others through the financial institutions mailings or other communications with its customers, provided that no confidential consumer information is disclosed in the marketing of products and services except as permitted in *Exempt Disclosures* of Subsection 5.92.040, below.

(e) Except as otherwise permitted by this Chapter, an entity located within the City of Daly City that receives confidential consumer information from a financial institution under this Chapter shall not disclose this information to any other individual or entity, unless the disclosure would be lawful under this Chapter if made directly to the other individual or entity by the financial institution.

5.92.030 Notice and Consent

(a) A financial institution located in the City of Daly City that proposes to disclose or share a consumer's confidential consumer information shall provide a written notice to the consumer that describes (1) the specific types of information that would be disclosed or shared, (2) the general circumstances under which the information would be disclosed or shared, (3) the specific types of persons or businesses that would receive the information, and (4) the specific proposed types of uses for the information.

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

5.92.040 Exempt Disclosures

(a) This Chapter shall not apply to information that is not personally identifiable to a particular person or to a particular business entity.

(b) This Chapter shall not prohibit the release of confidential consumer information under the following circumstances:

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

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

(3) The confidential consumer information is:

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

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

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

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

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

(F) Released to a court of competent jurisdiction.

(G) Released to a state or local agency for the purposes of child support enforcement.

(4) The confidential consumer information is released to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors, provided that the information obtained is not used for any other purpose.

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

(6) The confidential consumer information is released (A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), or (B) from a consumer report reported by a consumer reporting agency, provided that the information obtained is not used for any other purpose.

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

(8) The confidential consumer information is released to comply

with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

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

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

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

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

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

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

5.92.050 Insurance and Securities Disclosures

(a) The restrictions on disclosure and use of confidential consumer information, and the requirement for notification, disclosure, and opportunity for the consumer to direct that the confidential consumer information be disclosed through prior written consent, as provided in this Chapter, do not apply to any person or entity that meets paragraph (1) or (2), below:

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

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

(B) Is licensed to sell securities by the United States Securities and Exchange Commission.

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes, but is not limited to, the following:

(A) The rights and obligations of the parties in the insurance or securities transaction.

(B) An explicit limitation on the use of confidential consumer information about a consumer to transactions authorized by the contract and the requirements contained in this Chapter.

(C) The transactions specified in subparagraph (B) fall within the

scope of activities permitted by the licenses of the parties.

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

5.92.060 Administrative Penalties and Civil Remedies

(a) In addition to any other remedies available at law, any consumer may bring an action against any financial institution located in the City of Daly City that discloses or shares confidential consumer information concerning him or her in violation of this Chapter, for either or both of the following:

(1) Nominal damages of one hundred dollars (\$100). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the consumer.

(b) Any financial institution located in the City of Daly City that discloses or shares confidential consumer information in violation of this Chapter shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for an administrative fine to be levied by the City of Daly City not to exceed five hundred dollars (\$500) per violation.

5.92.070 Fair Credit Reporting Act or Federal or State Conflict

This Chapter shall not be construed: In a manner that is inconsistent with the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.); or to be in conflict with any federal or California state statute or regulation that pre-empts this area of regulation to the exclusion of local control. Such conflicts shall be resolved in a manner favorable to the viability and enforcement of this Chapter, and to best preserve the financial privacy of individuals and business entities consistent with this Chapter.

SECTION 4. Effective Date.

This ordinance shall be effective on January 1, 2003.

SECTION 5. Severability.

If any provision of this Chapter is held by any court or by any Federal or State agency of competent jurisdiction, to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision thereof which had previously been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding.

If any article, section, subsection, phrase, clause, sentence, or word in this Chapter shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of this Chapter but

shall be confined to the article, section, subsection, subdivision, clause, sentence or word so held invalid or unconstitutional.

SECTION 6. Environmental Determination.

The City Council of the City of Daly City finds and determines that the implementation of measures described in this Chapter is in furtherance police powers of the City of Daly City, and that these purposes are exempt from the provisions of the California Environmental Quality Act (CEQA); Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code, as provided in categorical exemption Classes 1, 4, 5, 7, 8, 9, and or 21 of the CEQA Guidelines (Title 14, *California Code of Regulations*, Sections 15301-15329).

SECTION 7. Publication.

This ordinance shall be published according to law.

Introduced this 12th day of August, 2002

Passed and adopted as an Ordinance of the City of Daly City of Daly City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 9th day of September, 2002 by the following vote:

AYES, City Councilmembers Klatt, Tissier, Torres, Guingona

NOES, City Councilmembers None

Absent, City Councilmembers: Agrimonti

HELEN R. FLOWERDAY
CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MICHAEL P. GUINGONA
MAYOR OF THE CITY OF DALY CITY