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OFFICE OF THE CITY CLERK
OAKLAND

MEMORANDUM

To: Councilmember De La Fuente and members of the Community & Economic
Development Committee
2009 NOV 13 PM 5:00

From: Councilmembers Patricia Kernighan & Rebecca Kaplan

Re: Item 8 - Revised Draft Ordinance. Condominium Conversion

Date: November 10, 2009

Attached hereto is the most recent version of the proposed amendments to the condominium conversion ordinance (O.M.C. Chapter 16.36). The changes consist of clarifications made to the first draft and are not substantive changes. The changes can be summarized as follows:

16.36.050 A. 7c. Clarifying that the rent increase provisions in the lifetime lease for a unit that ceases to be covered by the Rent Adjustment Ordinance, must be consistent with the Rent Adjustment Ordinance.

16.36.050 A. 7c. Deleted a provision regarding payment of the Rent Program Fee. Rent Program Fees on converted units would be paid in accordance with the Rent Program Fee ordinance.

16.36.050 A. 7d. Clarifying the language regarding who is eligible for a lifetime lease.

16.36.070 I. Clarifying that the pilot program only applies to buildings covered by the Rent Adjustment Ordinance.

16.36.070 I. 6. Sets out the specific fund where the Condominium Conversion Impact Fee will be deposited. Clarifies when the fee must be paid.

16.36.070I. 7. Deletes the last sentence regarding the purpose of the section which was erroneously included in the draft. The purpose of the section is set out in the recitals and is to avoid involuntary displacement of tenants as a result of the conversion.

Item: _____

CED Committee

November 10, 2009

REVISED

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 NOV -5 PM 5:00

APPROVED AS TO FORM AND LEGALITY

DRAFT

City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

An Ordinance Adopting the Following:

1) Amending OMC Chapter 16.36, Condominium Conversions, As Follows:

a) To Establish a Pilot Program Providing an Alternate Means for a Limited Number of High Rent Apartments to Convert to Condominiums and to Establish Increased Tenant Protections in Buildings so Converted and to Establish an Impact Fee for Such Conversions;

B) To Facilitate a Limited Number of Established and Qualified Tenancy in Common Properties to Convert to Condominiums by Eliminating the Requirement for Obtaining Conversion Rights; and

C) To Clarify That Residential Rental Units Newly Constructed or Created from Nonresidential Space Can Use the Conversion Rights They Generated To Convert Those Rental Units To Condominiums on a One for One Basis.

2) Amending the Master Fee Schedule to Set the Amount of the Impact Fee for Higher Rent Condominium Conversions at \$15,000.

WHEREAS, the City of Oakland has adopted laws and policies to increase homeownership opportunities for Oakland residents; and

WHEREAS, said laws and policies include, but are not limited to, City Council Resolution Number 69661 adopted in 1993, the Housing Element of the City's General Plan updated in 2004, and the Consolidated Plan updated 2005 and submitted to the United States Department of Housing and Urban Development; and

WHEREAS, despite these laws and policies, the City's homeownership rate has not increased, according to the most reliable data from the U.S. Census; and

WHEREAS, the rate of homeownership in the City of Oakland is only 41%, which is much lower than the homeownership rates of the County of Alameda (55%), the State of California (57%), and the nation (67%), according to Year 2000 U.S. Census reports; and

WHEREAS, homeownership provides numerous benefits such as enabling Oakland residents to invest their income to build financial security rather than paying rent to a landlord; and

WHEREAS, the 2006 Strategic Plan for the United States Department of Housing and Urban Development states, "Homeownership allows an individual or family to make an investment in the future. A home is an asset that can grow in value and provide capital to finance future needs of a family, such as college education or retirement. Homeownership helps stabilize neighborhoods, strengthen communities, and stimulate economic growth. Research has shown that homeownership improves outcomes for children on a number of dimensions including school achievement and dropout rates;" and

WHEREAS, conversion of rental units to condominiums will increase revenue to the City because of more transfers of real property resulting in more real estate transfer taxes, increasing the assessed valuation on the converted properties thereby increasing property tax revenue; and increasing the number of parcels on which parcel taxes are assessed; and

WHEREAS, existing residential buildings that currently serve as rental housing could serve as homeownership housing for Oakland residents; and

WHEREAS, the City desires to prevent displacement caused by tenants choosing not to purchase or not being able to purchase their rental units that are converted to homeowner condominiums; and

WHEREAS, the City's existing condominium conversion ordinance, adopted in 1981, does not generate any funding for affordable housing, does not have an annual cap on the number of units that can be converted, and does not require any reporting of conversion activities; and

WHEREAS, condominium conversions of rental units that have market rents which are at least 35% higher than the average market rents in Oakland would not reduce the supply of rental units available to low and moderate income households if taken off the rental market, so long as the tenancies of existing tenants are preserved; and

WHEREAS, an average rent of \$2,100 per month for units in a rent controlled building would approximate a rent level at or above that for moderate income households if the rent were at market, and rents for such units would be chargeable at market rates if the units were vacant pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code §1954.53; and

WHEREAS, buildings with rental units in the impact areas set out in O.M.C. 16.36.050 are required to obtain conversion rights from newly constructed rental housing within the impact area in order to convert to condominiums and owners of larger buildings have

historically had difficulty obtaining sufficient conversion rights to convert an entire building;
and

WHEREAS, the purposes for requiring conversion rights in order to convert existing rental units to condominiums was to maintain the level of non-subsidized rental units in the City and to provide additional economic incentive to build new rental housing because of the potential sale of the conversion rights thereby created to condominium converters; and

WHEREAS, converting existing rental units to condominiums removes rental units from the market, therefore it is appropriate for owners of properties converted to condominiums that are permitted by the city to convert without obtaining conversion rights to mitigate the removal of the rental units by providing funds equivalent to what they would otherwise pay for conversion rights to fund additional housing opportunities through renovating housing vacated through foreclosures or other appropriate housing programs; and

WHEREAS, City staff conducted a survey of sales of conversion rights and has determined that \$15,000 per unit is a reasonable amount for purchasing conversion rights and that this amount is less than costs of subsidizing the renovation or construction of a new housing unit affordable to a moderate income household; and

WHEREAS, the City wishes to avoid displacement of existing tenants and therefore will require owners of buildings seeking to convert higher rent rental units under this amendment to Chapter 16.36 to offer existing tenants lifetime leases and require that such units cannot be sold separately during the term of the lifetime lease;

WHEREAS, the City wishes to assess the impact and issues pertaining to conversions of higher rent rental units and for this reason wishes to establish the amendments to the ordinance for the conversion of higher rent units in the impact areas as a pilot program with a limitation of 300 units that can be converted over a two-year period with the amendments sunseting unless otherwise further extended by the City Council prior to the end of the two-year pilot program; and

WHEREAS, a number of smaller rental properties have formed as "tenants in common" for ownership/occupancy purposes; and

WHEREAS, tenants in common properties often have difficulty financing and transferring ownership because, although each unit is occupied by an owner, the units are not owned individually; and

WHEREAS, the City does not wish to promote removal of rental units through the tenants in common mechanism, existing tenants in common owned properties have already removed rent units from the market and therefore their conversion to condominiums would not further erode the number of rental units in the City; and

WHEREAS, the City wishes to assess the impact and issues pertaining to conversions of higher tenants in common units and for this reason wishes to establish the amendments to

the ordinance for the conversion of tenants in common units as a pilot program with a limitation of 60 units that can be converted over a two-year period with the amendments sunseting unless otherwise further extended by the City Council prior to the end of the two-year pilot program; and

WHEREAS, some properties that were constructed as rental units not subdivided as condominiums seek to convert to condominiums within less than seven years after construction was completed and the property obtained a certificate of occupancy, but notwithstanding that such properties would have created conversion rights for 100% of the rental units created, the Planning Commission has only permitted the owners to use 50% of the conversion rights to convert the units on the same property to condominiums resulting in properties of half subdivided units and half as one parcel; and

WHEREAS, newly constructed rental properties should be able to use 100% of the conversion rights generated on the property that generated the conversion rights so long as the conversion rights would otherwise be available for use on other rental properties; and will

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act for the City of Oakland have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities, which includes an exemption under subsection (k) for dividing existing multiple family residences into common interest ownership), and Section 15183 (projects consistent with the general plan), this project is categorically exempted; and

WHEREAS, the City Council has received and considered the reports and other documents accompanying this Ordinance as well as public testimony; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Oakland Municipal Code Chapter 16.36 Condominium Conversions is Hereby Amended as Follows: (section numbers and titles are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through~~ type; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed)

Chapter 16.36 CONDOMINIUM CONVERSIONS

Sections:

16.36.010 Conversion defined.

16.36.020 Notice of intention to convert.

16.36.030 Notice to prospective tenants.

16.36.040 Tenant notifications.

16.36.050 Tenant rights and the preliminary tenant assistance program.

16.36.060 Tentative map and tentative parcel map requirements for conversions.

- 16.36.070 Action on the tentative map or tentative parcel map.
- 16.36.080 Final tenant assistance program.
- 16.36.090 Information to be filed with final and parcel maps.
- 16.36.100 Information on final and parcel maps.
- 16.36.110 Notice of subdivision public report or notice of start of sales program.
- 16.36.120 Information to be given to prospective buyers.
- 16.36.130 Noise insulation standards.
- 16.36.140 Submission of informational reports.

16.36.010 Conversion defined.

"Conversion" means a proposed change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, from residential rental realty to a stock cooperative project containing five or more dwelling units, a condominium project, or a Community Apartment project, regardless of whether substantial improvements have been made to such structures. Whenever an occupancy permit has been issued by the city for a multifamily building, any attempt thereafter to make the project a condominium, community apartment, or stock cooperative shall constitute a conversion. Those multifamily residential buildings having building permits but for which no initial certificate of occupancy has ever been issued and which have never been occupied shall be deemed excluded from the definition of "conversion." This Section shall not apply to a "limited - equity housing cooperative" as defined in Section 11003.4 of the Business and Professions Code.

(Prior code § 7-7.01)

16.36.020 Notice of intention to convert.

At least sixty (60) days prior to filing a tentative map or tentative parcel map for a conversion, the subdivider shall provide all tenants of the building to be converted, individually and in writing, with the following notice:

To the occupant(s) of

 (Address)

The owner(s) of this building, at (address), plan(s) to file an application for a (tentative map or tentative parcel map) with the city to convert this building to a (condominium, community apartment or stock cooperative project). You shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

 (signature of owner or owner's agent)

 (date)

Accompanying this notice will be written information describing, in general, what steps and actions the subdivider and others, including governmental agencies, will or must take in order for the building to be converted. It will include information on how the tenant will be involved, informed, and assessed at each step in the process and on what rights the tenant has, whether mandated by state or local government or whether

provided voluntarily by the subdivider. It will also include the date on which the subdivider will most likely file the tentative map or tentative parcel map as well as the approximate date on which the subdivider expects the final subdivision public report, if any, to be issued.

Also accompanying this notice will be the notice of tenant rights and the subdivider's preliminary tenant assistance program, both as set forth in Section 16.36.050, and the information concerning tenant notifications as set forth in Section 16.36.040.

All persons who subsequently become tenants shall also be provided with the above notices.

For each application, all documents referred to in this section shall be approved by the Director of City Planning as to form, correctness, and completeness.

The written notice to tenants required by this section shall be deemed satisfied if it complies with the legal requirements for service by mail.

(Prior code § 7-7.02)

16.36.030 Notice to prospective tenants.

Commencing at a date not less than sixty (60) days prior to the filing of a tentative map or tentative parcel map, the subdivider shall give notice of such filing, in the form shown below, to each person applying after such date for rental of a unit in the building to be converted. This notice must be given to the prospective tenant prior to the acceptance of any rent or deposit from said prospective tenant.

The notice shall read as follows:

To the prospective occupant(s) of

(Address)

The owner(s) of this building, at (address), has filed or plans to file an application for a (tentative map or tentative parcel map) with the city to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the City or Oakland and, if five or more units are involved, until after a public report is issued by the Department of Real Estate. If you become a tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

(signature of owner or owner's agent)

(date)

I have received this notice on

(date)

(prospective tenant's signature)

Prospective tenants shall also receive all accompanying documents described in Section 16.36.020 and all documents set forth in Sections 16.36.040 and 16.36.050.

If the subdivider fails to give notice pursuant to this section, he or she shall pay to each

prospective tenant who becomes a tenant and who was entitled to such notice, an amount equal to the sum of the following:

- A. Actual moving expenses incurred when moving from the subject property, but not to exceed a maximum amount, if any, that is specified in the final tenant assistance program, as set forth in Section 16.36.080, or five hundred dollars (\$500.00), whichever is greater; and
- B. The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed five hundred dollars (\$500.00). (Prior code § 7-7.03)

16.36.040 Tenant notifications.

Each tenant shall be given a notice containing the information as set forth below:

A. The city shall provide tenants with the following notices:

1. Each tenant will be given at least ten days' prior written notice of the date, time and place of any public hearing held by the Advisory Agency on the tentative map or tentative parcel map. Such notice shall also advise tenants of their right to appear and be heard.

2. Each tenant will receive a copy of any city report or recommendation concerning tentative map or tentative parcel map at least three days prior to any meeting for which the map appears on the agenda.

3. Each tenant will be given at least three days' prior written notice of the date, time and place of a hearing held to consider an appeal from an action of the Advisory Agency. Such notice shall also advise tenants of their right to appear and be heard. Subdivider shall provide the city with a sufficient number of stamped envelopes addressed to tenants to allow the city to carry out the above responsibilities, such number to be determined by the Director of City Planning.

B. In addition to the notice of intention to convert as set forth in Section 16.36.020 and the notice to prospective tenants as set forth in Section 16.36.030, the subdivider shall also be responsible for the following:

1. Each tenant will be given at least five days' prior written notice of the date, time and place of any meeting held on the tentative map or tentative parcel map other than those set forth in subsections (A)(1) and (A)(3) of this section.

2. Each tenant will be notified individually and in writing of any action taken on the tentative map or tentative parcel map by the Advisory Agency, City Planning Commission, or City Council within two days of such action being taken.

3. Each tenant will be given written notification within ten days of approval of a final map or a parcel map.

4. Each tenant in buildings with five or more units will be given at least ten days' prior written notice that an application for a subdivision public report will be submitted to the California Department of Real Estate. Such notice shall also state that tenants will be notified within five days of subdivider's receipt of the final subdivision public report and that copies will be available upon request; it will also state subdivider's estimate of when the report will be issued.

5. Each tenant in buildings with five or more units will be given written notification within five days of subdivider's receipt of the final subdivision public report. If the conversion involves four or less units, in which case no public report is issued, each

tenant will be given ten days' prior written notice of the start of subdivider's sales program.

The Director of City Planning shall be given a copy of all of the above notices at the same time as the tenants receive them. The written notices required by this section shall be deemed satisfied if they comply with the legal requirements for service by mail. (Prior code § 7-7.04)

16.36.050. Tenant rights and the preliminary tenant assistance program.

A. With regard to any conversion as defined in Section 16.36.010, each tenant shall have the following minimum rights which shall be set forth in a notice of tenant rights.

1. After receipt of this notice, each tenant will be entitled to terminate his or her lease or rental agreement without any penalty upon notifying the subdivider in writing thirty (30) days in advance of such termination; provided, however, that this requirement shall cease upon notice to the tenant of the abandonment of subdivider's efforts to convert the building.

2. No tenant's rent will be increased from the date of issuance of this notice until at least twelve (12) months after the date subdivider files the tentative map or tentative parcel map with the city; provided, however, that this requirement shall cease upon abandonment of subdivider's efforts to convert the building.

3. No remodeling of the interior of tenant-occupied units shall begin until at least thirty (30) days after issuance of the final subdivision public report or, if one is not issued, after the start of subdivider's sales program. (For purposes of this chapter, the start of subdivider's sales program shall be defined as the start of tenants' ninety (90) days first-right-of-refusal period set forth below.)

4. Each tenant shall have an exclusive right to contract for the purchase of his or her unit or, at the tenant's option, any other available unit in the building upon the same or more favorable terms and conditions that such units will be initially offered to the general public, such right to run for at least ninety (90) days from the issuance of the final subdivision public report or, if one is not issued, from the start of subdivider's sales program.

5. Each tenant shall have a right of occupancy of at least one hundred eighty (180) days from the issuance of the final subdivision public report or, if one is not issued, from the start of subdivider's sales program, prior to termination of tenancy due to conversion.

6. Tenants in units containing a tenant sixty-two (62) years or older shall be provided a lifetime lease on their unit or, at tenant's option, on any other available unit in the building. Such leases, to commence no later than the date of issuance of the final subdivision public report, or, if one is not issued, no later than the start of subdivider's sales program, shall be subject to the following conditions:

a. Tenants shall have the option of cancelling the lease at any time upon thirty (30) days' written notice to the owner.

b. Tenants cannot be evicted except for just cause.

c. Right of occupancy shall be nontransferable.

d. The first year's base monthly rent for the unit shall be set at no more than the rent existing on the unit one year prior to the filing of the tentative map or tentative parcel map increased by no more than seventy-five (75) percent of the

percentage increase in the residential rent component of the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland Metropolitan Area (Bay Area Rental CPI) from the date one year prior to the filing of the tentative map or tentative parcel map to the effective date of the lifetime lease.

e. Subsequent rent adjustments, if any, may be made no sooner than one year from the effective date of the lifetime lease, shall be limited to no more than one per year, and the percentage increase in the Bay Area Rental CPI for the most recent twelve (12) month period.

f. Notwithstanding the above, no rent increase shall exceed any rent increase guidelines adopted by the city.

g. Except as provided hereinabove, terms and conditions of the lifetime lease shall be the same as those contained in tenant's current lease or rental agreement.

The preliminary tenant assistance program, as set forth in subsection B of this section, shall make provision for the above minimum rights on the terms set forth above or on terms more favorable to the tenant.

7. This subsection applies only to Tenants in properties converted pursuant to Sections 16.36.070 I ("higher rent buildings"). The subdivider must offer a lifetime lease to each tenant for the unit in which that tenant resides at the time the subdivider files the application to convert. Such lease, if accepted by the tenant within 6 months from the time of offer, shall commence no later than the date of issuance of the final subdivision public report, or, if one is not issued, no later than the start of subdivider's sales program, and shall be subject to the following conditions:

a. A tenant shall have the option of cancelling the lease at any time upon thirty (30) days' written notice to the owner;

b. The lease shall include a termination clause that provides that the rental agreement can only be terminated for a cause pursuant to Oakland or state law in which the tenant is at fault;

c. In the event that the converted unit ceases to be covered by Oakland's Rent Adjustment Ordinance, the lifetime lease must provide that subsequent rent adjustments, if any, may be made consistent with standards set out in the Rent Adjustment Ordinance and its implementing regulations. Disputes over rent increases may be mediated or arbitrated, including using Rent Adjustment Program staff.

d. Only an Original Tenant is eligible for a lifetime lease. An Original Tenant is a person who, on the date the subdivider files the application to convert, (i) is a legal tenant obligated on the rental agreement and (2) whose principal place of residence is the unit to be converted. The lifetime lease terminates whenever the last of the original tenant or tenants ceases to occupy the unit as her or his principal place of residence and may not be assigned nor sublet by an Original Tenant without the express written consent of the subdivider. However, an Original Tenant may include as an occupant a spouse, domestic partner, child, parent, grandchild, or grandparent who is in occupancy at the time the lifetime lease is executed, or other person approved by the subdivider as an occupant, or as otherwise required by law and subject to any occupancy restrictions in the tenant's rental agreement prior to the lifetime lease; but such other occupants do not have status as Original Tenants,

e. This subsection applies to the subdivider, including any successor

in interest or assignee.

B. The subdivider's preliminary tenant assistance Program (PTAP) shall consist of at least two parts: efforts to minimize tenant displacement, and tenant relocation assistance.

1. In the first part of the PTAP, subdivider shall describe those incentives and inducements that would increase the potential for, and ability of, tenants to become owners in the conversion. Subdivider shall also include actions and procedures to enable hard-to-relocate tenants to remain as tenants.

2. The second part of the PTAP shall include all relocation and moving assistance and information to be provided to each tenant and all steps the subdivider will take to ensure the successful relocation of each tenant in the event that conversion takes place and the tenant chooses not to purchase a unit or remain as a tenant. In both parts of the PTAP, subdivider shall give particular attention to specific steps that will be taken to assist the elderly, disabled, and other tenants who may encounter difficulty in finding new quarters.

(Prior code § 7-7.05)

16.36.060 Tentative map and tentative parcel map requirements for conversions. In addition to other matters required in this title, the subdivider shall submit to the Advisory Agency, along with the tentative map or tentative parcel map of a conversion, one copy of each of the notices and other documents to be provided to all tenants and prospective tenants pursuant to Sections 16.36.020 through 16.36.050. Subdivider shall also certify on the tentative map or tentative parcel map the following:

A. That all tenants have received all documents set forth in Sections 16.36.020, 16.36.040 and 16.36.050 of the Oakland Municipal Code; and that all prospective new tenants have received and will receive said documents, along with the notice set forth in Section 16.36.030 of the Oakland Municipal Code;

B. That all tenants and Director of City Planning will receive all notices as set forth in subsection B of Section 16.36.040 of the Oakland Municipal Code, and that they will receive all information as required in Section 16.36.080 of the Oakland Municipal Code. The Director of City Planning may require other information to be filed with the tentative map or tentative parcel map which, in the Director's opinion, will assist in determining whether the project is consistent with the purposes set forth in Section 16.04.010 or will assist in making any of the findings as set forth in Section 16.36.070. Any such determination by the Director of City Planning may be appealed to the City Planning Commission in the manner set forth in Section 17.132.020 of the zoning regulations of the city.

The Director of City Planning may waive the tenant notification requirements contained in Sections 16.36.020 and 16.36.040 where the building proposed for conversion is not tenant-occupied at the time of tentative map or tentative parcel map application. Where the building proposed for conversion is not tenant-occupied and the subdivider declares under penalty of perjury that no unit within the building will be rented prior to final or parcel map approval, the Director of City Planning may waive the tenant assistance requirements set forth in Sections 16.36.050 and 16.36.080.

(Prior code § 7-7.06)

16.36.070 Action on the tentative map or tentative parcel map.

Action by the Advisory Agency shall be governed, in addition to that set forth in Section 16.08.030, by the following:

- A. The Advisory Agency shall deny approval of a tentative map for the conversion of five or more housing units unless it finds that every converted unit will be replaced with a rental unit added to the City's housing supply. Such replacement, if made in accordance with provisions of this chapter, shall be found to avoid the negative impact the conversion would otherwise have had on the City's rental housing supply. Accordingly, a conversion of five or more housing units shall be approved, subject to meeting all other requirements prescribed by state and city, if the subdivider agrees that, prior to final map approval, subdivider will, in a manner acceptable to the Advisory Agency, demonstrate that subdivider owns "conversion rights" equal in number to the units proposed for conversion. "Conversion rights" are generated by projects which add housing units to the city's rental supply, and one conversion right is equivalent to one housing unit within such a project. Conversion rights may be generated by project(s) either undertaken by the subdivider or by others from whom subdivider has obtained or acquired such "rights" in a legally binding manner. In addition to being used for the conversion of housing units on another property, conversion rights may be used on the property that generated the conversion rights on a one for one basis. No conversion rights shall be generated by project(s) which are intended to become the property of the Oakland Housing Authority. Subdivider shall provide the Advisory Agency with information concerning the intended location and type of rental units that will generate the conversion rights of which subdivider intends to demonstrate ownership.
- B. Project(s) generating conversion rights may involve new rental construction, increasing the number of units in an existing residential rental building, or converting a nonresidential building to residential rental units.
- C. Conversion rights may also be generated by bringing back into the supply, through major rehabilitation, a residential rental building that has been vacant for at least one year prior to commencement of work on the rehabilitation project. Anyone attempting to generate conversion rights by rehabilitating a vacant residential rental building must demonstrate to the satisfaction of the Director of City Planning that the building was indeed vacant for at least one year, that the work did indeed involve major rehabilitation, and that the building was not vacated for the purpose of generating conversion rights. For purposes of this chapter, rehabilitation shall be deemed "major" if it equals twenty (20) percent of the total value of the building after rehabilitation.
- D. Conversion rights may also be generated by the construction of a condominium, community apartment, or stock cooperative project if the owner of such project, for which final map approval has been obtained, makes an agreement in writing with the city that for a period of not less than seven years, the owner will offer the units in the project to the public as conventional rental units subject to a lease that shall contain no commitment for later purchase of the unit, the form of said lease to be approved by the Director of City Planning. Subsequent sale of any unit prior to the expiration of the seven-year rental period shall be subject to the same terms and conditions stated in said written agreement.
- E. Tentative map approval of the conversion must take place no later than seven

years from the issuance of a certificate of occupancy on the project(s) generating the conversion rights. Project(s) for which building permits were issued prior to March 18, 1980 cannot generate conversion rights.

F. No units in the building approved for conversion shall be sold until a certificate of occupancy has been issued by the City Building Official on the project(s) generating the conversion rights. For buildings of five or more units, subdivider shall request the California Department of Real Estate in writing to not issue the final subdivision public report until said Department has received written notification by the subdivider to issue said report. Said notification must include written approval from the Director of City Planning, which approval shall not be given until all necessary certificates of occupancy have been issued.

G. Notwithstanding the above, the Advisory Agency shall deny approval of a tentative map or tentative parcel map if it finds that the conversion is proposed to take place in the "conversion impact area," an area of the city whose rental housing supply has been negatively impacted by previous conversions. The conversion impact area shall contain two sections: the primary section consisting of Census Tracts 4034, 4035, 4036, 4037, 4039, 4040, and 4041; and the secondary section consisting of Census Tracts 4038, 4042, 4043, 4052, and 4053.

H. A conversion which would otherwise be denied due to its location within the conversion impact area shall be approved, subject to meeting all other requirements prescribed by state and city, if the subdivider agrees to replace (using the conversion rights method described above) each converted unit with a rental unit according to the following: For conversions to take place in the primary section of the conversion impact area, conversion rights must be generated within the primary section; for conversions to take place in the secondary section, conversion rights must be generated within the conversion impact area.

I. Pilot program for conversion of "higher rent" rental housing units within a conversion impact area and that are covered by the Rent Adjustment Ordinance (O.M.C. Chapter 8.22). As an alternative to the requirement for the subdivider to obtain conversion rights for the number of units to be converted pursuant to subsections 16.36.070 A through H above, commencing on the effective date of this enactment of this subsection 16.36.070 I and ending two years thereafter, the Advisory Agency shall accept applications for a maximum of 300 "higher rent" rental housing units provided such units meet the following qualifications:

1. The average rent for units in the building to be converted must be at least \$2,105 per month for the month immediately preceding the application;

3. The building must be at ninety percent (90%) occupancy for the month immediately preceding the application;

4. The building must contain at least one hundred (100) rental units;

5. No rental unit on the property was removed from the rental market by use of the Ellis Act nor were any of the units vacated by threatened use of the Ellis Act within five (5) years prior to the date of application for the conversion;

6. The subdivider must pay a Condominium Conversion Impact Fee to the City of Oakland for each unit to be converted. The Fee shall be deposited into the Affordable Housing Trust Fund. The amount of the Fee will be set in the Master Fee schedule. The Fee must be paid not later than the time of final approval of the

subdivision map and after the exhaustion of any appeals challenging the approval of the map and with final approval and recording of the final map conditioned on the fee payment.

7. The subdivider must offer a lifetime lease pursuant to subsection 16.36.050J to all tenants not purchasing a unit who lawfully occupy the property at the time that the application for a tentative map is submitted. The lifetime lease shall provide that the subdivider and all subsequent owners shall set all future increases shall according to the terms and provisions of the Oakland Rent Stabilization Ordinance, and further, as a condition of obtaining rights from the City of Oakland as set forth in subsection 6 above, the owner must agree that he or she will not separately sell any unit that is occupied by a tenant who has a lifetime lease; such proscription on sale shall run with the land and bind the subdivider and subsequent owners of the building, as long as any lifetime lease remains in effect;

8. The City will record a deed of trust against any unit in the subdivided property that is subject to a lifetime lease to secure performance under this Subsection 16.36.070I, and permitting release of the deed of trust whenever a tenant with a lifetime lease vacates voluntarily or evicted for cause.

9. The subdivider must offer each existing tenant a first right of refusal to purchase her or his unit at a discount of at least ten percent below the asking price or selling price for a comparable unit in the building whenever the subdivider is authorized to start marketing the converted units pursuant to state law.

10. The subdivider must comply with all other applicable provisions of this Chapter 16.36 except as modified by this subsection 16.36.070I.

J. Pilot program for the conversion of established tenancy-in-common ownership buildings of five (5) units or greater located in a conversion impact area. Units in properties owned by residents as tenants-in-common may be converted to condominiums without requiring conversion rights if the property meets the following conditions:

1. The property is located within an impact area;

2. Two Thirds (2/3) of the units in the property have been occupied continuously by owners as tenants-in-common of the property as their principal place of residence for at least two years prior to the date of the enactment of this subsection 16.36.070J; for purposes of the section owner occupancy includes occupancy by the owners' children or parents.

3. No rental unit on property was removed from the rental market by use of the Ellis Act nor were any of the units vacated by threatened use of the Ellis Act within five (5) years prior to the date of application for the conversion;

4. No more than one hundred (100) units may be converted pursuant to this subsection 16.36.070J;

5. This subsection, 16.36.070J, expires two years from the date of the enactment of this subsection 16.36.070J.

6. The subdivider must comply with all other applicable provisions of this Chapter 16.36 except as modified by this subsection 16.36.070J.

I. Notwithstanding other provisions of this section, the Advisory Agency shall deny approval of a tentative map or tentative parcel map if it finds that the subdivider vacated units in the building proposed for conversion in order to avoid providing payments and other benefits to tenants as described in the tenant assistance program. It shall also deny approval if it finds that the subdivider's preliminary tenant assistance program, as set forth in Section 16.36.050, or any submission required by Section 16.36.020, 16.36.040 or 16.36.060 is unacceptable or otherwise inconsistent with the purpose of this title as it concerns the city's housing goals and policies.
(Prior code § 7-7.07)

16.36.080 Final tenant assistance program.

If the tentative map or tentative parcel map is approved, subdivider shall prepare a final tenant assistance program (FTAP) in conformity with any conditions of approval relating to the tenant assistance program. Within two days of receiving such approval, subdivider shall distribute a copy of the FTAP to each tenant and to the Director of City Planning. If the Advisory Agency approves the map, the FTAP shall be accompanied by a written notice advising tenants of the action of the Advisory Agency and informing them of their right to appeal the decision to the City Council, if a tentative map is involved, or to the City Planning Commission, if a tentative parcel map is involved, within fifteen (15) days of the date of the decision.
(Prior code § 7-7.08)

16.36.090 Information to be filed with final and parcel maps.

In addition to other matters required in this title, the following shall be filed with the final or parcel map:

- A. A copy of the final tenant assistance program as described in Section 16.36.080;
- B. A copy of the notice of subdivision public report or notice of start of sales program as set forth in Section 16.36.110;
- C. A certificate of occupancy issued by the City Building Official subsequent to the date of filing of the tentative map or tentative parcel map;
- D. One copy each of the following documents more fully described in subsections A, B and C of Section 16.36.120: written notice to be given to prospective buyers; property report; structural pest report; and report describing the building's utilities, storage space, and laundry facilities;
- E. For tentative map or tentative parcel map approvals involving conversion rights, evidence, in the manner specified by the Advisory Agency as set forth in Section 16.36.070, that the subdivider owns conversion rights equal in number to the units to be converted.

No final or parcel map shall be approved until the above requirements have been met.
(Prior code § 7-7.09)

16.36.100 Information on final and parcel maps.

In addition to other matters required in this title, the information on the final or parcel map shall show, under the owner's certificate, the following:

- A. For final maps only, a statement pursuant to Section 66427.1 of the State of

California Subdivision Map Act;

B. A statement certifying that copies of the property report, structural pest report, and utilities/storage space/laundry facilities report, all more fully described in Section 16.36.120, were submitted along with subdivider's request for a certificate of occupancy inspection; and, if a final map, that these documents plus a copy of the notice to be given to prospective buyers, more fully described in Section 16.36.120, have been or shall be filed with the California Department of Real Estate in the subdivider's application for public report; and, if a final map, that the subdivider has requested or shall request that the above-mentioned notice to be given to prospective buyers be included in the subdivision public report;

C. A statement certifying that the Director of City Planning and each tenant in the building to be converted has received or will receive a notice of final or parcel map approval and, for buildings with five or more units, a notice of subdivision public report application as set forth in subsections (B)(3) and (B)(4) of Section 16.36.040;

D. A statement certifying that the Director of City Planning and each tenant in the building to be converted will receive the notice of subdivision public report or notice of start of sales program as set forth in Section 16.36.110;

E. For tentative map or tentative parcel map approvals involving conversion rights, a statement certifying, in conformity with Section 16.36.070, that no unit in the conversion will be offered for sale until a certificate of occupancy will have been issued on those project(s) generating conversion rights;

F. For tentative map approvals involving conversion rights, a statement certifying, in conformity with Section 16.36.070, that the California Department of Real Estate has been or will be requested not to issue the final subdivision public report until so notified in writing by the subdivider, such request to include written approval of the Director of City Planning to the issuance of said report;

G. A statement certifying, in conformity with Section 16.36.130, that no unit in the conversion will be offered for sale until the unit conforms to the noise insulation standards promulgated in Title 25 of the California Administrative Code, Section 1092, or its successor;

H. A statement certifying that informational reports will be submitted to the City Planning Director as required by and set forth in Section 16.36.140.

No final or parcel map shall be approved until the above requirements have been met. (Prior code § 7-7.10)

16.36.110 Notice of subdivision public report or notice of start of sales program. Within five days of receipt of the final subdivision public report described in Section 11018 of the California Business and Professions Code, the subdivider of a building with five or more units shall notify, in writing, the Director of City Planning and all tenants in the building to be converted of the date of issuance of said report. For buildings with four or less units, the subdivider shall give the Director of City Planning and all tenants in the building to be converted ten days' prior written notice of the start of the sales program. Said notices, to be accompanied by the subdivider's final tenant assistance program as set forth in Section 16.36.080, shall also state the following:

A. That, for buildings of five or more units, a copy of the final subdivision public report is available to each tenant upon request;

B. That no remodeling of the interior of tenant-occupied units shall begin until at least thirty (30) days after issuance of said report or start of the sales program;

C. That each tenant has an exclusive right to contract for the purchase of the tenant's respective unit, or, at the tenant's option, any other available unit in the building upon the same terms and conditions that such units will be initially offered to the general public or upon terms more favorable to the tenant as indicated in the subdivider's final tenant assistance program attached to this notice, such right to run for a period of not less than ninety (90) days from the date of issuance of said report or the start of the sales program;

D. That each tenant has a right of occupancy of at least one hundred eighty (180) days from the issuance of said report or the start of the sales program or until the expiration of tenant's lease, or as specified in the subdivider's final tenant assistance program attached to this notice, whichever is longer, prior to termination of tenancy due to conversion. This provision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including but not limited to the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the California Civil Code;

E. That the subdivider will provide each tenant not wishing to purchase a unit with up-to-date information of available apartments of comparable size, price, and location within the city and will take other steps as indicated in the subdivider's final tenant assistance program attached to this notice.

The written notices required by this section shall be deemed satisfied if they comply with the legal requirements for service by mail.

(Prior code § 7-7.11)

16.36.120 Information to be given to prospective buyers.

All prospective buyers of converted units shall be given written notices, stating the existence of a seventy-two (72) hour period following an agreement to purchase, during which period a prospective buyer may withdraw from the agreement to purchase without penalty or cost. The written notice shall also state the availability of the following:

A. A property report prepared and signed by an appropriately licensed contractor or engineer. Said report shall:

1. Describe the condition and useful life of the roof and foundations, and the mechanical, electrical, plumbing, and structural elements of all existing structures on the property, and

2. Estimate future property maintenance costs;

B. A structural pest report prepared and signed by a licensed pest control operator, conforming to California Business and Professions Code, Section 8516;

C. A report describing the building with regard to whether utilities are separately metered; water shutoff valves; availability of protected storage space in addition to closet space ordinarily contained within a unit; and laundry facilities, if any;

D. A statement, signed by a person experienced in the field of acoustical testing and engineering, certifying that the converted unit conforms to the noise insulation standards promulgated in Title 25 of the California Administrative Code, Section 1092, or its successor.

(Prior code § 7-7.12)

16.36.130 Noise insulation standards.

No unit in a building approved for conversion shall be offered for sale unless it conforms to the noise insulation standards promulgated in Title 25 of the California Administrative Code, Section 1092, or its successor.

(Prior code § 7-7.13)

16.36.140 Submission of informational reports.

Within thirty (30) days of the issuance of the final subdivision public report on the conversion of a building with five or more units or the start of the sales program in a building of four units or less, subdivider shall submit to the Director of City Planning informational reports pertaining to tenants of the conversion displaced since the filing of the tentative map or tentative parcel map, and to buyers of the units being converted. The information, as required, shall be submitted on forms to be provided by the City Planning Department. These informational reports shall be submitted annually, and they shall continue to be submitted until all units in the conversion have been sold.

(Prior code § 7-7.14)

16.36.150 Regulations by City Administrator

The City Administrator is authorized to develop regulations to implement this Chapter.

Section 2. Amendments to Master Fee Schedule.

Ordinance number 12880 C.M.S. (Master Fee Schedule), as amended, is hereby amended to establish a Condominium Conversion Impact Fee in the amount of \$15,000 by inserting this fee in the Master Fee Schedule under Community and Economic Development Agency, Miscellaneous section E.

Section 3. The City Council finds and determines that this Ordinance is exempt from the requirements of the California Environmental Quality pursuant to the exemptions stated in the recitals above .

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____