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[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*

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.

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

20
21 By:



22 YVONNE R. MÉRÉ
Deputy City Attorney



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120318

Date Passed: October 02, 2012

Ordinance amending the San Francisco Police Code, Article 1, and adding Sections 96 to 96.6 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.

September 17, 2012 Land Use and Economic Development Committee - RECOMMENDED

September 25, 2012 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

October 02, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Kim, Mar, Olague and Wiener

Excused: 1 - Farrell

File No. 120318

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on 10/2/2012 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved