

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development  
Nadia Sesay, Interim Executive Director, Office of Community Investment and Infrastructure  
Robert Collins, Executive Director, Rent Board

FROM: *Al* Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

DATE: January 31, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Farrell on January 24, 2017:

**File No. 170094**

**Ordinance amending the Administrative Code to require that all cash-out proceeds received by an owner of an affordable housing development supported in whole or in part by taxpayer funds shall be used only for the creation, development, and preservation of affordable housing.**

If you have 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 or by email at: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

c: Eugene Flannery, Mayor's Office of Housing and Community Development  
Kate Hartley, Mayor's Office of Housing and Community Development

[Administrative Code - Affordable Housing Cash-Out Proceeds Restriction]

Ordinance amending the Administrative Code to require that all cash-out proceeds received by an owner of an affordable housing development supported in whole or in part by taxpayer funds shall be used only for the creation, development, and preservation of affordable housing.

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

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

Section 1. The Administrative Code is hereby amended by adding Chapter 47A, entitled "Affordable Housing Cash-Out Proceeds Restriction," and consisting of Sections 47A.1, 47A.2, and 47A.3, to read as follows:

**CHAPTER 47A: AFFORDABLE HOUSING CASH-OUT PROCEEDS RESTRICTION**

**SEC. 47A..1. FINDINGS.**

(a) The creation and preservation of affordable housing in San Francisco has long been a priority of the Board of Supervisors (the "Board").

(b) The Board has directed the investment of hundreds of millions of taxpayer dollars in the creation and preservation of affordable housing within San Francisco by, among other things, providing loans and grants and utilizing other financial tools to offset the costs of development, construction, rehabilitation, and renovation of affordable housing units throughout the City.



(c) It has come to the Board's attention that in connection with the development, construction, and financing of an affordable housing development assisted with taxpayer funds, the owner of the development may receive a developer fee in connection therewith and such fee may be used by the developer for purposes unrelated to the development, construction, or preservation of affordable housing.

(d) It has also come to the Board's attention that in connection with the refinancing of an affordable housing development assisted with taxpayer funds, the owner of the development may choose to refinance the project to provide funds to renovate and rehabilitate the affordable units. Often, in order to refinance the development, an owner will create a new entity formed by the current owner and a new equity tax credit partner and sell the development to the new entity. The current owner will then receive from the purchase price paid by the new entity "Cash-Out Proceeds" (as defined below).

(e) A refinancing scenario may look like this:

<u>SOURCE OF FUNDS</u>	<u>ORIGINAL PROJECT COSTS</u>	<u>CURRENT STATUS</u>	<u>REFINANCING</u>
<u>Conventional 1st Mortgage (Bank)</u>	<u>\$1,400,000</u>	<u>\$800,000</u>	<u>\$1,600,000</u>
<u>2nd Mortgage (Bank)</u>	<u>\$500,000</u>	<u>\$500,000</u>	<u>n/a</u>
<u>State Loan</u>	<u>\$2,000,000</u>	<u>\$3,000,000</u>	<u>\$5,000,000</u>
<u>MOHCD/City Loan (interest only)</u>	<u>\$500,000</u>	<u>\$1,000,000</u>	<u>\$1,100,000</u>
<u>Deferred Developer Fee</u>	<u>\$300,000</u>	<u>Paid</u>	<u>\$450,000</u>
<u>Tax Credit Partner Equity</u>	<u>\$5,000,000</u>	<u>Paid</u>	<u>\$4,500,000</u>
<u>Other – loan owed to seller in connection with refinancing</u>	<u>n/a</u>	<u>n/a</u>	<u>\$3,000,000</u>
<u>TOTAL</u>	<u>\$9,700,000</u>	<u>\$5,300,000</u>	<u>\$15,650,000</u>
<u>Rehabilitation Costs</u>			<u>\$1,600,000</u>
<u>Cash-Out Proceeds</u>			<u>\$8,750,000</u>

1           (f) It has also come to the Board's attention that in some circumstances, Cash-Out  
2 Proceeds have been used for purposes unrelated to the creation, development, and preservation of  
3 affordable housing.

4           (g) The Board intends to ensure that Developer Fees (defined below) are commensurate  
5 with industry best practices; and

6           (h) This Board also intends that all cash-out proceeds received by an owner of an  
7 affordable housing development supported in whole or in part by taxpayer funds be used only for the  
8 creation, development, and preservation of affordable housing.

9           **SEC. 47A.2. DEFINITIONS.**

10          For purposes of this Chapter 47A, the following definitions apply:

11          "Affordable Housing" means any and all housing funded in whole or in part from monies  
12 contributed by the City from any source of funds.

13          "Cash-Out Proceeds" means in connection with any sale or refinancing of an Affordable  
14 Housing development, any and all funds received by an Owner of an Affordable Housing development  
15 that are not needed or utilized to retire existing debt or construct, improve or preserve the Affordable  
16 Housing development.

17          "Developer Fee" means any fee received or deferred in whole or in part by an Owner of an  
18 Affordable Housing development in connection with the financing, development, construction, or  
19 renovation therewith.

20          "Owner" means the initial owner of an Affordable Housing development, and any successor.

21          "taxpayer funds" means any monies received, granted, invested, or loaned to an Affordable  
22 Housing development by the City from any source of funds.



1        **SEC. 47.2.3. RESTRICTION.**

2        From and after the Effective Date of this Chapter, the Mayor's Office of Housing and  
3        Community Development ("MOHCD") is hereby directed to enter into all necessary agreements to  
4        ensure that during any period while a loan, grant, or other funds received from the City remains  
5        outstanding, all Cash-Out Proceeds resulting from the purchase or refinancing of an Affordable  
6        Housing development are used solely for: (a) capital/tenant improvements; (b) purchase or acquisition  
7        of additional property for Affordable Housing; (c) building new Affordable Housing; or (d) payment of  
8        operating and staff costs required for the creation, development, construction, or preservation of  
9        Affordable Housing. MOHCD is further directed to ensure that Developer Fees do not exceed industry  
10       standards.

11       Section 2. Effective Date. This ordinance shall become effective 30 days after  
12       enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
13       ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
14       of Supervisors overrides the Mayor's veto of the ordinance.

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

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19       By: Michelle Sexton  
20       Michelle Sexton  
21       Deputy City Attorney  
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## **LEGISLATIVE DIGEST**

[Administrative Code-Affordable Housing Cash-Out Proceeds Restriction]

**Ordinance amending the Administrative Code to require that all cash-out proceeds received by an owner of an affordable housing development supported in whole or in part by taxpayer funds shall be used only for the creation, development, and preservation of affordable housing.**

### **Existing Law**

There is no existing law.

### **Amendments to Current Law**

Directing the Mayor's Office of Housing and Community Development (MOHCD) to enter into all necessary agreements to ensure that during any period while a loan, grant, or other funds received from the City remains outstanding, all cash-out proceeds resulting from the purchase or refinancing of an Affordable Housing development are used solely for: (a) capital/tenant improvements; (b) purchase or acquisition of additional property for Affordable Housing; (c) building new Affordable Housing; or (d) payment of operating and staff costs required for the creation, development, construction, or preservation of Affordable Housing. And, further directing MOHCD to ensure that developer fees do not exceed industry standards.

### **Background Information**

In connection with the development, construction and financing of an affordable housing development assisted with taxpayer funds, the owner of the affordable housing development may choose to refinance or sell the development and utilize any monies received for purposes unrelated to the development, construction or preservation of affordable housing.

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