

CITY OF OAKLAND
AGENDA REPORT

2009 NOV -5 PM 6:52

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: November 10, 2009

RE: **SUPPLEMENTAL REPORT TO PROVIDE A STAFF ANALYSIS OF
PROPOSED MODIFICATIONS TO THE CITY'S CONDOMINIUM
CONVERSION ORDINANCE**

Staff has prepared a supplemental report to provide an analysis and commentary on the proposed modifications to the City's Condominium Conversion Ordinance. With additional time for a more thorough analysis, there may be additional issues that also should be addressed. This report provides historical background on previous Council consideration of this issue and identifies key issues and concerns that may require further research and analysis.

Background

For the past several years, the City has approached the issue of condominium conversions within the broader context of a comprehensive housing policy, and the issue has been linked in particular to issues concerning inclusionary zoning.

Changes to the Condominium Conversion Ordinance were most recently proposed in Fall 2006 and were discussed extensively by the Planning Commission and the Community and Economic Development Committee. When the proposal came before the City Council on December 5, 2006, the matter was referred to the Blue Ribbon Commission (BRC) that had recently been created to deal with the issue of inclusionary zoning. The intent of this action was to develop a "comprehensive housing strategy to ensure that housing, be it rental or ownership is affordable to all income levels within the City."

The BRC met for over 6 months in 2007 and presented its final recommendations to the Community and Economic Development Committee on September 11, 2007. Those recommendations included an inclusionary zoning program and proposals for expanding funding for affordable housing and targeting those resources to focus primarily on households with incomes below 60% of area median income. The BRC was not able to reach consensus on condominium conversion, and instead submitted two separate and substantially different proposals on condominium conversions. The City Council took no action on the BRC recommendations, stating a desire to wait for the Mayor's pending housing policy proposals.

In February 2008, the Mayor presented a comprehensive housing policy initiative that included proposals for inclusionary zoning, condominium conversion, changes to existing homebuyer and

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rehabilitation programs, expansion and targeting of affordable housing funds, modifications to the rent adjustment program, and efforts to return foreclosed homes to the housing supply.

Since that time, the homebuyer programs have been modified and efforts are underway to deal with vacant foreclosed properties, but there has been no action by the City Council on the rest of the Mayor's housing package.

Analysis

For several years the City has framed the condominium conversion issue within a broader context of a comprehensive housing strategy to provide housing for all economic levels in Oakland.

The current proposal takes up condominium conversion as a separate issue. In addition, while past discussions have centered around the condominium conversion program as a whole, the current proposal provides an exception to the existing rules for a limited pilot project. Finally, past proposals to permit more condominium conversions have been linked to a policy objective of providing affordable housing opportunities as an alternative to more costly single family homes. The current proposal does not appear to address this objective; the table on which the revenue projections are based assumes that converted units will sell for an average price of \$500,000 per unit. Even with a 10 percent discount to existing tenants, those prices are not affordable to lower income households and may not even be affordable to moderate income households. Currently, a two bedroom unit would need to be priced in the range of \$375,000 to \$425,000 to be affordable to a moderate income household (120 percent of area median income, which is \$96,450 for a family of three).

With respect to the specific provisions of the current proposal, staff has identified areas that may require additional research and analysis to avoid unintended consequences or which might be subject to legal challenge.

The most significant issue involves the conversion fee itself. The fee is defined as an impact fee to partially mitigate the loss of rental units from the City's housing supply. The California Fee Mitigation Act (Government Code Section 66001) requires that prior to enactment of any impact fee, of a nexus study be performed to establish the relationship between condominium conversion and specific impacts (e.g., loss of rental housing) and to establish a reasonable basis for the amount of the fee and the uses of the revenue derived from the fee. Such an analysis was performed, for example, prior to the City's adoption of the Jobs/Housing Impact Fee. Completion of a nexus study in conformance with the Fee Mitigation Act would protect the City against potential legal challenges that could delay implementation of the pilot program.

A second area of concern is that there are a number of places where the report and the Ordinance are not consistent, such as a clear specification on where the impact fees would be deposited and how they can be used.

Other technical issues that potentially generate further substantive discussion include the following:

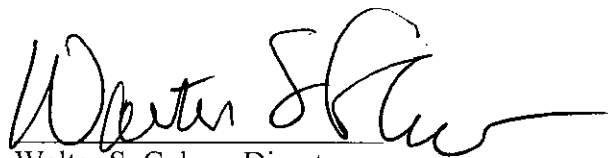
- The proposed ordinance limits the pilot program to “higher rent buildings,” defined as buildings where the average rent is at least \$2,105 per month. Use of an average building rent does not take into account differences in unit size. A building containing mostly 3-bedroom units with an average rent of \$2,105 is far more affordable than a building containing mostly 1-bedroom units at that same level. Affordable housing programs generally establish different maximum rents for units of different sizes. “Higher rent buildings” should be defined as buildings in which unit rents exceed affordability levels adjusted for unit size, which would yield a lower threshold for 1 bedroom units and a higher threshold for 3 bedroom units.
- Protection of existing tenants is dependant on the enforceability of requirements for lifetime leases and limitations on rent increases. It may be advisable to require relocation payments and then waive those requirements so long as lifetime lease and rent limitations remain in effect.
- The pilot program for conversion of tenancies in common (TICs) does not include the same tenant protections offered for conversion of “high rent units,” including lifetime leases and rent limitations (other than those already provided in the ordinance for seniors). Because ownership of units as tenancies in common does not require owner occupancy, Council may wish to consider providing similar protections or relocation assistance to tenants who are displaced by conversion of TICs.
- Once units are converted to condominium status, there would likely be Homeowner Association Fees. It is not clear under either the Rent Adjustment Program or the proposed ordinance to what extent those fees could be passed on to tenants in the form of rent increases for increased housing services costs.
- As drafted, the ordinance requires conversion fees be paid upon final approval of subdivision maps. Current City ordinances allow converters up to 24 months after approval of the tentative map (not application) to secure final map approval. State law permits the City to extend this to up to five years, and recently the City Council and the State have granted additional extensions. As a result, the City might not receive any funding for mitigation for at least two years, or considerably longer, from the date of adoption of the proposed changes. As a result, the program would be unlikely to provide

funding in the near term for rehabilitation of vacant, distressed and/or foreclosed properties.

- The table on tax revenue projections contained in Exhibit D overstates the revenue the City will receive. It should be noted that references in that table to “Oakland share” include both revenues to the City and revenues to the Oakland Unified School District. The share that would be received by the City is the “Oakland share” less the school district share.
- It is unclear why this proposal relaxes restrictions only in the impact zones, when those areas were singled out in the original ordinance because those were the areas that had experienced the greatest concentration of conversions.

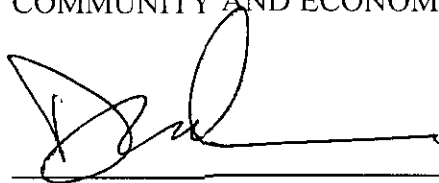
As noted above, past discussions of condominium conversions have treated the issue within a broader context of developing a comprehensive housing strategy. The current proposal would create a relatively restricted exception to the current condominium conversion ordinance without addressing either broader housing policy issues or the various issues that have been raised around condominium conversion itself. The current proposal also does not appear likely to result in an increase in affordable homeownership opportunities. Projected revenue from the proposal is both overstated and unlikely to be realized for considerable time. Finally, there are a number of issues specific to the current proposal that merit further analysis and discussion.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

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