

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Eric Shaw, Director, Mayor's Office of Housing and Community Development

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight Committee,  
Board of Supervisors

DATE: May 19, 2021

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Haney on May 11, 2021:

File No. 210534

**Ordinance amending Ordinance No. 49-17, as amended by Ordinance No. 209-17, to change the timeline for the payments of a \$2,700,000 gift and \$9,750,000 from the project sponsor of the project at 950-974 Market Street to the 180 Jones Street Affordable Housing Fund; amending the Administrative Code regarding use of the 180 Jones Street Affordable Housing Fund; and authorizing actions in furtherance of this Ordinance, as defined herein.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Offices of Chair Preston and Supervisor Haney  
Eugene Flannery, Mayor's Office of Housing and Community Development  
Amy Chan, Mayor's Office of Housing and Community Development

1 [Administrative Code and Amending Ordinance No. 49-17 - Deferring Payments to and Use of  
2 the 180 Jones Affordable Housing Fund]

3 **Ordinance amending Ordinance No. 49-17, as amended by Ordinance No. 209-17, to**  
4 **change the timeline for the payments of a \$2,700,000 gift and \$9,750,000 from the**  
5 **project sponsor of the project at 950-974 Market Street to the 180 Jones Street**  
6 **Affordable Housing Fund; amending the Administrative Code regarding use of the 180**  
7 **Jones Street Affordable Housing Fund; and authorizing actions in furtherance of this**  
8 **Ordinance, as defined herein.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
12 **Board amendment additions** are in double-underlined Arial font.  
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
14 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
15 subsections or parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Background and Findings.

18 (a) On March 17, 2017, the City enacted Ordinance No. 49-17, which waived the  
19 Planning Code's Jobs-Housing Linkage Fee (Section 413 *et seq.*), the Affordable Housing  
20 requirements (Section 415 *et seq.*), and the alternative water supply requirements set forth in  
21 Health Code Article 12C; exempted 26,572 square feet from the calculation of gross floor area  
22 to allow the additional floor area, and exempted 26,572 square feet from Planning Code  
23 Sections 123 and 128 to reduce any required transferable development rights by such  
24 amount, for a project located at 950-974 Market Street (the "Project"), in exchange for the  
25 dedication of real property at 180 Jones Street to the Mayor's Office of Housing and  
Community Development ("MOHCD") at no cost and payment by Mid-Market Center LLC (the

1 "Project Sponsor") of approximately \$11.25 million to the 180 Jones Street Affordable Housing  
2 Fund (the "180 Jones Fund"), according to a payment timeline. Under the payment timeline,  
3 the first payment, of \$1.5 million, is due prior to issuance of the first construction document for  
4 the Project, or July 1, 2017, whichever comes first. (Ordinance No. 49-17; Section 2(a)(1)(B).)  
5 Ordinance No. 49-17 also established the 180 Jones Fund; accepted a \$2.7 million gift from  
6 the Project Sponsor to the 180 Jones Fund; and accepted a \$300,000 gift from the Project  
7 Sponsor to the City to support the City's efforts to recognize and support historic and present-  
8 day Transgender, Lesbian, Gay, and Bisexual ("TLGB") communities in the Tenderloin  
9 neighborhood.

10 (b) On November 3, 2017, the City enacted Ordinance No. 209-17, which amended  
11 Ordinance No. 49-17 to change the payment timeline.

12 (c) The Project Sponsor has conveyed the Dedicated Land and paid \$1.5 million to the  
13 180 Jones Fund under Section 2(a)(1)(A)-(B) of Ordinance No. 49-17. Section 2(a)(1)(C) of  
14 Ordinance No. 49-17 provides that the Project Sponsor shall make a payment of \$13.9 million  
15 to the 180 Jones Fund, less the acquisition cost of the Dedicated Land, prior to issuance of  
16 the Project's first temporary certificate of occupancy. As the actual cost of the Dedicated Land  
17 was \$4.15 million, the payment required under Section 2(a)(1)(C) is \$9.75 million. Sections  
18 2(a)(1) and 5 of Ordinance No. 49-17 further authorize the Project Sponsor to pay a gift to the  
19 City of \$2.7 million upon issuance of the Project's first temporary certificate of occupancy.  
20 Given the foregoing, the Project Sponsor's total outstanding payment is \$12.45 million (the  
21 "Outstanding Payment").

22 (d) On account of the challenges presented by the COVID-19 pandemic, the  
23 completion of the Project has been delayed, and the Project Sponsor has requested to further  
24 amend the payment timeline to facilitate completion of the Project and associated financing of  
25 affordable housing located at 180 Jones Street ("180 Jones Affordable Housing Project").

1 MOHCD anticipates that construction of the 180 Jones Affordable Housing Project will  
2 commence on or before December 31, 2022, depending on an allocation of tax-exempt bonds  
3 by the California Debt Limit Allocation Committee and tax credits by the California Tax Credit  
4 Allocation Committee.

5 (e) The Board of Supervisors now desires to amend the payment timeline for the  
6 Project Sponsor to make the Outstanding Payment to the 180 Jones Fund to coincide with the  
7 completion of the Project and anticipated commencement of the 180 Jones Affordable  
8 Housing Project.

9 Section 2. Ordinance No. 49-17 is hereby amended at Section 2, page 7, lines 12  
10 through 25, and page 8, lines 1 through 14, to modify the Project Sponsor’s payment timeline  
11 by replacing the text of Section 2(a)(1) in its entirety with the following replacement language:

12 “(1) Dedicate a site to the City to be used for affordable housing and to pay money to  
13 the 180 Jones Fund. In lieu of paying the Jobs-Housing Linkage Fee and the Affordable  
14 Housing Fee or providing on-site or off-site inclusionary affordable housing units, prior to  
15 issuance of the first construction document for the Project, the Project Sponsor shall convey in  
16 fee simple absolute to the City or MOHCD, according to the land dedication provisions of the  
17 City and County of San Francisco Inclusionary Affordable Housing Program Monitoring  
18 Procedures Manual issued by the Department of City Planning (“Procedures Manual”), the  
19 real property located at 180 Jones Street, at no cost to MOHCD. In addition, between  
20 issuance of the first construction document and the first temporary certificate of occupancy for  
21 the Project as set forth in more detail below, the Project Sponsor shall pay \$15.4 million, less  
22 the acquisition cost of the Dedicated Property, to the 180 Jones Fund established by this  
23 Ordinance, which real property and Fund shall be used by MOHCD to facilitate construction of  
24 an affordable housing project of a minimum of 60 efficiency units at 180 Jones Street  
25 affordable to low-income households. This \$15.4 million, comprised of the acquisition cost of

1 the Dedicated Land and payments to the 180 Jones Fund, is the equivalent payment of the  
2 Project's Jobs-Housing Linkage Fee and an affordable housing percentage fee of 25% under  
3 Planning Code Sections 415 et seq., the current affordable housing fee percentage applicable  
4 to the Project, plus a gift to the City of \$2.7 million. The conveyance by the Project Sponsor of  
5 the Dedicated Land to the City and payments to the 180 Jones Affordable Housing Fund shall  
6 occur pursuant to the following schedule:

7 (A) Conveyance of Dedicated Land prior to issuance of the first construction  
8 document for the Project.

9 (B) Payment of \$1.5 million prior to issuance of the first construction  
10 document for the Project.

11 (C) Payment of \$9.75 million prior to issuance of the Project's first temporary  
12 certificate of occupancy or, at the election of Project Sponsor (the "Outstanding Payment  
13 Deferral Election"), prior to the earlier of the following: (i) 60 days after written notice to the  
14 Project Sponsor from the Mayor's Office of Housing and Community Development ("MOHCD")  
15 that the affordable housing project located at 180 Jones ("180 Jones Affordable Housing  
16 Project") has received funding allocation from the California Debt Limit Allocation Committee  
17 ("CDLAC"), California Tax Credit Allocation Committee ("TCAC"), or any other local, state, or  
18 federal funding source sufficient to, along with the proceeds of the 180 Jones Fund, develop  
19 and construct the 180 Jones Affordable Housing Project, or (ii) December 31, 2022. If Project  
20 Sponsor makes the Outstanding Payment Deferral Election, interest shall accrue on the \$9.75  
21 million payment for the period commencing on the date that the Project receives its first  
22 temporary certificate of occupancy and ending on the date that the Project Sponsor satisfies  
23 the Outstanding Payment Deferral Election payment obligation, with the rate of such interest  
24 being calculated monthly by the Treasurer's Office as 1.25 times the Monthly Earned Income  
25

1 Yield Rate for the City and County of San Francisco's Pooled Funds, as posted on the  
2 Treasurer's website.

3 (D) Payment of a \$2.7 million gift prior to issuance of the Project's first  
4 temporary certificate of occupancy, or, at the election of the Project Sponsor (the "Outstanding  
5 Gift Deferral Election"), prior to the earlier of the following: (i) 60 days after written notice to  
6 the Project Sponsor from MOHCD that the 180 Jones Affordable Housing Project has  
7 received funding allocation from CDLAC, TCAC, or any other local, state, or federal funding  
8 source sufficient to, along with the proceeds of the 180 Jones Fund, construct the 180 Jones  
9 Affordable Housing Project, or (ii) December 31, 2022. If Project Sponsor makes the  
10 Outstanding Gift Deferral Election, interest shall accrue on the \$2.7 million gift for the period  
11 commencing on the date that the Project receives its first temporary certificate of occupancy  
12 and ending on the date that the Project Sponsor satisfies the Outstanding Gift Deferral  
13 Election payment obligation, with the rate of such interest being calculated monthly by the  
14 Treasurer's Office as 1.25 times the Monthly Earned Income Yield Rate for the City and  
15 County of San Francisco's Pooled Funds, as posted on the Treasurer's website."

16 Section 3. Ordinance No. 49-17 is hereby amended at Section 5, page 11, lines 15  
17 through 19, by replacing the text of the first paragraph in its entirety with the following  
18 replacement language:

19 "The Project Sponsor has offered a gift of \$2.7 million to the City, to be paid in  
20 accordance with Section 2(a)(1)(D). This gift would be given to the 180 Jones Fund, to assist  
21 in providing affordable housing at 180 Jones Street. The Board of Supervisors hereby  
22 authorizes MOHCD to accept the gift of \$2.7 million from the Project Sponsor, and to expend  
23 it consistent with the purposes, procedures, and requirements of the 180 Jones Fund."

24 Section 4. Except as stated in Sections 2 and 3 above, this ordinance does not  
25 otherwise change the terms of Ordinance No. 49-17 as amended by Ordinance No. 209-17.

1 Section 5. Article XIII of Chapter 10 of the Administrative Code is hereby amended by  
2 revising Section 10.100-375, to read as follows:

3 **SEC. 10.100-375. 180 JONES STREET AFFORDABLE HOUSING FUND.**

4 \* \* \* \*

5 (b) **Use of Fund.** The fund is to be used exclusively by the Mayor’s Office of  
6 Housing and Community Development (MOHCD), or its successor, for the purpose of  
7 supporting development and construction of affordable housing units at 180 Jones Street  
8 (Assessor’s Block 0343, Lot 14)-, and supportive services, operating subsidies, and/or rental  
9 assistance for tenants at said affordable housing units. If, however, the City fails to approve a  
10 revised project at 180 Jones Street within five years of the last payment to the Fund  
11 authorized by the 950-974 Market Street Ordinance, as amended by the ordinance in Board File  
12 No 210534, the money in the Fund shall be deposited into the Citywide Affordable Housing  
13 Fund as established in Administrative Code Section 10.100-49, or its successor fund.

14 \* \* \* \*

15 Section 6. Effective Date; Retroactivity.

16 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
17 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
18 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
19 Mayor’s veto of the ordinance.

20 (b) Upon its effective date, this ordinance shall be retroactive to May 1, 2021.

21 Section 7. Scope of Codified Provisions of Ordinance.

22 As to Section 5 of this ordinance, the Board of Supervisors intends to amend only  
23 those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation  
24 marks, charts, diagrams, or any other constituent parts of the Municipal Code that are  
25 explicitly shown in this ordinance as additions, deletions, Board amendment additions, and

1 Board amendment deletions in accordance with the “Note” that appears under the official title  
2 of the ordinance.

3 Section 8. Authorization of Actions in Furtherance of this Ordinance.

4 The Mayor, Clerk of the Board of Supervisors, the Director of Property, MOHCD, the  
5 Director of the Planning Department, and the Director of the Department of Building  
6 Inspection are hereby authorized and directed to take any and all actions which they or the  
7 City Attorney may deem necessary or advisable in order to effectuate the purpose and intent  
8 of this ordinance (including, without limitation, receipt of payment to the 180 Jones Fund and  
9 confirmation of satisfaction of the conditions to the effectiveness of Ordinance No. 49-17, as  
10 amended by Ordinance No. 209-17 and this ordinance).

11 Section 9. Directions to Clerk.

12 The Clerk of the Board of Supervisors is hereby directed to place a copy of this  
13 ordinance in File No. 161066 for Ordinance No. 49-17 and File No. 170835 for Ordinance No.  
14 209-17, and to make a notation cross-referencing this ordinance where Ordinance No. 49-17  
15 and Ordinance No. 209-17 appear on the Board of Supervisors website as legislation passed.

16  
17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

19 By: /s/ KEITH NAGAYAMA  
20 KEITH NAGAYAMA  
21 Deputy City Attorney  
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**LEGISLATIVE DIGEST**

[Administrative Code and Amending Ordinance No. 49-17 - Deferring Payments to and Use of the 180 Jones Affordable Housing Fund]

**Ordinance amending Ordinance No. 49-17, as amended by Ordinance No. 209-17, to change the timeline for the payments of a \$2,700,000 gift and \$9,750,000 from the project sponsor of the project at 950-974 Market Street to the 180 Jones Street Affordable Housing Fund; amending the Administrative Code regarding use of the 180 Jones Street Affordable Housing Fund; and authorizing actions in furtherance of this Ordinance, as defined herein.**

Existing Law

On March 17, 2017, the City enacted Ordinance No. 49-17, which waived the Planning Code's Jobs-Housing Linkage Fee, the Inclusionary Affordable Housing requirements, and the alternative water supply requirements set forth in Health Code Article 12C; exempted 26,572 square feet from the calculation of gross floor area to allow the additional floor area, and exempted 26,572 square feet from Planning Code Sections 123 and 128 to reduce any required transferable development rights by such amount, for a project located at 950-974 Market Street (the "Project"). Ordinance No. 49-17 waived and exempted the Project from those provisions in exchange for the dedication of real property at 180 Jones Street to the Mayor's Office of Housing and Community Development ("MOHCD") at no cost, plus payment by Mid-Market Center LLC (the "Project Sponsor") of approximately \$11.25 million to the 180 Jones Street Affordable Housing Fund, according to a payment timeline.

Under the payment timeline set forth in Ordinance No. 49-17, the first payment, of \$1.5 million, was due prior to issuance of the first construction document for the Project, or July 1, 2017, whichever came first, and the second payment, \$9.75 million, is due prior to the issuance of the Project's first temporary certificate of occupancy. (Ordinance No. 49-17; Section 2(a)(1)(B) and (C).)

Ordinance No. 49-17 also established the 180 Jones Street Affordable Housing Fund; accepted a \$2.7 million gift from the Project Sponsor to the 180 Jones Street Affordable Housing Fund; and accepted a \$300,000 gift from the Project Sponsor to the City to support the City's efforts to recognize and support historic and present-day Transgender, Lesbian, Gay and Bisexual ("TLGB") communities in the Tenderloin neighborhood. The 180 Jones Street Affordable Housing Fund will be used for construction of an affordable housing project located at 180 Jones ("180 Jones Affordable Housing Project").

On November 3, 2017, the City enacted Ordinance 209-17 that amended the payment timeline for the Project Sponsor's first payment to the 180 Jones Affordable Housing Fund, to

coincide with the closing of financing for the Project and issuance of the Project's first construction document.

#### Amendments to Current Law

This Ordinance amends the payment timeline for the Project Sponsor's payment to the 180 Jones Affordable Housing Fund. The Project Sponsor will make the second payment (\$9.75 Million) and the gift (\$2.7 Million) by the issuance of the Project's temporary certificate of occupancy, or the Project Sponsor may elect to make the second payment and/or the gift by no later than the earlier of: (1) December 31, 2022, or (2) within 60 days of MOHCD notifying the Project Sponsor that the affordable housing project located at 180 Jones has received an allocated of tax-exempt bonds by the California Debt Limit Allocation Committee and tax credits by the California Tax Credit Allocation Committee. If the Project Sponsor elects to defer the second payment and/or the gift, the deferred payment and/or gift will accrue interest.

This Ordinance also amends Administrative Code Section 10.100-375 to allow MOHCD to use the 180 Jones Affordable Housing Fund for development costs, as well as supportive services, operating subsidies, and/or rental assistance for tenants at such affordable housing units.

This Ordinance does not otherwise change the terms of Ordinance No. 49-17.

#### Background Information

At the time Ordinance No. 49-17 was enacted, the Project Sponsor contemplated that payments could be made when the Project received its temporary certificate of occupancy. On account of the challenges presented by the COVID-19 pandemic, the completion of the Project has been delayed. MOHCD anticipates that construction of the 180 Jones Affordable Housing Project will commence on or before December 31, 2022 depending on an allocation of bonds and tax credits.

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# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Haney

Subject:

[Administrative Code and Ordinance No. 49-17 - Deferring Payments to and Use of the 180 Jones Affordable Housing Fund]

The text is listed:

Ordinance amending Ordinance No. 49 -17, as amended by Ordinance No. 209-17, to change the timeline for the payments of a \$2,700,000 gift and \$9,750,000 from the project sponsor of the project at 950-974 Market Street Affordable Housing Fund; amending the Administrative Code regarding use of the 180 Jones Street Affordable Housing Fund; and authorizing actions in furtherance of this ordinance.

Signature of Sponsoring Supervisor:

For Clerk's Use Only