

<b>Item 2 File 10-0045</b>	<b>Department(s): District Attorney's Office, Police Department, and Assessor-Recorder's Office</b>
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## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed ordinance would amend Section 8.24-5 of the City's Administrative Code to (a) increase the Real Estate Fraud Prosecution Recordation Fee (Recordation Fee) by \$1.00, or 50 percent, from \$2.00 to \$3.00 for each real estate document recorded in San Francisco and (b) make environmental findings.

### Legal Mandates

- On October 31, 1997, the Board of Supervisors approved Section 8.24-5 in the City's Administrative Code, to establish a new \$2.00 Real Estate Fraud Prosecution Recordation Fee (Ordinance 413-97), in accordance with Section 27388 of the California Government Code.
- On September 27, 2008, Section 27388 of the California Government Code was amended to increase the allowable Recordation Fee from \$2.00 to \$3.00 for each real estate document recorded.

### Fiscal Impact

- In FY 2007-2008, the City received \$171,156 and in FY 2008-2009, the City received \$148,164 of Recordation Fee revenues. The Assessor-Recorder's Office estimates that in FY 2009-2010, the City will receive approximately \$161,822, although the FY 2009-2010 Budget assumes \$242,000 of revenues.
- If the proposed ordinance is approved, the Recordation Fee would increase by \$1.00, from \$2.00 to \$3.00 and would generate an estimated \$181,797 in total Recordation Fee revenues in FY 2009-2010, or approximately \$19,975 more than the currently estimated \$161,822. On an annualized basis, the Budget and Legislative Analyst estimates that the proposed Recordation Fee of \$3.00 would generate approximately \$240,571, or close to the amount budgeted in FY 2009-2010 of \$242,000.

### Policy Consideration

- In accordance with Administrative Code Section 8.24-5, the District Attorney's Office is required to submit an annual report to the Board of the Supervisors summarizing (a) the real estate fraud cases investigated and prosecuted and (b) Recordation Fee revenues received and expenditures incurred. However, for FY 2006-2007, FY 2007-2008, and FY 2008-2009, the District Attorney's Office only prepared and submitted two reports to the Board of Supervisors, which included the Recordation Fee information for all three fiscal years.

### Recommendations

- The District Attorney's Office should submit annual Recordation Fee reports to the Board of Supervisors, in accordance with Administrative Code Section 8.24-5.
- Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

## BACKGROUND/MANDATE STATEMENT

### Existing Legal Requirements

Pursuant to Section 27388 of the California Government Code, the City was initially allowed to charge a Real Estate Fraud Prosecution Recordation Fee (Recordation Fee) of \$2.00 when a real estate instrument, paper, or notice<sup>1</sup> (real estate document), that was required or permitted by State law, was recorded in San Francisco County. In accordance with Section 27388 of the California Government Code, the fees collected must be used to fund the administrative and operating costs to deter, investigate, and prosecute real estate fraud crimes and other related purposes, such as training.

On October 31, 1997, the Board of Supervisors approved Section 8.24-5 in the City's Administrative Code, to establish a new \$2.00 Real Estate Fraud Prosecution Recordation Fee (Ordinance 413-97) in accordance with State Government Code. Administrative Code Section 8.24-5 also established the Real Estate Fraud Protection Trust Fund Committee, comprised of representatives from the District Attorney's Office, City Administrator, and the City Attorney's Office. The Real Estate Fraud Protection Trust Fund Committee establishes and publishes procedures for use of the Recordation Fees.

On September 27, 2008, Section 27388 of the California Government Code (Senate Bill 1396 in the FY 2007-2008 session) was amended to increase the allowable Recordation Fee from \$2.00 to \$3.00 for each real estate document recorded.

## DETAILS OF PROPOSED LEGISLATION

In accordance with State Government Code, the proposed ordinance would amend Section 8.24-5 of the City's Administrative Code to (a) increase the Recordation Fee by \$1.00, or 50 percent, from \$2.00 to \$3.00 when a real estate document is recorded in San Francisco County and (b) make environmental findings.

On December 29, 2009, the San Francisco Planning Department determined that the proposed Recordation Fees are categorically exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines.

## FISCAL ANALYSIS

The Recordation Fees are currently collected by the Assessor-Recorder's Office, when each real estate document is recorded by the City's Assessor-Recorder's Office. The Real Estate Fraud Protection Trust Fund Committee determined that the Recordation Fee revenues would be allocated as follows: (a) District Attorney's Office would receive 54 percent of the revenues, (b) Police Department would receive 36 percent of the revenues, and (c) Assessor-Recorder's Office

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<sup>1</sup> Real estate instrument, paper, or notice includes a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, and a notice of rescission of declaration of default.

would receive ten percent of the revenues. Any unused Recordation Fee revenues can be carried over into the next fiscal year.

The District Attorney's Office uses the Recordation Fee revenues to prosecute real estate fraud cases, provide training on real estate fraud crimes and conduct outreach to the community, attorneys, social workers and other related professionals. The Police Department's Economic Crimes Unit uses their Recordation Fee revenues to conduct real estate investigations. The Assessor-Recorder's Office has been carrying forward their Recordation Fee revenues to fund enhancements to the real property tax system that would (a) automate the review and assessment of property documents and generate notifications sent to property owners, and (b) allow the Assessor-Recorder's Office to identify fraud cases more efficiently.

Table 1 below identifies the number of real estate documents recorded by the Assessor-Recorder's Office over the past three fiscal years and the total Recordation Fee revenues received.

**Table 1: Number of Real Estate Documents and Revenues in FY 2007-2008, FY 2008-2009 and FY 2009-2010**

	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-2010*</b>
Number of Real Estate Documents	85,578	74,082	80,911
Recordation Fee	\$2	\$2	\$2
<b>Total</b>	<b>\$171,156</b>	<b>\$148,164</b>	<b>\$161,822</b>

\* The Assessor's Office estimates \$161,822 of Recordation Fee revenues will be collected in FY 2009-2010 based on actual revenues received through February 2010.

Source: Assessor-Recorder's Office

Over the past three fiscal years, the expenditures of (a) the District Attorney's Office related to real estate fraud cases, training and outreach and (b) the Police Department related to real estate investigations have exceeded the amount of Recordation Fee revenues received, as shown in Table 2 below.

**Table 2: Recordation Fee Revenues and Related Expenditures in FY 2007-2008, FY 2008-2009 and FY 2009-2010**

	<b>FY 2007-08</b>	<b>FY 2008-09</b>	<b>FY 2009-2010</b>
District Attorney's Office Revenues	\$92,424	\$80,009	\$87,384*
District Attorney's Office Expenditures	195,396	148,516	112,398**
<b>District Attorney's Office Difference</b>	<b>(\$102,972)</b>	<b>(\$68,507)</b>	<b>(\$25,014)</b>
Police Department Revenues	\$61,616	\$53,339	\$58,256*
Police Department Expenditures	132,047	67,058	58,256***
<b>Police Department Difference</b>	<b>(\$70,431)</b>	<b>(\$13,719)</b>	<b>0</b>
Assessor-Recorder's Office Revenues	\$17,116	\$14,816	\$16,182*
Assessor-Recorder's Office Expenditures****	\$0	\$0	\$0
<b>Assessor-Recorder's Office Difference</b>	<b>\$17,116</b>	<b>\$14,816</b>	<b>\$16,182</b>

\* Estimated by the Assessor-Recorder's Office

\*\* Estimated by the District Attorney's Office

\*\*\* Estimated by the Police Department

\*\*\*\* The Assessor-Recorder's Office has been setting aside the FY 2007-2008, FY 2008-2009, and FY 2009-2010 Recordation Fee revenues for an upgrade to the Assessor-Recorder's Office main hardware and software system.

Source: District Attorney's Office, Police Department, and Assessor-Recorder's Office

According to Mr. Eugene Clendinen Chief Financial Officer in the District Attorney's Office, the actual shortfalls of \$102,972 in FY 2007-2008 and \$68,507 in FY 2008-2009, and the estimated shortfall of \$25,014 in FY 2009-2010 for the District Attorney's Office were funded or will be funded with the previous year's fund balance of Recordation Fee revenues. Mr. Clendinen advises that the District Attorney's Office uses the Recordation Fee revenues for the salaries and benefits of .50 FTE of the 8182 Head Attorney supervising the Elder Abuse Unit, which handles real estate fraud cases. In addition, Mr. Clendinen advises that some of the expenditures have included supplies and a FY 2007-2008 and FY 2008-2009 professional contract with Helen Karr, an expert on elder abuse<sup>2</sup>, for \$46,075 and \$22,375, respectively.

According to Mr. Ken Bukowski, Chief Financial Officer of the Police Department, the actual shortfalls of \$70,431 in FY 2007-2008 and \$13,719 in FY 2008-2009 for the Police Department were funded with General Fund monies that were appropriated by the Board of Supervisors in the annual budgets. However, Mr. Bukowski advises that the Police Department will not continue to use General Fund monies to fund overtime for purposes of conducting real estate investigations in the Economic Crimes Unit in future fiscal years. According to Mr. Bukowski, the Police Department uses the Recordation Fee revenues for overtime salaries and benefits of Inspectors who conduct real estate investigations in the Economic Crimes Unit.

According to Ms. Kimberlee Kimura, Chief Administrative Officer of the Assessor-Recorder's Office, the Assessor-Recorder's Office has been carrying forward the FY 2007-2008, FY 2008-2009, and FY 2009-2010 Recordation Fee funds, for a total of \$48,114 (\$17,116 plus \$14,816 plus \$16,182), for a pending enhancement project that would enhance the real property tax system, which would (a) automate the review and assessment of property documents and generate notifications sent to property owners, and (b) allow the Assessor-Recorder's Office to identify fraud cases more efficiently. Ms. Kimura advises that the \$48,114 of Recordation Fees would only cover a portion of the enhancement project. The project is estimated at a total cost of \$500,000. According to Mr. Mark McLean, Budget Analyst of the Assessor-Recorder's Office, existing 1630 Account Clerks and 8109 Document Examiner Technicians process and administer real estate documents and fees together with other Assessor-Recorder's documents, which are paid with General Fund monies appropriated by the Board of Supervisors in the annual budget.

### **Estimated Increase in Recordation Fees Revenues**

If the proposed ordinance is approved by the Board of Supervisors, the Recordation Fee would increase by \$1.00, from \$2.00 to \$3.00, effective when the Mayor signs the proposed ordinance. For purposes of the analysis in Table 3 below, the Budget and Legislative Analyst estimates that the proposed ordinance would be approved by both the Board of Supervisors and Mayor by April 1, 2010.

As shown in Table 3 below, the proposed \$1 increase in the Recordation Fee, from \$2.00 to \$3.00 would generate approximately \$181,797 in FY 2009-2010, or approximately \$19,975 more than the estimated \$161,822, as shown in Table 1 above.

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<sup>2</sup> According to Mr. Clendinen, many real estate fraud cases involve older adults being taken advantage of their real property.

**Table 3: FY 2009-2010 Estimated Recordation Fee Revenue**

	<b>FY 2009-2010*</b>	<b>Recordation Fee</b>	<b>Total Revenues</b>
July 2009	7,853	\$2	\$15,706
August 2009	7,082	2	14,164
September 2009	8,563	2	17,126
October 2009	7,049	2	14,098
November 2009	5,319	2	10,638
December 2009	7,250	2	14,500
January 2010	7,131	2	14,262
February 2010	3,620	2	7,240
<b>July 2009 – February 2010 Total</b>	<b>53,867</b>		<b>\$107,734</b>
<b>Monthly Average of Real Estate Documents</b>	<b>6,733</b>		
March 2010 (projected)	6,733	\$2	\$13,466
April 2010 (projected)	6,733	3	20,199
May 2010 (projected)	6,733	3	20,199
June 2010 (projected)	6,733	3	20,199
<b>Total of July 2009 through June 2010</b>	<b>80,799</b>		<b>\$181,797</b>

Source: Assessor-Recorder's Office for July 2009 through February 2010 and analysis conducted by the Budget Analyst for March 2010 through June 2010

Based on an average of 80,190 real estate documents recorded each year, the proposed Recordation Fee of \$3.00 would generate approximately \$240,571 in annual Recordation Fee revenues, as shown in Table 4 below.

**Table 4: Estimated Annualized Revenue**

	<b>Real Estate Documents from Table 1</b>
FY 2007-2008	85,578
FY 2008-2009	74,082
Estimated FY 2009-2010*	80,911
<b>Average of Real Estate Documents</b>	<b>80,190</b>
Recordation Fee	\$3
<b>Annualized Total</b>	<b>\$240,571</b>

\* Estimated by the Assessor-Recorder's Office

Source: Analysis conducted by the Budget and Legislative Analyst

Of the estimated \$240,571 in Recordation Fee revenues, the District Attorney's Office would receive approximately \$129,908 (54 percent), the Police Department would receive \$86,606 (36 percent) and the Assessor-Recorder's Office would receive \$24,057 (10 percent). According to Mr. Bukowski the proposed increase in Recordation Fee revenues would be used to fund the overtime salary and benefit expenditures of existing Police Department staff investigating real estate fraud cases. Mr. Clendinen advises that the proposed increase in Recordation Fee revenues would be used to fund the salary and benefit expenditures of existing District Attorney's Office staff prosecuting real estate fraud cases. Mr. Clendinen further advises that the District Attorney's Office has several funding sources for prosecuting elder abuse cases, which encompasses real estate fraud cases, which includes the General Fund, Federal grant funds and State grant funds. Mr. McLean advises that the increase in Recordation Fee revenues would be used to fund the enhancement project in the Assessor-Recorder's Office.

The Budget and Legislative Analyst notes that the estimated annual revenue of \$240,571 with the proposed \$3.00 Recordation Fee is slightly less than the budgeted \$242,000 of Recordation Fee revenues included in the City's FY 2009-2010 budget. According to Mr. Clendinen, the proposed Recordation Fee increase was initially intended to be introduced during the FY 2009-2010 budget appropriation process, such that the increased revenues would have been realized for all of FY 2009-2010. However, Mr. Clendinen advises that the District Attorney's Office began working on drafting legislation for the proposed Recordation Fee increase in October of 2009 and the proposed ordinance was not completed and introduced until December 12, 2009.

## POLICY CONSIDERATION

In accordance with Administrative Code Section 8.24-5, the District Attorney's Office is also required to submit an annual report to the Board of the Supervisors summarizing (a) the real estate fraud cases investigated and prosecuted and (b) the amount of Recordation Fee revenue received and related expenditures incurred.

For FY 2006-2007, FY 2007-2008 and FY 2008-2009, the District Attorney's Office prepared and submitted two reports to the Board of Supervisors, which included the Recordation Fee information for all three fiscal years. Although the two reports included Recordation Fee information for all three fiscal years, such reports were not prepared and submitted on an annual basis as required by Administrative Code Section 8.24-5. The Budget and Legislative Analyst recommends that the District Attorney's Office submits annual reports to the Board of Supervisors in accordance with Administrative Code Section 8.24-5.

Such reports identified (a) the number of cases investigated, (b) the number of cases being prosecuted in court, (c) the number and types of training and outreach conducted, (d) the number and types of meetings attended, (e) any legal changes affecting the investigation and prosecution of real estate fraud, and (f) the amount of Recordation Fee revenue received and expenses incurred.

Table 5 below shows the number of real estate fraud cases investigated and the number of cases being prosecuted in court over the past three fiscal years.

**Table 5: Real Estate Fraud Cases Investigated and Prosecuted**

	Investigated	Cases in Court
<u>District Attorney's Office</u>		
October 26, 2007 through March 19, 2009	10	6
May 11, 2006 through October 25, 2007	13	5

Source: District Attorney's Office reports

## RECOMMENDATIONS

1. The District Attorney's Office should submit annual Recordation Fee reports to the Board of Supervisors in accordance with Administrative Code Section 8.24-5.

2. Approval of the proposed ordinance, which would increase the Recordation Fee from \$2.00 to \$3.00, as authorized by State Government Code, for each real estate document recorded in San Francisco County, is a policy decision for the Board of Supervisors.