

BOARD of SUPERVISORS



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MEMORANDUM

TO: William Scott, Police Chief, Police Department

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 5, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by the Public Utilities Commission on November 27, 2018:

File No. 181108

Ordinance amending the Police Code to require sellers or landlords of real property in San Francisco to disclose to buyers or tenants that the property is located within the flood risk zone delineated on the San Francisco Public Utilities Commission's 100-Year Storm Flood Risk Map; amending the Housing Code to require that the Department of Building Inspection's Report of Residential Building Record include a disclosure statement for property located within the flood risk zone; and affirming the Planning Department's determination under the California Environmental Quality Act.

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: erica.major@sfgov.org.

c: Rowena Carr, Police Department
Asja Steeves, Police Department
Sergeant Rachael Kilshaw, Police Department

1 [Police, Housing Codes - Required Disclosure of Storm Flood Risks]

2

3 **Ordinance amending the Police Code to require sellers or landlords of real property in**
4 **San Francisco to disclose to buyers or tenants that the property is located within the**
5 **flood risk zone delineated on the San Francisco Public Utilities Commission’s 100-Year**
6 **Storm Flood Risk Map; amending the Housing Code to require that the Department of**
7 **Building Inspection’s Report of Residential Building Record include a disclosure**
8 **statement for property located within the flood risk zone; and affirming the Planning**
9 **Department’s determination under the California Environmental Quality Act.**

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.

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

18 Section 1. Environmental Findings.

19 The Planning Department has determined that the actions contemplated in this
20 ordinance comply with the California Environmental Quality Act (California Public Resources
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
22 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms
23 this determination.

24 Section 2. The Police Code is hereby amended by adding Article 51, consisting of
25 Sections 5100 through 5104, to read as follows:

1 "100-Year Storm Flood Risk Map" means the map approved by the San Francisco Public
2 Utilities Commission at a public hearing identifying Flood Risk Parcels in San Francisco, which map
3 may be updated from time to time.

4 "Commission" means the San Francisco Public Utilities Commission.

5 "Deep and Contiguous Flooding" for purposes of the 100-Year Storm Flood Risk Map means
6 flooding that (1) is at least six inches in depth and (2) covers a contiguous area the size of at least half
7 a City block.

8 "Disclosure Statement" means the disclosure statement in Section 5102(b).

9 "Execution" means the making or acceptance of an offer.

10 "Flood Risk Parcel" means a parcel that has been identified as subject to Deep and Contiguous
11 Flooding in a 100-Year Storm on the most recently published 100-Year Storm Flood Risk Map,
12 including, without limitation, parcels that are used for residential, commercial, industrial, and other
13 uses.

14 "Transfer" means the transfer, sale, grant, gift, exchange, lease, or sublease (regardless of
15 duration of the Transfer) of all or part of a Flood Risk Parcel. A Transfer does not include those
16 transfers listed in California Civil Code Section 1102.2, as amended from time to time. For purposes
17 of this Article 51, a Transfer may be accomplished without or with a contract, including, but not limited
18 to, a deed, a purchase and sale agreement, an installment land sale contract, a lease with an option to
19 purchase, any other option to purchase, a ground lease coupled with improvements, or any other lease.

20 "Transferee" means a recipient of all or part of a Flood Risk Parcel in a Transfer, including,
21 without limitation, a buyer, tenant, exchangee, or grantee.

22 "Transferor" means a conveyor of all or part of a Flood Risk Parcel in a Transfer, including,
23 without limitation, a seller, landlord, exchanger, or grantor.

24 **SEC. 5102. DISCLOSURE REQUIREMENT.**

25 **(a) Disclosure Mandate.**

1 (1) Conditions Precedent. The disclosure requirement set forth in this subsection (a)
2 shall apply after 30 days have elapsed from the Commission's completing both of the following:

3 (A) approval of a 100-Year Storm Flood Risk Map at a publicly noticed hearing
4 and, after approval, the mailing of a notice to all owners of Flood Risk Parcels that are located within
5 the flood zone boundaries delineated on the Map that the Map has been approved and of the obligation
6 to comply with the disclosure requirement contained in this Article 51; and

7 (B) adoption of rules and criteria that allow an owner or landlord of a Flood
8 Risk Parcel to request review of the designation of the parcel as a Flood Risk Parcel in the 100-Year
9 Flood Risk Map based on specified technical grounds. Such rules and criteria shall provide that the
10 filing of a request for review shall stay application of the disclosure requirement in this subsection (a)
11 with respect to the applicable Flood Risk Parcel until the General Manager or his or her designee
12 completes the review and issues a final determination as to whether the parcel shall be re-designated
13 on the Map.

14 If a Transferor wishes to Transfer its real property while the review and determination are
15 pending, the Transferor must disclose that the real property has been designated a Flood Risk Parcel in
16 accordance with this Article 51 but that a request for review has been filed and is pending.

17 (2) Disclosure Requirement. The Transferor of a Flood Risk Parcel shall deliver to
18 each prospective Transferee the Disclosure Statement, as follows:

19 (A) If the Transfer is a sale, then as soon as practicable before transfer of title.

20 (B) If the Transfer is a transfer by a real property sales contract, or by a lease
21 with an option to purchase, or by a ground lease coupled with improvements, or by any other lease,
22 then as soon as practicable before Execution of the contract or lease.

23 (b) Contents of Disclosure. The Disclosure Statement shall be on a separate form and shall
24 state the following, in the font size shown, the size of which shall make the Disclosure Statement easily
25 readable. The Commission or Commission staff shall have authority to approve nonmaterial changes

1 in the Disclosure Statement:

2 LOCAL OPTION

3 REAL ESTATE TRANSFER DISCLOSURE STATEMENT

4 THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE
5 CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS BLOCK
6 _____ , LOT _____ , AT THE FOLLOWING STREET ADDRESS: _____.

7 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED
8 PROPERTY IN COMPLIANCE WITH ORDINANCE NO. _____ , CODIFIED AS ARTICLE 51 OF
9 THE SAN FRANCISCO POLICE CODE. IT IS NOT A WARRANTY OF ANY KIND BY THE
10 TRANSFEROR(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS
11 TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE
12 PRINCIPAL(S) MAY WISH TO OBTAIN.

13 I

14 TRANSFEROR'S INFORMATION

15 The Transferor discloses the following information with the knowledge that even though this is
16 not a warranty, prospective Transferees may rely on this information in deciding whether and on what
17 terms to purchase, rent, or lease the subject property. Transferor hereby authorizes any agent(s)
18 representing any principal(s) in this transaction to provide a copy of this statement to any person or
19 entity in connection with any actual or anticipated transfer (including any sale or lease) of the
20 property.

21 THE FOLLOWING ARE REPRESENTATIONS MADE BY THE TRANSFEROR(S) AS
22 REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO AND ARE NOT THE
23 REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS
24 NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE TRANSFEROR AND
25 TRANSFeree.

1 The City and County of San Francisco recognizes that it is in the public interest to ensure that
2 persons who own properties at risk of flooding have information about their flood risk so they can take
3 steps to mitigate the risk, such as flood-proofing their property or purchasing flood insurance. It is
4 also in the public interest to ensure that before persons purchase, rent, or lease real property they have
5 notice regarding the stormwater flood risk to their property. Mandatory disclosure before sale, rent, or
6 lease is an effective tool for ensuring that buyers and tenants of real property in San Francisco have
7 access to this important information.

8 Accordingly, the San Francisco Public Utilities Commission has adopted the 100-Year Storm
9 Flood Risk Map. Your property is located in a “100-year storm flood risk zone” as shown on the 100-
10 Year Storm Flood Risk Map. Accordingly, your property may be subject to deep and contiguous
11 flooding during a 100-year storm event due to stormwater flow and drainage, and you may
12 experience inconveniences, costs, and governmental requirements related to that flooding.

13 A 100-year storm event means a storm that has a 1% probability of occurring at a particular
14 location in a given year.

15 If your property is in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood
16 Risk Map, that does not mean your property is subject to flooding only during a 100-year storm event.
17 Your property may also flood at other times and from other causes.

18 The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm
19 event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco
20 that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages,
21 or other causes of flooding, and should not be relied upon to provide a complete assessment of a
22 property’s risk of flooding.

23 The 100-Year Storm Flood Risk Map may be found at
24 <https://www.sfwater.org/index.aspx?page=1229> and is on file with the San Francisco Public Utilities
25 Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information

1 pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco
2 Public Utilities Commission at RainReadySF@sfgwater.org or (415) 695-7326.

3 Transferor certifies that the information herein is true and correct to the best of the
4 Transferor's knowledge as of the date signed by the Transferor.

5 Transferor _____ Date _____

6 Transferor _____ Date _____

7 II

8 TRANSFeree(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE
9 AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE
10 PROVISIONS IN A CONTRACT BETWEEN TRANSFeree(S) AND TRANSFEROR(S) WITH
11 RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

12 I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

13 Transferor _____ Date _____ Transferee _____ Date _____

14 Transferor _____ Date _____ Transferee _____ Date _____

15 Agent (Broker Representing Seller) _____ By _____ Date _____

16 (Please Print) (Associate Licensee or Broker-Signature)

17 Agent (Broker Obtaining the Offer) _____ By _____

18 Date _____ (Please Print) (Associate Licensee or Broker-Signature)

19 A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE
20 LEGAL ADVICE, CONSULT YOUR ATTORNEY.

21 (c) Amendments to the Map. If, at any time after the Commission's initial adoption of the 100-
22 Year Storm Flood Risk Map, the Commission amends the Map at a public hearing and provides mailed
23 notice to the owners after the hearing of all parcels impacted by such amendment (i.e., any Flood Risk
24 Parcels that were either added to or removed from the Map), the disclosure requirement in subsection
25 (a) shall apply to the Flood Risk Parcels of such amended Map, after 30 days have elapsed from the

1 date of the Commission's mailing of the notice. An owner or landlord of a newly-designated Flood
2 Risk Parcel shall have the same right to contest its property identification in the 100-Year Flood Risk
3 Map as is stated in subsection (a)(1)(B).

4 **SEC. 5103. PRIVATE RIGHT OF ACTION.**

5 (a) Any Transferor who fails to provide the disclosure required in Section 5102 may be liable
6 for a civil penalty of \$2,000 for each failure to provide the disclosure. This penalty may be assessed
7 and recovered in a civil action brought by a Transferee in any court of competent jurisdiction. The
8 civil penalty available under this subsection (a) shall be in addition to any other rights and remedies
9 that may be available to the Transferee.

10 (b) This Article 51 shall not create any private right of action against the City. In enacting and
11 implementing this Article, the City is assuming an undertaking only to promote the general welfare. It
12 is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is
13 liable in money damages to any person who claims that such breach proximately caused injury. The
14 City shall have no duty or liability based on any failure to implement the disclosure required by this
15 Article or based on the City's failure to prosecute or enforce this disclosure requirement.

16 **SEC. 5104. OTHER DISCLOSURE REQUIREMENTS.**

17 Nothing in this Article 51 is intended to alter or limit other disclosures that may be required by
18 applicable law, including but not limited to any disclosure relating to actual flooding that may have
19 occurred on a property.

20
21 Section 3. Chapter 3.5 of the Housing Code is hereby amended by revising Section
22 351, to read as follows:

23 * * * *

24 (c) **Contents of Report of Residential Building Record.** The Department of Building
25 Inspection shall, upon application in the manner hereinafter provided, issue a Report of

1 Residential Building Record to the owner which shall contain, in respect to said residential
2 building, the following information, insofar as ascertainable from City records:

3 * * * *

4 (11) (a) Is the building in the Mandatory Earthquake Retrofit of Wood-Frame
5 Building Program?

6 Yes _____ No _____

7 (b) If yes, has the required upgrade work been completed?

8 Yes _____ No _____

9 (12) Is the building located within the flood risk zone boundaries delineated on the San
10 Francisco Public Utilities Commission's 100-Year Storm Flood Risk Map?

11 Yes _____ No _____

12 * * * *

13
14 Section 4. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18
19 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
20 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
21 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
22 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
23 additions, and Board amendment deletions in accordance with the "Note" that appears under
24 the official title of the ordinance.

25 ///

1 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of
2 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
3 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining portions or applications of the ordinance. The Board of
5 Supervisors hereby declares that it would have passed this ordinance and each and every
6 section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12
13 By:



14 EILEEN CHAUVET
15 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police, Housing Codes - Required Disclosure of Storm Flood Risks]

Ordinance amending the Police Code to require sellers or landlords of real property in San Francisco to disclose to buyers or tenants that the property is located within the flood risk zone delineated on the San Francisco Public Utilities Commission’s 100-Year Storm Flood Risk Map; amending the Housing Code to require that the Department of Building Inspection’s Report of Residential Building Record include a disclosure statement for property located within the flood risk zone; and affirming the Planning Department’s determination under the California Environmental Quality Act.

Existing Law

State law provides that certain disclosures be made upon the transfer of real property. One of those disclosure requirements is whether the real property is located in a special flood hazard area (any type Zone “A” or “V”) designated by the Federal Emergency Management Agency. The Federal Emergency Management Agency has not completed flood mapping for the City and County of San Francisco. In addition, once completed, the Federal Emergency Management Agency maps may or may not show flooding from stormwater that affects property in San Francisco.

Amendments to Current Law

The San Francisco Public Utilities Commission performed a technical analysis to develop a 100-Year Storm Flood Risk Map, which shows areas of San Francisco that are at risk of “deep and contiguous” flooding in a 100-year storm. When the 100-Year Storm Flood Risk Map is approved at a public hearing, property owners whose real property is located in a storm flood risk area will be required to disclose to prospective transferees (including tenants) that the property is located in a flood risk area and the Department of Building Inspection’s Report of Residential Building Record will include a disclosure statement for property located within the flood risk zone.

Background Information

The San Francisco Public Utilities Commission passed a resolution on November 13, 2018 recommending that the Board of Supervisors adopt the proposed ordinance requiring sellers or landlords of real property in San Francisco to disclose to prospective buyers or tenants if the property is located within the flood risk zone delineated on the San Francisco Public Utilities Commission’s 100-Year Storm Flood Risk Map, and requiring the Department of Building Inspection’s Report of Residential Building Record to include a disclosure statement for property located within the flood risk zone.