

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

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3 **Ordinance amending the Administrative Code to require that all so long as any funds**
4 **provided by the Mayor’s Office of Housing and Community Development are outstanding**
5 **cash-out proceeds received by an owner of an affordable housing development supported**
6 **in whole or in part by taxpayer funds shall be used only for the creation, development, and**
7 **preservation of affordable housing. may not be expended for participating in, supporting, or**
8 **attempting to influence a political campaign for any ballot measure.**

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

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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:

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

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

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

24 (b) The Board has directed the investment of hundreds of millions of taxpayer dollars in
25

1 the creation and preservation of affordable housing within San Francisco by, among other things,
 2 providing loans and grants and utilizing other financial tools to offset the costs of development,
 3 construction, rehabilitation, and renovation of affordable housing units throughout the City.

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

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

16 (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
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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 (d)(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 (e)(g) The Board intends to ensure that Developer Fees (defined below) are
10 commensurate with industry best practices; and

11 (f)(h) This Board also intends desires to ensure that so long as any funds provided by
12 the Mayor’s Office of Housing and Community Development (“MOHCD”) are outstanding, all
13 Cash-Out Proceeds received by an owner of an affordable housing development supported
14 in whole or in part by taxpayer funds be used only (1) the creation, development, and
15 preservation of affordable housing. may not be expended for participation in, supporting, or
16 attempting to influence a political campaign for any ballot measure.

17 **SEC. 47A.2. DEFINITIONS.**

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

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

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

1 “Developer Fee” means any fee received or deferred in whole or in part by an Owner of
2 an Affordable Housing development in connection with the financing, development,
3 construction, or 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
10 enter into all necessary agreements to ensure that during any period while a loan, grant, or other funds
11 received from provided by MOHCD the City remains outstanding, all Cash-Out Proceeds resulting
12 from the purchase, transfer or refinancing of an Affordable Housing development are used
13 solely for: are not expended for participation in supporting, or attempting to influence a
14 political campaign for any ballot measure and instead used for: (a) capital/tenant improvements;
15 (b) purchase or acquisition of additional property for Affordable Housing; (c) building new Affordable
16 Housing; or (d) payment of operating and staff costs required for the creation, development,
17 construction, or preservation of Affordable Housing; (e) the provision of resident, tenant or
18 community services consistent with restrictions set forth in Section 501(c)(3) of Internal
19 Revenue Code; (f) repayment in whole or in part of any City loan related to an Affordable
20 Housing development so long as all City regulatory requirements or restrictions remain in
21 place; or (g) any other purpose subject to the advance written approval of the Director of
22 MOHCD. MOHCD is further directed to ensure that Developer Fees do not exceed industry
23 standards.

24 Section 2. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

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6 By: _____
Michelle Sexton

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