

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection  
Sonya Harris, Secretary, Building Inspection Commission

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

DATE: December 5, 2018

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following 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.**

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports 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: William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection

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                                    **ARTICLE 51. STORMWATER FLOOD RISK DISCLOSURE**

2                                    **SEC. 5100. FINDINGS AND PURPOSE.**

3                                    (a) As San Francisco has grown, its hilly topography has been paved over, and naturally  
4 formed historic waterways have been incorporated into the City's combined sewer and stormwater  
5 collection system that routes both overland runoff and sanitary sewage to the City's treatment plants.

6                                    (b) During intense storms, when there is more rain than the collection system is designed to  
7 handle, certain areas of the City are subject to flood risk from stormwater. The location of these flood-  
8 prone areas generally aligns with the City's historic waterways and areas that are built on landfill.

9                                    (c) Flooding in these areas can result in property damage which negatively impacts affected  
10 residents and businesses.

11                                   (d) The San Francisco Public Utilities Commission performed a technical analysis to develop a  
12 100-Year Storm Flood Risk Map that identifies those parcels in San Francisco that are at risk of deep  
13 and contiguous flooding during a storm with a 100-year return period, meaning a storm having a 1%  
14 chance of occurring in a given year.

15                                   (e) It is in the public interest to ensure that owners of real property at risk of deep and  
16 contiguous flooding from stormwater have accurate information about the flood risk so they can take  
17 steps to mitigate the risk.

18                                   (f) For that reason, and also to ensure fairness in real property transactions, it is also in the  
19 public interest to ensure that people are aware of stormwater flood risks before buying or renting real  
20 property. Mandatory disclosure at the point of sale, or before signing a lease, is an effective tool for  
21 ensuring that buyers and tenants of real property have access to this information.

22                                   **SEC. 5101. DEFINITIONS.**

23                                   "100-Year Storm" means a storm that has a 1% probability of occurring at a particular  
24 location in a given year.

25                                   ///

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

16 n:\legana\as2018\1800301\01318275.docx

## **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.