

KK34
Ordinance No. 101941

AN ORDINANCE requiring a certificate regarding land use and local assessments prior to the recording of documents transferring certain real property, and providing for penalties and remedies in such connection.

2-21-73 Pass

COMPTROLLER
FILE NUMBER

See CB 43282

Council Bill No. 93611

INTRODUCED: FEB 20 1973	BY: PLANNING & URBAN DEV.
REFERRED: FEB 20 1973	TO: PLANNING & URBAN DEV.
REFERRED:	
REFERRED:	
RECEIVED: FEB 26 1973	SECOND READING: FEB 26 1973
THIRD READING: FEB 26 1973	SIGNED: FEB 26 1973
PRESENTED TO MAYOR: FEB 27 1973	APPROVED: MAR 8 1973
VETO TO CITY CLERK: MAR 8 1973	PUBLISHED: MAR 10 1973
VETOED BY MAYOR:	VETO PUBLISHED:
PASSED OVER VETO:	VETO SUSTAINED:

KSS

ORDINANCE 101941

AN ORDINANCE requiring a certificate regarding land use and local assessments prior to the recording of documents transferring certain real property, and providing for penalties and remedies in such connection.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The grantor of any fee title or beneficial interest in real property in a transaction subject to the tax on conveyances provided in RCW Ch. 26A.45 shall, prior to transmitting the instrument of conveyance to the County Department of Records and Elections for recording, deliver or cause to be delivered to the grantee a certificate on a form prepared by the Superintendent of Buildings and signed by the real estate broker representing the grantor, or by the grantor if not so represented, which states:

- (a) the existing zoning classification of the property conveyed;
- (b) the established permitted use of said property, if any, as shown by the records of the Building Department;
- (c) the date and description of the most recent building or use permit, if any, issued for the property conveyed;
- (d) the amount of any proposed assessments for local improvements against the property conveyed as shown on any preliminary assessment roll therefor in the records of the City Engineer; and
- (e) the amount of any existing assessments for local improvements against the property conveyed, as shown on any assessment roll therefor in the records of the City Treasurer.

Provided, no such certificate shall be required where the property conveyed is improved only with a single-family dwelling and accessory structures, and the grantor or his agents do not represent to the grantee that said property may be lawfully used as a site for more than one dwelling unit; nor shall such certificate be required in any transaction where the grantee has expressly waived such requirement by a written instrument to such effect separate and apart from any agreement to purchase the property conveyed.

Section 2. This ordinance shall be enforced by the Superintendent of Buildings, and anyone violating or failing to comply with the provisions of this ordinance shall, upon conviction thereof, be subject to a civil penalty in a sum not exceeding five hundred dollars; and in any action brought by the grantee to rescind a conveyance or agreement therefor, a final judgment of conviction of the grantor under this ordinance shall be prima facie evidence against said grantor that the matters contained in Section 1(a), (b), (c), (d) and (e) of this ordinance were not known to the grantee at the time of the agreement or conveyance.

(To be used for all Ordinances except Emergency.)

Section 3. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 26 day of February, 1973,
and signed by me in open session in authentication of its passage this 26 day of February, 1973

John R. Miller
President Pro Tem of the City Council.

Approved by me this 8th day of March, 1973

M. Uhlman
Mayor.

Filed by me this 8th day of March, 1973

Attest: *C. H. Sanderson*
City Comptroller and City Clerk.

(SEAL)

MAR 10 1973

Published

By *G. C. Geisert*
Deputy Clerk.

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LAW DEPARTMENT

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CLAIMS MANAGER
V. L. PORTER

February 14, 1973

Honorable John R. Miller, Chairman
Planning and Urban Development
Committee
City Council
Seattle

Dear Sir:

By letter dated December 18, 1972 you transmitted C.B. 93282, entitled:

"AN ORDINANCE relating to land use, requiring certificates of zoning and assessment to be presented upon the transfer of certain properties."

and asked that we prepare substitute legislation incorporating certain amendments recommended by the committee, and that in addition we "investigate the state law," presumably in view of our opinion No. 5355, dated October 2, 1969, to Mrs. Arthur V. Lamphere, then Chairman of the City Council's Planning Committee. In said opinion we advised that the conveyancing of real property was governed by comprehensive state laws, and that a requirement of a certificate relating to zoning and occupancy as a condition of the transaction could not be imposed by ordinance. We further advised, however, that the City could make it unlawful to knowingly misrepresent certain facts to a potential real estate purchaser, such as the zoning classification or the content of city records, but that such an ordinance would not invalidate the transaction and thereby fully protect the purchaser, nor was the criminal remedy a likely method of effectively curbing such zoning-related misrepresentations.

Pursuant to your request we have prepared and transmit herewith a proposed ordinance incorporating the requested changes from C.B. 93282 as well as certain other changes hereinafter discussed. Such proposed ordinance does not attempt to prohibit the County

RECEIVED
FEB 13 PM 4:10
SEATTLE CITY COUNCIL

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February 14, 1973

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Department of Records and Elections from accepting documents for recording, nor does it attempt to invalidate transactions carried out in accordance with state conveyancing laws, both of which would exceed the City's authority. We have amended the language proposed by C.B. 93282 as to rescission from --

" . . . an agreement to purchase real property shall be subject to rescission by the purchaser if a statement . . . is not furnished . . .",

which in our opinion would conflict with state laws and policy regarding conveyances, to provide instead that --

" . . . in any action brought by the grantee to rescind a conveyance or agreement therefor, a final judgment of conviction of the grantor under this ordinance shall be prima facie evidence against said grantor that the matters contained in Section 1(a), (b), (c), (d) and (e) of this ordinance were not known to the grantee at the time of the agreement or conveyance."

thereby avoiding the attempt to create irrebuttable presumptions that grantor acted unfairly or fraudulently and that the equities of the case require rescission. Such irrebuttable presumptions have fared badly in the courts. See: Seattle vs. Ross, 54 Wn.2d 655 (presumption of guilt from fact of proximity to unlawfully kept narcotics); and Seattle vs. Stone, 67 Wn.2d 886 (presumption that owner parked unattended car illegally). We have provided instead that it shall be presumed that grantee was ignorant of the facts which would have been contained in the certificate, which presumption can be rebutted by evidence to the contrary, and this leaves to the Superior Court, where it belongs, the question whether, under all of the circumstances of the case, the grantee in a particular transaction is entitled to a judgment of rescission.

C.B. 93282 did not provide any penalty for failure to comply with the provisions thereof, as required by Article IV, Section 25 of the City Charter and in the proposed ordinance transmitted herewith we have provided a maximum civil penalty of \$500, which we recommend.

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As revised, the proposed ordinance in our opinion does not conflict with state law. Because of the extent of the changes made from C.B. 93282 we advise that such proposed ordinance must be introduced as new legislation, rather than substituted for said C.B. 93282.

Yours very truly,

A. L. NEWBOULD
Corporation Counsel

By



GORDON F. CRANDALL
Assistant

GFC:sg

Enc.

CITY COUNCIL TRANSMITTAL

TO: SEATTLE CITY COUNCIL

73 FEB 13 PM 4:15

FROM:

John B. Wilson, Chairman
 Planning and Urban Development Committee

C.F. # _____

Date Sent: _____ Reply Requested By: _____

Subject: _____

Comments relative to past City Council action or action of other committees are requested on the reverse of this transmittal.

ACTION Required

	Review and Return File With Your Answer to Sender	
	Review and Answer Petitioner, Return File and Copy of Answer to Sender	
	Review and Make Recommendations, Return File and Recommendations to Sender () In Duplicate	
	Prepare Legislation and Return File to Sender	(over attached subject)

Additional Information: _____

 Signature

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported
and Adopted

Your Committee on

PLANNING & URBAN DEVELOPMENT

FEB 26 1973

to which was referred

C.B. 93611,

Requiring a certificate regarding land use and local assessments prior to the recording of documents transferring certain real property, and providing for penalties and remedies in such connection.

RECOMMENDS THAT THE SAME DO PASS.

Chairman

John R. Miller P&UD
Chairman

Committee

Committee

