File No. 120318

Committee Item No. 3
Board Item No. 7

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** September 17, 2012

Board of Supervisors Meeting **Date** October 2, 2012

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Completed by: Alisa Miller **Date** September 13, 2012
Completed by: Alisa Miller **Date** September 10, 2012

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Police Code - Additional Penalties for Foreclosed Properties]

Ordinance amending the San Francisco Police Code Article 1 and adding Sections 96 to 96.6 to permit the City and County of San Francisco to: 1) declare that public nuisances occurring at foreclosed properties be considered aggravating factors in imposing civil penalties and injunctive relief; 2) hold individuals and entities who own significant numbers of foreclosed properties to increased civil penalties for failing to maintain the properties; and 3) make environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Police Code Article 1 is hereby amended by adding Sections 96 to 96.3, to read as follows:

Article 1

Sec. 96 Title.

Sec. 96.1. Findings and Purpose.

Sec. 96.2. Definitions.

Sec. 96.3. Aggravated Penalties for Foreclosed Properties.

Sec. 96.4. Severability.

Sec. 96.5. No Conflict with State or Federal Law.

Sec. 96.6. Undertaking for the General Welfare.

1 ***SEC. 96. TITLE.***

2 *This Section shall be known as the Foreclosure Responsibility and Accountability Ordinance.*

3

4 ***SEC. 96.1 . FINDINGS AND PURPOSE.***

5 *1. San Francisco is still seeing a significant number of foreclosures. According to the San*
6 *Francisco Assessor/Recorder's fiscal year 2010-2011 Annual Report, there were 2,277 notices of*
7 *default recorded in residential, commercial and industrial properties. This statistic represents an*
8 *average of 184 recorded notices of default per month, up 171% from five years ago.*

9 *2. In addition, there were 927 actual foreclosures in the 2010-2011 fiscal year or an*
10 *average of 83 per month. This figure represents a 3% increase from the previous fiscal year, and an*
11 *1128% increase from five years ago when foreclosures averaged 7 per month.*

12 *3. The majority of foreclosures in San Francisco are non-judicial foreclosures. A non-*
13 *judicial foreclosure allows a lender to sell a property to pay off an existing debt, assuming the lender is*
14 *authorized to foreclose and that all the requisite procedures are followed. Often, by the time the*
15 *foreclosure process has concluded, the foreclosed property is in a state of disrepair, often suffering*
16 *from deferred maintenance and neglect and needing significant repairs.*

17 *4. Once a foreclosure has concluded, properties can remain in a state of disrepair for*
18 *months, even years. Often, a foreclosing owner, despite having the resources and ability to abate the*
19 *conditions, chooses to leave the property in its current state subjecting tenants and the surrounding*
20 *community and neighbors to the effects of this neglect: further deteriorating conditions such as mold,*
21 *lack of heat and hot water, peeling paint, overgrown vegetation, vulnerability to squatters, blight, and*
22 *other nuisance.*

23 *5. The City recognizes the importance in a dense, urban environment of the need to ensure*
24 *that properties are maintained in a healthy and safe condition, free of nuisances and blight and*
25 *therefore it is the policy of the City that all Departments consider enforcement of this Ordinance a high*

priority. By holding owners of foreclosed properties responsible for maintaining their properties and increasing the potential consequences errant owners face for permitting nuisances to continue, the City can more effectively ensure that its neighborhoods are healthy and safe for those who choose to live, work or visit.

SEC. 96.2. DEFINITIONS.

For the purposes of this Article, the following terms shall have the following meanings:

(a) "Foreclosed Property/ies" means a property where a Trustee Deed is issued evidencing the sale, recovery or transfer to a lender or a third party pursuant to any judicial or non-judicial process initiated as recourse for a borrower's default or alleged default on a loan secured by the property.

(b) "Public Nuisance" includes any condition that is defined as a public nuisance under California state law including California Civil Code sections 3479 and 3480. "Public Nuisance" also includes any condition declared by the San Francisco Municipal Code to be a public nuisance.

(c) "Person" shall include, but is not limited to: 1) individuals; 2) corporations; 3) not-for-profit organizations; 4) partnerships; 5) associations; 6) other business entities; and 7) groups of individuals or entities.

SEC. 96.3. ENHANCED PENALTIES FOR FORECLOSED PROPERTIES.

(a) It shall be unlawful to maintain a foreclosed property in a manner that constitutes a public nuisance.

(b) Maintaining a foreclosed property in a manner that constitutes a public nuisance shall be considered an aggravating factor in fashioning civil penalties and/or injunctive relief pursuant to state or local law, including California Civil Code sections 3479-3480, California Code of Civil Procedure section 731, Health and Safety Code sections 11570 et seq. and 17910 et seq., and the San Francisco Municipal Code.

(c) Persons who own ten or more foreclosed properties shall be liable for an increased penalty of up to three times (treble) the amount of any civil penalty assessed by a court of competent jurisdiction for maintaining a foreclosed property in a manner that constitutes a public nuisance. In these circumstances, a court may treble any award of civil penalties authorized by applicable provisions of state and local law including but not limited to the following:

(i) San Francisco Administrative Code

(ii) San Francisco Building Code

(iii) San Francisco Electrical Code

(iv) San Francisco Fire Code

(v) San Francisco Health Code

(vi) San Francisco Housing Code

(vii) San Francisco Mechanical Code

(viii) San Francisco Planning Code

(ix) San Francisco Plumbing Code

(x) San Francisco Public Works Code

(c) Nothing in this Article shall be interpreted as restricting or otherwise limiting the enforcement authority that state law or the Charter or Municipal Code vest in the City, its agencies, officers or employees or any state agency.

SEC. 96.4. SEVERABILITY.

(a) If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection,

sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid or unconstitutional.

SEC. 96.5. NO CONFLICT WITH STATE OR FEDERAL LAW.

(a) Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SEC. 96.6. UNDERTAKING FOR THE GENERAL WELFARE.

(a) In adopting and implementing this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing in its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. **Effective Date.** This ordinance shall become effective 30 days from the date of passage.

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

By: _____
YVONNE R. MERE
Deputy City Attorney

FILE NO. 120318

LEGISLATIVE DIGEST

[Police Code - Additional Penalties for Foreclosed Properties]

Ordinance amending the San Francisco Police Code Article 1 and adding Sections 96 to 96.6 to permit the City and County of San Francisco to: 1) declare that public nuisances occurring at foreclosed properties be considered aggravating factors in imposing civil penalties and injunctive relief; 2) hold individuals and entities who own significant numbers of foreclosed properties to increased civil penalties for failing to maintain the properties; and 3) make environmental findings.

Existing Law

Under the existing law, an owner of real property may be subject to injunctive relief and civil penalties under various provisions of municipal and state law for the maintaining or creating a public nuisance. There is currently no specific provision in the municipal code that holds individuals and entities who own significant numbers of foreclosed properties to increased civil penalties for maintaining a public nuisance.

Amendments to Current Law

This legislation amends the Police Code to declare that public nuisances occurring at foreclosed properties shall be considered an aggravating factor for purposes of imposing civil penalties and injunctive relief. For owners of ten or more foreclosed properties, this Ordinance permits courts to award an increased penalty of up to three times (treble) the amount of any civil penalty authorized by state or local law.

Background Information

San Francisco is still seeing a significant number of foreclosures, with more than 927 foreclosures occurring in the 2010-2011 fiscal year. Often by the time a property is foreclosed upon, the property has been neglected and sorely in need of maintenance. A property that is left in such a condition often can fall victim to squatters, illegal dumping, overgrowing vegetation and vermin, quickly deteriorating into a condition that qualifies as a public nuisance.

California Civil Code Section 3479 defines nuisance as, "[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or

offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." California Civil Code Section 3480 defines a public nuisance as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

There are provisions of municipal and state law that authorize civil actions against owners of properties that are maintained as public nuisances. Those provisions not only permit the imposition of an injunction to abate the actual nuisance conditions, but many permit the assessment of a civil penalty for violations of law. However, there is no provision that specifically addresses the blight caused by neglected, foreclosed properties or attempts to deter nuisances at those types of properties from occurring.

This Ordinance would permit courts to consider nuisances at foreclosed properties as an aggravating factor in assessing the above remedies. In addition, it would provide courts the mechanism to penalize owners of more than ten foreclosed for maintaining public nuisances.

File No. 120318
9/17/12. Received
in Committee

September 17, 2012

Good Afternoon Supervisors. My name is Robert Davis and I live in the Bayview, 94124. I'm here today to support Supervisor Cohen's ordinance to increase penalties on owners of blighted property in San Francisco that are nuisances.

Unfortunately, the larger problem is that the Department of Building Inspection (DBI) is unwilling or unable to enforce the existing Blight Ordinance (194-09). To put it bluntly, they are overwhelmed and under-motivated by this onerous task. According to the DBI's MIS department:

- There are over 5,800 open Notice of Violations (NOV's) in SF, dating back to 1994.
- There are over 2,000 open Director's Hearings (DH's) in SF, dating back to 2000.
- There are over 750 Director's Hearings in SF at which the DBI's complaints were upheld but the cases were never forwarded to the DBI Litigation Committee or full Building Inspection Commission.

Codified descriptions of blight:

- Overgrown weeds and grass
- Landscaping
- Trash, litter, and debris
- Outside storage of household items
- Property blight
- Disrepair and exterior property conditions
- Graffiti
- Abandoned or junk vehicles
- Vehicles parked on lawn or unpaved areas
- Home auto repair

DBI Complaint Process

Currently this is the process the DBI has in place to handle complaints of blighted buildings:

1. Complaints are received by D.B.I. staff and are directed to appropriate division: Housing, Building, Electrical, Plumbing, and Disability Access.

2. Inspector makes inspection and verifies complaint. If complaint is not valid, clear case records. If complaint is valid, inform property owners/lessees on ways to make corrections, i.e., how to file permits and if plans are necessary with appropriate written instructions. Writes Notice of Violation (N.O.V.) on site, specifies maximum time allowed to make corrections per the prioritized violation chart.

3. Senior Inspector is informed of action and reviews N.O.V. Determines if emergency order is required.

4. If 1st notice is complied with, then case is abated.

5. When time has elapsed and corrections have not been made, then Inspector issues 2nd notice.

6. Chief Inspector of Division is notified and reviews case. If unable to reach a solution, then sends the case to the Director of D.B.I. for a Hearing.

7. If 2nd N.O.V. is complied with, then case is abated.

8. If B.I.D., P.I.D. and E.I.D. cases have not been resolved at Chief's level, then case is now referred to Code Enforcement Division. C.E.D. prepares case for Director's Hearing.

9. Director has hearing and issues order of abatement if required. Develops cost assessment statement and mails to owner with instructions of A.A.B. (Abatement Appeals Board) process.

10. If building is brought into compliance with Director's order, then case is abated. If not in compliance, then case is referred to full Commission for review or at request of property owner to A.A.B. Hearing.

11. A.A.B./Commission Hearing Appeal is heard and decision is rendered. If appeal is denied and owner still refuses to comply then case is sent to full Commission.

12. C.E.D. presents all facts and findings to full Commission for review.

13. Commission reviews all cases with orders of abatement and decides on next course of action, i.e., City Attorney referral, lien process, collection agency etc.

14. City Attorney takes legal action.

Here are the results of a Sunshine request for Open Director's Hearings, sorted by year in the first list and then by Zip Code in the second list.

All open Director's Hearings, both scheduled and unscheduled. That is, any property that has reached step #8 of the DBI NOV procedure, namely "8. If B.I.D., P.I.D. and E.I.D. cases have not been resolved at Chief's level, then case is now referred to Code Enforcement Division. C.E.D. prepares case for Director's Hearing".

Year	#1 Number of Open Director's Hearings	%
1996	3	0.14%
1997	3	0.14%
1998	0	0.00%
1999	6	0.29%
2000	40	1.91%
2001	112	5.36%
2002	134	6.41%
2003	134	6.41%
2004	145	6.93%
2005	186	8.90%
2006	183	8.75%
2007	171	8.18%
2008	120	5.74%
2009	138	6.60%
2010	185	8.85%
2011	322	15.40%
2012	209	10.00%
TOTAL:	2091	100

Zip Code	#1 Number of Open Director's Hearings	%
94102	62	2.97%
94103	122	5.83%
94104	4	0.19%
94105	19	0.91%
94107	55	2.63%
94108	24	1.15%
94109	116	5.55%
94110	222	10.62%
94111	10	0.48%
94112	268	12.82%
94114	114	5.45%
94115	76	3.63%
94116	70	3.35%
94117	100	4.78%
94118	90	4.30%
94121	81	3.87%
94122	98	4.69%
94123	56	2.68%
94124	180	8.61%
94127	47	2.25%
94129	1	0.05%
94131	78	3.73%
94132	27	1.29%
94133	86	4.11%
94134	85	4.07%
total	2091	100

"How many Director's Hearings are there that have resulted in a finding against the property owner and possibly upheld by the Abatement Appeals Board but have never been sent to the Litigation Committee or to the full Committee for review (step #12 of the DBI NOV procedure)?" I believe this would merely be taking the list of cases presented to the Litigation Committee and subtracting all open Director's Hearings, the information requested in #1, above.

Year	#2 Number of Open Director's Hearings	%
2000	15	1.96%
2001	55	7.20%
2002	83	10.86%
2003	92	12.04%
2004	107	14.01%
2005	110	14.40%
2006	109	14.27%
2007	85	11.13%
2008	29	3.80%
2009	17	2.23%
2010	33	4.32%
2011	28	3.66%
2012	1	0.13%
TOTAL	764	100

Zip Code	#2 Number of Open Director's Hearings	%
94102	24	3.14%
94103	53	6.94%
94104	2	0.26%
94105	6	0.79%
94107	17	2.23%
94108	12	1.57%
94109	55	7.20%
94110	85	11.13%
94111	3	0.39%
94112	105	13.74%
94114	34	4.45%
94115	31	4.06%
94116	18	2.36%
94117	38	4.97%
94118	35	4.58%
94121	25	3.27%
94122	37	4.84%
94123	17	2.23%
94124	59	7.72%
94127	19	2.49%
94131	26	3.40%
94132	5	0.65%
94133	16	2.09%
94134	42	5.50%
Total:	764	100.00

So, what's this all worth?

2,091 x $1,141* = $2,385,831.

and

764 x $1,141* = $871,724.

Total: $3,257,555.

*In February 2012, I asked for a spreadsheet showing Open NOV's with Assessed Costs and the date of the Director's Hearing. The DBI reported 10,401 Open NOV's in San Francisco, with an average Assessed Cost of $1,141 due the DBI for the 57 NOV's that show a Final Assessed Cost. My figures assume that the average open Director's Hearing generates the same revenue as an average Open NOV.

OPEN NOV's BY ZIP CODE and BY YEAR

Zip Code	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	DBI Total	
94102	1	0	0	3	1	0	2	3	14	6	13	12	5	25	49	21	44	73	272	4.69%
94103	0	0	1	0	0	1	5	20	12	21	15	29	30	36	44	38	69	135	456	7.87%
94104	0	0	0	0	0	0	0	1	1	0	0	0	0	1	0	4	4	5	16	0.28%
94105	0	0	0	0	0	0	1	1	1	0	1	2	1	2	1	4	5	13	32	0.55%
94107	0	0	0	0	0	0	3	6	9	7	4	7	9	11	4	15	18	31	124	2.14%
94108	0	0	0	0	0	0	0	2	2	3	1	8	5	6	10	8	26	21	92	1.59%
94109	0	0	0	0	0	1	5	10	11	7	17	15	23	26	49	85	78	165	492	8.49%
94110	1	0	0	2	1	0	21	13	22	36	49	47	43	48	60	104	143	192	782	13.49%
94111	0	0	0	1	0	0	0	0	1	3	1	0	1	4	5	7	5	15	43	0.74%
94112	1	1	1	1	2	2	13	15	21	28	26	41	47	56	54	81	72	131	593	10.23%
94114	1	1	2	3	1	2	4	11	17	19	18	27	31	16	18	39	83	127	420	7.25%
94115	0	0	0	0	1	0	1	2	5	7	12	12	6	22	24	21	24	37	174	3.00%
94116	1	0	0	0	0	0	3	8	5	6	3	7	6	5	4	21	18	45	132	2.28%
94117	1	1	1	3	2	3	5	6	20	22	23	25	34	18	25	42	47	77	355	6.12%
94118	0	0	0	1	0	1	1	5	21	8	8	20	20	12	14	23	36	57	227	3.92%
94121	0	0	0	0	0	1	3	4	8	10	12	3	15	17	11	10	28	40	162	2.79%
94122	0	0	0	0	0	0	2	2	4	8	7	18	14	18	8	18	19	60	178	3.07%
94123	0	0	0	0	0	0	0	5	7	1	2	7	4	7	3	8	19	23	86	1.48%
94124	0	0	0	0	0	0	8	14	11	14	18	21	21	30	31	31	59	68	326	5.62%
94127	0	0	0	1	0	0	1	3	6	3	3	4	6	7	14	9	16	23	96	1.66%
94129	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0.02%
94131	0	0	0	0	1	0	4	2	12	4	6	6	17	9	3	28	33	60	185	3.19%
94132	0	1	0	0	1	1	2	2	4	3	1	5	5	5	3	5	5	14	57	0.98%
94133	0	0	1	1	1	1	3	5	6	7	9	20	11	13	9	20	44	66	217	3.74%
94134	1	0	0	1	0	0	1	9	8	8	12	21	22	21	19	29	39	46	237	4.09%
no zip	0	0	0	0	0	1	0	0	0	10	2	6	2	2	2	5	5	7	42	0.72%
total	7	4	6	17	11	14	88	149	228	241	263	363	378	418	464	676	939	1531	5797	100.00%
	0.12%	0.07%	0.10%	0.29%	0.19%	0.24%	1.52%	2.57%	3.93%	4.16%	4.54%	6.26%	6.52%	7.21%	8.00%	11.66%	16.20%	26.41%	100.00%	

So, what's this all worth?

5,797 x $1,141 = $6,614,377

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp or meeting date

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

☒ 1. For reference to Committee: Land Use and Economic Development

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. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. 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 different form.

Sponsor(s):

Cohen

Subject:

Ordinance - Police Code - Additional Penalties for Foreclosed Properties

The text is listed below or attached:

Attached

Signature of Sponsoring Supervisor: Mel Clark

For Clerk's Use Only:

120318