

File No. 170094

Committee Item No. 1

Board Item No. 7

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date February 27, 2017

Board of Supervisors Meeting

Date March 21, 2017

#### Cmte Board

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|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Memorandum of Understanding (MOU)            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 - Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 700                                     |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Vacancy Notice                               |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Information Sheet                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

OTHER (Use back side if additional space is needed)

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Completed by: Alisa Somera Date February 23, 2017

Completed by: Young Date 3/3/17

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

2  
3 **Ordinance amending the Administrative Code to require that all cash-out proceeds**  
4 **received by an owner of an affordable housing development supported in whole or in**  
5 **part by taxpayer funds shall be used only for residential and tenant services and the**  
6 **creation, development, and preservation of affordable housing.**

7  
8 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

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

16 Section 1. The Administrative Code is hereby amended by adding Chapter 47A,  
17 entitled "Affordable Housing Cash-Out Proceeds Restriction," and consisting of Sections  
18 47A.1, 47A.2, and 47A.3, to read as follows:

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

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

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

23 (b) The Board has directed the investment of hundreds of millions of taxpayer dollars in the  
24 creation and preservation of affordable housing within San Francisco by, among other things,  
25 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.

1 (c) It has come to the Board's attention that in connection with the development,  
 2 construction, and financing of an affordable housing development assisted with taxpayer funds,  
 3 current MOHCD policy restricts the use of Developer Fees to predevelopment,  
 4 preconstruction costs and expenses related to the development of affordable housing in San  
 5 Francisco, the owner of the development may receive a developer fee in connection  
 6 therewith and such fee may be used by the developer for purposes unrelated to the  
 7 development, construction, or preservation of affordable housing.

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

15 (e) — A refinancing scenario may look like this:

SOURCE OF FUNDS	ORIGINAL PROJECT COSTS	CURRENT STATUS	REFINANCING
Conventional 1st Mortgage (Bank)	\$1,400,000	\$800,000	\$1,600,000
2nd Mortgage (Bank)	\$500,000	\$500,000	n/a
State Loan	\$2,000,000	\$3,000,000	\$5,000,000
MOHCD/City Loan (interest only)	\$500,000	\$1,000,000	\$1,100,000
Deferred Developer Fee	\$300,000	Paid	\$450,000
Tax Credit Partner Equity	\$5,000,000	Paid	\$4,500,000

1	Other loan owed to seller in connection with refinancing	n/a	n/a	\$3,000,000
2				
3	TOTAL	\$9,700,000	\$5,300,000	\$15,650,000
4	Rehabilitation Costs			\$1,600,000
5	Cash-Out Proceeds			\$8,750,000

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

9 (f)(g) The Board intends to ensure that Developer Fees (defined below) are commensurate  
10 with industry standards/best practices; and

11 (g)(h) This Board also intends that all cash-out proceeds received by an owner of an  
12 affordable housing development supported in whole or in part by taxpayer funds be used only for (1)  
13 the provision of resident or tenant services; and (2) the creation, development, and preservation of  
14 affordable housing.

15 **SEC. 47A.2. DEFINITIONS.**

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

17 "Affordable Housing" means any and all 100% affordable or rent restricted developments  
18 located in San Francisco any and all housing funded in whole or in part from monies contributed  
19 by the City from any source of funds.

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

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

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

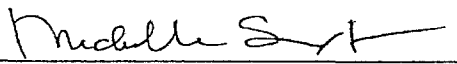
5 "Taxpayer funds" means any monies received, granted, invested, or loaned to an Affordable  
6 Housing development by the City from any source of funds.

7 **SEC. 47.2.3. RESTRICTION.**

8 From and after the Effective Date of this Chapter, the ordinance in Board File No. 170094,  
9 the Mayor's Office of Housing and Community Development ("MOHCD") is hereby directed to enter  
10 into all necessary agreements to ensure that during any period while a loan, grant, or other funds  
11 received from the City remains outstanding, all Cash-Out Proceeds resulting from the purchase,  
12 transfer or refinancing of an Affordable Housing development are used solely for: (a) capital/tenant  
13 improvements; (b) purchase or acquisition of additional property for Affordable Housing; (c) building  
14 new Affordable Housing; ~~or~~ (d) payment of operating and staff costs required for the creation,  
15 development, construction, or preservation of Affordable Housing; or (e) the provision of resident or  
16 tenant services. Such agreements shall also require that during any period Cash-Out  
17 Proceeds are outstanding, an Owner shall submit an annual report, in form and substance  
18 satisfactory to MOHCD, setting forth the use and expenditure of said Cash-Out Proceeds.  
19 MOHCD is further directed to ensure that Developer Fees are restricted in accordance with  
20 MOHCD written policy and do not exceed industry standards.

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

1 APPROVED AS TO FORM:  
2 DENNIS J. HERRERA, City Attorney

3  
4 By:   
5 Michelle Sexton  
6 Deputy City Attorney  
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FILE NO.

**LEGISLATIVE DIGEST**

*Revised 2/27/17*

[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 residential and tenant services and 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; or (e) the provision of resident or tenant services. Such agreements shall also require that during any period Cash-Out Proceeds are outstanding, an Owner shall submit an annual report, in form and substance satisfactory to MOHCD, setting forth the use and expenditure of said Cash-Out Proceeds. 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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BOARD of SUPERVISORS



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1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## 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: *ell*  
*for* 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

Print Form

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

# Introduction Form

By a Member of the Board of Supervisors of the Mayor

2017 JAN 24 PM 4:08

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 [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) 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 a Imperative Form.

Sponsor(s):

Supervisor Mark Farrell

Subject:

Administrative Code - Affordable Housing Cash-Out Proceeds Restriction

The text is listed below or attached:

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.

Signature of Sponsoring Supervisor:

For Clerk's Use Only: