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DEPUTY CITY ATTORNEY

## **REVISED DRAFT**

### **OAKLAND CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**AN ORDINANCE TO IMPLEMENT THE "AFFORDABLE HOMES FOR OAKLANDERS PLAN":**

**(1) AMENDING O.M.C. CHAPTER 16.36 (CONDOMINIUM CONVERSIONS) TO DO THE FOLLOWING: PERMIT OWNERS OF RESIDENTIAL PROPERTY TO PAY FEES FOR A HOUSING TRUST FUND IN-LIEU OF PROVIDING CONVERSION RIGHTS FOR THE CONVERSION TO HOMEOWNER CONDOMINIUMS; REQUIRE PURCHASE PRICE DISCOUNTS AND CLOSING COST ASSISTANCE FOR TENANTS PURCHASING THEIR UNITS; INCREASE RELOCATION ASSISTANCE TO TENANTS WHO DO NOT PURCHASE THEIR UNITS; ESTABLISH A LIMIT OF 800 CONVERTED UNITS PER YEAR; AND REQUIRE AN ANNUAL REPORT, AND**

**(2) AMENDING THE MASTER FEE SCHEDULE TO APPLICATION FEES FOR CONDOMINIUM CONVERSIONS**

**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

Item: 14  
CED Committee  
November 28, 2006

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

**WHEREAS**, the City wishes to encourage existing tenants to purchase the rental units in which they reside both to provide Oaklanders homeownership opportunities and to minimize potential tenant displacement because of conversions of rental housing to homeowner condominiums; and

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

**WHEREAS**, tenants displaced from rental housing may go from regulated rents to higher rents due to vacancy decontrol and, therefore, should be provided reasonable compensation to mitigate the effects of involuntary displacement; 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**, on October 18, 2006, and November 1, 2006, the City Planning Commission heard testimony regarding the proposed ordinance and on November 1, 2006, it forwarded its comments to the City Council; and

**WHEREAS**, on November 14, 2006 and November 28, 2006, the Community and Economic Development Committee met and received public comments on the proposed ordinance; and

**WHEREAS**, City staff performed analysis based on the typical costs subdividers have been paying to determine the appropriate in-lieu fee for the ordinance; and

**WHEREAS**, the City Council has received and considered the reports and other documents accompanying this Ordinance, the Planning Commission comments, as well as public testimony; and

**WHEREAS**, the City will incur additional costs for processing applications and enforcing the Ordinance; now therefore

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

**SECTION 1.** This Ordinance shall be known as the "Affordable Homes For Oaklanders Plan".

**SECTION 2.** Title 16, Chapter 16.36 of the Oakland Municipal Code is hereby amended to read as follows:

Chapter 16.36 ~~CONDOMINIUM CONVERSIONS TO HOMEOWNER~~  
CONDOMINIUMS

**16.36.010 Condominium-Defined-Definitions**

"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 estate 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.

"Subdivider" has the same meaning as Cal. Gov. Code 66423.

"Tenant" means a person entitled, by written or oral agreement, to the use or occupancy of a rental unit converted or proposed to be converted.

"Prospective Tenant" means a person who submits a complete application to rent a rental unit on a parcel on which an application to convert to condominiums has been submitted under this Chapter.

**16.36.020 Notice to Tenants 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~~ Subdivider shall (1) provide the names and addresses of Tenants to the Planning Department and (2) 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 the following:

1. wWritten 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 2. 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.;~~

3. Referral to City-designated homebuyer counseling agencies.

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. Copies of all notices provided must be filed with the City Planning Department with the application for conversion or within 10 days of being provided to the Tenant, whichever is later.

If the Subdivider fails to give notice pursuant to this section, he or she shall pay to each Tenant who was entitled to such notice and who does not purchase a rental unit and vacates the rental unit at any time after the date when the Subdivider should have given the notice required by this section, an amount equal to the sum of the following:

- A. The sum of \$1,000 to compensate the Tenant for moving expenses incurred when moving from the subject property; and
- B. An amount equal to six months of the rent in effect when the notice to vacate is given, or the amount of rental assistance in the Tenant Assistance Program, whichever is greater; and
- C. The first and last month's rent on the Tenant's new rental unit immediately after moving from the subject property or the sum of \$2,000, whichever is greater.

**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. Copies of all notices provided must be filed with the City Planning Department with the application for conversion or within 10 days of being provided to the Tenant, whichever is later.

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, and who does not purchase a rental unit and vacates the rental unit at any time after the date when the Subdivider should have given the notice required by this section 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. The sum of \$1,000 to compensate the Tenant for moving expenses incurred when moving from the subject property; and~~

B. An amount equal to six months of the rent in effect when the notice to vacate is given; or the amount of rental assistance in the Tenant Assistance Program, whichever is greater; and

C. The first and last month's rent on the tenant's Tenant's new rental unit, if any, immediately after moving from the subject property but not to exceed five hundred dollars (\$500) or the sum of \$2,000, whichever is greater.

#### **16.36.040 Additional 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 and 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.

**16.36.050 Tenant Rights, and the Preliminary Tenant Assistance Program and Purchase Discount and Assistance.**



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. Section 16.36.050C sets out the required minimum favorable terms and conditions for the initial offer for the purchase of a unit.

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. This right to continued occupancy applies except whenever the Tenant's tenancy is terminated based on the fault of the Tenant pursuant to Code of Civil Procedure Section 1161 or, if the Tenant's unit is subject to O.M.C. 8.22.300, pursuant to O.M.C. 8.22.360A1 through 7.

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.

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. Subdivider shall also include actions and procedures to enable hard-to-relocate Tenants to remain as Tenants.

3. 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.

C. The Subdivider's TAP must include the following components:

1. All Tenants have been referred to a City-designated homebuyer counseling agency as required by Section 16.36.020.

2. Each Tenant who was a Tenant of record one year prior to the submission of the application for the subdivision may purchase his or her unit or any other available unit at the property and Subdivider shall give the Tenant a reduction in the purchase price of the unit in an amount that equals or exceeds 10% of the sales price for the unit based on its market value. The City Administrator or her designee shall develop regulations for resolving disputes over market value for units. The Subdivider is also required to pay an amount not to exceed \$15,000 for the following closing costs: escrow fees, recording fees, notary fees, document preparation/delivery fees, title insurance, City and County transfer tax, and third party reports required by the lender (such as appraisal reports and inspection reports).

3. If the Tenant elects not to purchase, the Subdivider must pay the Tenant an amount equal to six months of the rent in effect when the notice to vacate is given.

4. The discounts and relocation payments in 2, and 3 above are on a unit by unit basis, one discount or relocation per unit to be shared by the Tenants of record and are not assignable to any other person.

5. If the Subdivider sells, leases, transfers, or assigns any of the subdivided units, the new owner, lessee, transferee, or assignee will assume all Subdivider's unfulfilled obligations under the tenant assistance program.

#### **16.36.060 Tentative Map and Tentative Parcel Map Requirements for Conversions.**

A. 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:

**REVISED DRAFT**

11

Item: 14 \_\_\_\_\_  
CED Committee  
November 28, 2006

1. 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;

2. 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.

B. 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.

C. 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.

**16.36.070 Requirements for Conversion Rights or In Lieu Payments and 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. 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. The conversion rights so generated can be applied to the conversion of the building being rehabilitated. 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. Notwithstanding the foregoing sections A-H, inclusive, the Advisory Agency shall grant approval of a tentative map for a Condominium conversion that would ordinarily require conversion rights, if the Subdivider agrees that, prior to final map approval, Subdivider will make an In Lieu Fee payment into a Housing Trust Fund which shall be used for any housing assistance programs for very low, low, and/or moderate income Oakland residents approved by the City Council. All loans made from the Fund shall require that repayments are deposited into the Fund. Such In Lieu Fee payment, if made in accordance with provisions of this chapter, shall be found to avoid the negative impact the conversion may otherwise have had on the City's rental housing supply for very low, low, and moderate income households.

J. The In Lieu Fee payment referred to in this section is \$3,000 per room for conversion of rental units located in census tracts 4034, 4035, 4036, 4037, 4038, 4039, 4040, 4041, 4042, 4043, 4052, and 4053. For rental units that are not located in those census tracts, the In Lieu payment is \$2,000 per room. The number of rooms in a residential unit that the Subdivider seeks to convert shall be determined in accordance with the number listed in the City of Oakland Report of Residential Building Records ("3 R" report). The amount of the In Lieu fees set out in this Section 16.36.070J will be adjusted each calendar year starting January 1, 2008 by the amount of increase in the Consumer Price Index.

All Items, for the San Francisco-Oakland-San Jose Area, for the previous year as published by the U.S. Department of Labor. The adjusted amount of the In Lieu Fee for each year will be included in the Master Fee Schedule.

K. The City will refund to the Subdivider the In Lieu Fee payments if all of the units in the residential property are sold to Tenants in the building.

L. Beginning with January 1, 2007, the total number of units that the City can approve for conversion to condominium in any calendar year cannot exceed 800. Each application will be processed in order of the date the application is deemed complete by the Advisory Agency. Once 800 units are approved, the Advisory Agency may grant no further approvals in that calendar year. Accepted and complete applications for units above the annual cap will remain on file and be processed in order of date each application is deemed complete, and will be acted upon in the next calendar year.

M. 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.

**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.

**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.

#### **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.

**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 as are required by Section 16.36.050C 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.

**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.

**16.36.130 ~~Noise Insulation~~ Structural Standards.**

A. 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.

B. Fire Protection. No unit in a building approved for conversion shall be offered for sale unless the building contains the following fire safety measures installed according to applicable codes:

1. Smoke alarms connected to the electrical system;
2. Hallway emergency exit lighting;
3. Fire fighter "Knox boxes" at the main entry with door keys;
4. Prominent exterior and interior building and unit addressing.

**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.

**16.36.150 Regulations.**

The City Administrator or her or his designee may adopt regulations for the purpose of implementing this Chapter 16.36. Such regulations cannot conflict

with this Chapter or the intent of this Chapter. Before any regulations become final, they must be announced and made available to the public for at least 30 days prior to their taking effect so that the public may provide written comments on the proposed regulations.

#### **16.36.160 Annual Reports to the City Council**

Within sixty (60) days of the end of the calendar year the Director of the Community and Economic Development Agency shall report to the City Council information regarding the following:

- A. The number and location of homeowner conversions approved.
- B. Changes to the City's percentage of owner occupied and renter occupied units.
- C. Number of Tenants who purchase a converted unit.
- D. The amount of conversion fees received by the City and placed in the Housing Trust Fund.
- E. Any regulations adopted by the City Administrator to implement this Chapter.

#### **16.36.170 General Remedies.**

##### A. Violations of this Chapter.

1. Violations of this chapter may be enforced administratively or by civil remedies as set forth in this section or as otherwise specifically set out in this chapter.
2. In addition to the remedies provided in this chapter, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city in abatement and prosecution of the violation.
3. The remedies available in this chapter are not exclusive and may be used cumulatively with any other remedies in this chapter or at law.

##### B. General Administrative Remedies Applicable for Violations After Approval of the Final Map.

1. Administrative Citation. Anyone who violates specified provisions of this chapter may be issued an administrative citation. Administrative citations shall be issued in accordance with O.M.C Chapter 1.12 (Administrative Citations). The specified sections of this chapter that may be enforced by administrative citation shall be set out in regulations.
2. Administrative Assessment of Civil Penalties. Anyone who violates specified provisions of this chapter may be administratively assessed a civil penalty. Civil penalties for violations are assessed in accordance with O.M.C Chapter 1.08 (Administrative Assessment of Civil Penalties) as a major violation under that

Chapter 1.08. Specified sections of this chapter that may be enforced with civil penalties shall be set out in regulations.

3. The City Administrator shall designate staff authorized to issue administrative citation and civil penalties, if necessary.

4. Each and every day or any portion of a day during which a violation of any provision of this chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly.

C. General Civil Remedies. An aggrieved party may bring a civil action for injunctive relief or damages, or both, for any violation of the provisions of this chapter or any requirements of a final subdivision map. In the event a violator has been found to have willfully or maliciously violated this ordinance or the terms of the final subdivision map and subject to the requirements of Civil Code Section 3294, any award of damages will be trebled.

**16.36.180 Severability.**

This Chapter 16.36 shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity.

**16.36.190 Non-waiverability.**

Any provision, whether oral or written, in or pertaining to a rental or other agreement whereby any provision of this chapter is waived or modified by a Tenant or Prospective Tenant is void.

**16.36.200 Applicability—Effective date of chapter.**

The amendments to this chapter enacted in December 2006 take effect on January 1, 2007, except as follows:

A. The following provisions do not apply to applications deemed complete by the Advisory Agency before July 1, 2008 on parcels located outside the conversion impact areas described in Section 16.36.070G and that contain fewer than five dwelling units:

1. Conversion rights or in lieu fee requirements contained in Section 16.36.070;
2. The closing cost allowance authorized in 16.36.050C.

B. The amendments, including the newly established annual cap on converted units set out in Section 16.36.070L, do not apply to parcels for which applications are received and deemed complete by the Advisory Agency before January 1, 2007 or to parcels which would otherwise require conversion rights under

Chapter 16.36 as in effect prior to January 1, 2007, but for which the subdivider has, in the opinion of the Advisory Agency, obtained prior to January 1, 2007 a binding commitment to acquire conversion rights for each of the units sought to be converted.

**SECTION 3.** The Master Fee Schedule is hereby amended as follows:

Amend Engineering Fees: (Page M-5 FY2006-2007)

F. Tract Map:  
3 Surcharge/lot Existing fee: \$228  
Proposed fee: \$728

Amend Engineering Fees: (Page M-7 FY2006-2007)

T. Parcel Map:  
2 Final  
Add sub a Surcharge/lot  
Existing fee: \$0  
Proposed fee: \$500

Amend Planning Fees: (Page M-27 FY2006-2007)

Subsection B: Applications under the Oakland Subdivision Regulations

6. Condominium Conversion: Parcel Map  
Add sub a Surcharge/lot  
Existing fee: \$0  
Proposed fee: \$500

7. Condominium Conversion: Tentative Map  
Add sub a Surcharge/lot  
Existing fee: \$0  
Proposed fee: \$500

**SECTION 4.** The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. The reports to the Planning Commission, dated October 18, 2006 and November 1, 2006.
2. The reports to the Community and Economic Development dated Committee November 14, 2006 entitled Consideration of revisions to the City of Oakland Subdivision regulations (Title 16 of the Oakland Municipal Code—Condominium Conversions) regarding conversion of rental housing to condominium ownership as requested by Council members De La Fuente, Brooks and Chang; changes include substituting a fee to be paid to a Housing Trust Fund rather than the requirement for purchasing a conversion right in the private market; establishment of a cap of 1,500 units per year and changes to the

required tenant assistance program; New Chapter 16 would be entitled "Conversions to Homeownership"

3. The reports to the Community and Economic Development Committee dated November 28, 2006, entitled Report re An Ordinance To Implement The "Affordable Homes For Oaklanders Plan":

(1) Amending O.M.C. Chapter 16.36 (Condominium Conversions) to do the Following: Permit Owners of Residential Property to Pay Fees for a Housing Trust Fund In-Lieu of Providing Conversion Rights for the Conversion to Homeowner Condominiums; Require Purchase Price Discounts and Closing Cost Assistance for Tenants Purchasing Their Units; Increase Relocation Assistance to Tenants Who do not Purchase Their Units; Establish a Limit of 800 Converted Units Per Year; and Require An Annual Report, and  
(2) Amending the Master Fee Schedule to Application Fees for Condominium Conversions.

4. The report to the City Council dated December 5, 2006, entitled, entitled Report re An Ordinance To Implement The "Affordable Homes For Oaklanders Plan":

(1) Amending O.M.C. Chapter 16.36 (Condominium Conversions) to do the Following: Permit Owners of Residential Property to Pay Fees for a Housing Trust Fund In-Lieu of Providing Conversion Rights for the Conversion to Homeowner Condominiums; to Require Purchase Price Discounts and Closing Cost Assistance for Tenants Purchasing Their Units; Increase Relocation Assistance to Tenants Who do not Purchase Their Units; Establishing a Limit of 800 Converted Units Per Year; and Require An Annual Report, and  
(2) Amending the Master Fee Schedule to Application Fees for Condominium Conversions.

**SECTION 5.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

**SECTION 6.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Planning and Zoning, 250 Frank H. Ogawa Plaza, 2nd floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

**SECTION 7.** The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall

nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

**SECTION 8.** The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA) based upon the following, each of which provides a separate and independent basis, CEQA Guidelines section 15301(k); CEQA Guidelines section 15061(b) (3); and CEQA Guidelines section 15183.

**SECTION 9.** This Ordinance shall be effective as set forth therein. This Ordinance shall be published once in the Oakland Tribune, a newspaper of general circulation, printed and published in Alameda County and circulated in the City of Oakland, within fifteen days after adoption.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006**

PASSED BY THE FOLLOWING VOTE:

AYES-                    BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,  
                                  QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

**ATTEST: \_\_\_\_\_**  
**LATONDA SIMMONS**  
**City Clerk and Clerk of the Council**  
**of the City of Oakland, California**

**REVISED DRAFT**

24

Item: 14  
CED Committee  
November 28, 2006