[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.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italics Times New Roman font. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Environmental Findings.

The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 181108 and is incorporated herein by reference. The Board affirms this determination.

Section 2. The Police Code is hereby amended by adding Article 51, consisting of Sections 5100 through 5104, to read as follows:
ARTICLE 51. STORMWATER FLOOD RISK DISCLOSURE

SEC. 5100. FINDINGS AND PURPOSE.

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

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

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

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

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

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

SEC. 5101. DEFINITIONS.

“100-Year Storm” means a storm that has a 1% probability of occurring at a particular
location in a given year.
"100-Year Storm Flood Risk Map" means the map approved by the San Francisco Public Utilities Commission at a public hearing identifying Flood Risk Parcels in San Francisco, which map may be updated from time to time.

"Commission" means the San Francisco Public Utilities Commission.

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

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

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

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

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

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

"Transferor" means a conveyor of all or part of a Flood Risk Parcel in a Transfer, including, without limitation, a seller, landlord, exchanger, or grantor, and including the City and County of San Francisco.
SEC. 5102. DISCLOSURE REQUIREMENT.

(a) Disclosure Mandate.

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

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

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

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

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

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

(B) If the Transfer is a transfer by a real property sales contract, or by a lease with an option to purchase, or by a ground lease coupled with improvements, or by any other lease, then as soon as practicable before Execution of the contract or lease.
(b) **Contents of Disclosure.** The Disclosure Statement shall be on a separate form and shall state the following, in the font size shown, the size of which shall make the Disclosure Statement easily readable. The Commission or Commission staff shall have authority to approve nonmaterial changes in the Disclosure Statement:

**LOCAL OPTION**

**REAL ESTATE TRANSFER DISCLOSURE STATEMENT**

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

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

____

TRANSFEROR(S) INFORMATION

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

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

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

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

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

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

The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm
event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco
that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages,
or other causes of flooding, and should not be relied upon to provide a complete assessment of a
property’s risk of flooding.
The 100-Year Storm Flood Risk Map may be found at
https://www.sfwater.org/index.aspx?page=1229 and is on file with the San Francisco Public Utilities
Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information
pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco
Public Utilities Commission at RainReadySF@sfwater.org or (415) 695-7326.

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

Transferor ________________________________ Date ______________

Transferor ________________________________ Date ______________

II

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

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

Transferor ______________ Date ______________ Transferee ______________ Date ______________

Transferor ______________ Date ______________ Transferee ______________ Date ______________

Agent (Broker Representing Seller) ______________ By ______________ Date ______________

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

Agent (Broker Obtaining the Offer) ______________ By __________________________

Date ______________ (Please Print) (Associate Licensee or Broker-Signature)

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

(c) Amendments to the Map. If, at any time after the Commission’s initial adoption of the 100-
Year Storm Flood Risk Map, the Commission amends the Map at a public hearing and provides mailed
notice to the owners after the hearing of all parcels impacted by such amendment (i.e., any Flood Risk
Parcels that were either added to or removed from the Map), the disclosure requirement in subsection
(a) shall apply to the Flood Risk Parcels of such amended Map, after 30 days have elapsed from the
date of the Commission’s mailing of the notice. An owner or landlord of a newly-designated Flood
Risk Parcel shall have the same right to contest its property identification in the 100-Year Flood Risk
Map as is stated in subsection (a)(1)(B).

SEC. 5103. PRIVATE RIGHT OF ACTION.

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

(b) This Article 51 shall not create any private right of action against the City. In enacting and
implementing this Article, the City is assuming an undertaking only to promote the general welfare. It
is not assuming, nor is it imposing on 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. The
City shall have no duty or liability based on any failure to implement the disclosure required by this
Article or based on the City's failure to prosecute or enforce this disclosure requirement.

SEC. 5104. OTHER DISCLOSURE REQUIREMENTS.

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

Section 3. Chapter 3.5 of the Housing Code is hereby amended by revising Section
351, to read as follows:
(c) **Contents of Report of Residential Building Record.** The Department of Building Inspection shall, upon application in the manner hereinafter provided, issue a Report of Residential Building Record to the owner which shall contain, in respect to said residential building, the following information, insofar as ascertainable from City records:

* * * *

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

Yes________ No________

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

Yes________ No________

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

Yes________ No________ Date of 100-Year Storm Flood Risk Map________

* * * *

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

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

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

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

By:

EILEEN CHAUVET
Deputy City Attorney

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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.

February 04, 2019 Land Use and Transportation Committee - RECOMMENDED

February 12, 2019 Board of Supervisors - PASSED ON FIRST READING
  Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

February 26, 2019 Board of Supervisors - FINALLY PASSED
  Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 2/26/2019 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

File No. 181108

Date Approved: 3/8/19