

**BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO**

**Resolution 2022-\_\_\_**

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO AUTHORIZING THE SAN BENITO COUNTY RECORDER TO ESTABLISH A RESTRICTIVE COVENANT PROGRAM AND COLLECT THE \$2.00 FEE IMPOSED BY GOVERNMENT CODE SECTION 27388.2(A) TO RECOVER THE REASONABLE REGULATORY COST OF PERFORMING INSPECTIONS AND AUDITS TO REDACT UNLAWFULLY RESTRICTIVE AND DISCRIMINATORY COVENANTS**

**WHEREAS**, residential racial segregation was enforced throughout the United States, including in California, by a combination of government policies and judicially enforced private agreements; and,

**WHEREAS**, one mechanism used to maintain residential segregation was the “racially restrictive covenant,” an agreement prohibiting the homeowner from selling or renting the property to members of a specific race, ethnic or religious background; and,

**WHEREAS**, in 1948, the companion cases of *Shelley v. Kramer* 334 U.S. 1 and *Hurd v. Hodge* 334 U.S. 24, the United States Supreme Court held that state court enforcement of racially restrictive property covenants violated the due process and equal protection clauses of the 14<sup>th</sup> Amendment to the United States Constitution; and,

**WHEREAS**, while the Supreme Court ruling made such covenants unenforceable, subsequent state legislation, in California and elsewhere, made racial discrimination in housing accommodations, including by the use of exclusionary covenants, unlawful;

**WHEREAS**, although originally targeting racial discrimination, these laws have subsequently been amended to include discrimination on other grounds, such as gender, religion, and sexual orientation, among others (Government Code § 12955); and,

**WHEREAS**, despite their unlawfulness and unenforceability, these offensive exclusionary restrictions still appear in existing CC&Rs that are transferred from property sellers to buyers, unless the restrictions have been previously stricken, modified or recorded over; and,

**WHEREAS**, the California Legislature, by a supermajority vote of both houses, has passed AB 1466 which requires all Recorders in the State of California to establish a regulatory inspection and audit program to identify and redact unlawfully restrictive covenants, make regular audit reports to the Legislature, and authorized the Recorders to recover a \$2 recording fee on all property recordings pursuant to Government Code section 28388.2(a) to cover their reasonable regulatory costs for performing the inspections and audits mandated by the State. and,

**WHEREAS**, as mandated by Government Code Section 12956.3, the San Benito County Recorder’s Office, in coordination with the County Counsel’s Office, has formed the Discriminatory Covenant Inspection and Audit Task Force to begin to search through historic

recorded documents in San Benito County to provide historic record investigations, inspections and audit services to remove unlawful restrictive covenants and report back to the Legislature as mandated by Government Code Section 12956.3; and,

**WHEREAS**, the current Recorder fees do not provide sufficient resources to adequately fund the Discriminatory Covenant Inspection and Audit Task Force to remove unlawful and discriminatory records; and,

**WHEREAS**, the State Legislature's amendment of Government Code section 27388.2 allows Recorders to charge a fee of two dollars (\$2) for recording the first page of every real estate instrument, paper, or notice required or permitted by law to be recorded per each single transaction per parcel of real property, unless otherwise exempted by state law, and that change in state statute was approved by more than a two-thirds vote of all members elected to each of the two houses of the Legislature in compliance with Section 3(a) of Article XIII A of the California Constitution (AB 1466 Fee); and,

**WHEREAS**, the AB 1466 fee is necessary to provide adequate funds to cover the reasonable regulatory costs of providing the state mandated inspection and audit services performed by the Discriminatory Covenant Inspection and Audit Task Force's services in the County; and,

**WHEREAS**, to ensure the amount of the AB 1466 fee is no more than necessary to cover the reasonable cost of this state mandated program, Government Code section 27388.2 prohibits the Recorder from charging the AB 1466 fee after December 31, 2027 unless further findings are made in compliance with the California Constitution; and,

**WHEREAS**, the manner in which the State Legislature has allocated the \$2 AB 1466 Fee to a payor bears a fair or reasonable relationship to the payor's benefits received from the inspection and audit which will result in the removal of unlawful and discriminatory covenants countywide and comply with federal and state constitutional laws; and,

**NOW, THEREFORE, BE IT RESOLVED** that the County of San Benito Board of Supervisors hereby authorizes the Recorder to collect the AB 1466 Fee imposed by Government Code section 27388.2 to recover the reasonable costs of providing the state mandated inspection and audit services to remove unlawful and discriminatory records. As authorized by Government Code section 27388.2, as of February 1, 2022, the San Benito County Recorder may begin to commence the collection of two dollars (\$2.00) to be paid at the time of recording pursuant to state law.

**PASSED AND ADOPTED** by the Board of Supervisors, County of San Benito, State of California on this 25th day of January, 2022, by the following vote:


AYES: SUPERSVISORS  
NOES: SUPERSVISORS  
ABSTAINING: SUPERSVISORS  
ABSENT: SUPERSVISORS

By \_\_\_\_\_  
Bea Gonzales, Chairperson  
Board of Supervisors, County of San Benito

ATTEST:  
Jennifer Frechette, Clerk of the Board

APPROVED AS TO LEGAL FORM:  
Barbara J. Thompson, County Counsel

By: \_\_\_\_\_

By:  \_\_\_\_\_  
Joel Ellinwood, Assistant County Counsel

Date: \_\_\_\_\_

Date: January 25, 2022