

File No. 120318

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

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

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <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 |
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OTHER (Use back side if additional space is needed)

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Completed by: Alisa Miller Date September 13, 2012

Completed by: _____ Date _____

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

1 [Police Code - Additional Penalties for Foreclosed Properties]

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

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

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

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

15
16 **Article 1**

17 Sec. 96 Title.

18 Sec. 96.1. Findings and Purpose.

19 Sec. 96.2. Definitions.

20 Sec. 96.3. Aggravated Penalties for Foreclosed Properties.

21 Sec. 96.4. Severability.

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

23 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

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

5
6 **SEC. 96.2. DEFINITIONS.**

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

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

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

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

17
18 **SEC. 96.3. ENHANCED PENALTIES FOR FORECLOSED PROPERTIES.**

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

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

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

6 (i) San Francisco Administrative Code

7 (ii) San Francisco Building Code

8 (iii) San Francisco Electrical Code

9 (iv) San Francisco Fire Code

10 (v) San Francisco Health Code

11 (vi) San Francisco Housing Code

12 (vii) San Francisco Mechanical Code

13 (viii) San Francisco Planning Code

14 (ix) San Francisco Plumbing Code

15 (x) San Francisco Public Works Code

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

19
20 **SEC. 96.4. SEVERABILITY.**

21 (a) If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason
22 held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
23 shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors
24 hereby declares that it would have passed this ordinance and each and every section, subsection,
25

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

3
4 **SEC. 96.5. NO CONFLICT WITH STATE OR FEDERAL LAW.**

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

7
8 **SEC. 96.6. UNDERTAKING FOR THE GENERAL WELFARE.**

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

13
14 Section 2. **Effective Date.** This ordinance shall become effective 30 days from the
15 date of passage.

16
17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20
21 By:



22 YVONNE R. MERE
23 Deputy City Attorney
24
25

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.

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:
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):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

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