

OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND

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2006 DEC -1 AM 10:27

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December 5, 2006

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Honorable Members of the City Council

Re: Affordable Homes for Oaklanders Plan
(Condominium Conversions)
Amendments to Ellis Act Ordinance

Dear Honorable Councilmembers:

At its November 28, 2006 meeting, the Community and Economic Development Committee requested that the City Attorney's Office prepare a number of amendments to the proposed amendments to Chapter 16.36, the "Affordable Homes for Oaklanders Plan" responding to legal and policy issues. Attached are the amendments the Committee requested.

The Committee also requested amendments to O.M.C. 8.22.400, the Ellis Act Ordinance. Those amendments are also attached.

Also attached is a revision to Section 8 of the proposed Ordinance, one of the findings pertaining to the California Environmental Quality Act.

Very truly yours,

John A. Russo
City Attorney

By:

Richard F. Illgen
Deputy City Attorney

Attachments

Requested Amendments to Affordable Homes for Oaklanders Plan (Condominium Conversions)

Mandatory Amendment

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. As a further separate and independent basis, the City Council finds and determines that the adopted 2004 Housing Element Mitigated Negative Declaration contemplated these proposed amendments and that previous environmental determination is adequate here and no further environmental review is required, pursuant to CEQA Guidelines sections 15162, 15163 and 15164.

Amendments Requested to be Prepared by Community and Economic Development Committee

1. Council Reconsideration of Regulations [Revised Section] 16.36.150 Regulations.

A. Regulations by City Administrator. 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. Regulations will be deemed final within 60 days of the date made available to the public unless reconsidered and modified by the City Council.

B. Reconsideration by City Council. Concurrent with releasing proposed regulations to the public the City Administrator shall also provide them to City Councilmembers. Any Councilmember may seek reconsideration of the proposed regulations or any specific regulation within 45 days of the proposed regulations being provided to Councilmembers. In order to reconsider a regulation, a Councilmember must make a request to the Rules and Legislation Committee or other committee designated by the City Council. The City Council must address the proposed regulations within 90 days of being released to the public or the regulations are deemed final.

C. Initial Regulations. For those sections of this Chapter that require the City Administrator to develop regulations, the City Administrator shall develop an

initial set of regulations within 30 days of enactment of the amendments to this Chapter.

2. Priorities for Acceptance of Applications for Converted Units [Revised Section]

16.36.070 Requirements for Conversion Rights or In Lieu Payments and Action on the Tentative Map or Tentative Parcel Map.

L. Annual Cap.

1. Beginning January 1, 2007, the total number of units that the City can approve for conversion to condominium in any calendar year cannot exceed 800. The priority for approval of applications up to the 800 annual cap will be based on the following factors:

a. The percentage of units with proposed sales to existing Tenants. The sales must be to Tenants who are considered qualified to purchase as determined by a City-designated homebuyer counseling program or other information as determined by the City Administrator.

b. A geographic distribution of units to avoid concentration of converted units, to target areas of the City where homeownership would have a greater beneficial impact, and to distribute conversions throughout the City.

c. Time of application.

2. The City Administrator shall develop regulations setting out procedures and a system for implementing the priorities set out in this Section, including a preapplication for giving a property owner the right to submit an application for conversion if approved based on the priorities.

3. Minimum Tenant Intent To Purchase. [New Subsection]

16.36.070

N. Minimum Tenant Intent To Purchase.

1. No application for conversion shall be approved unless there are substantial numbers of tenants who have indicated their intent to purchase their unit or another unit in the building. This intent shall be evidenced by the submittal in writing by no less than [insert number] percent of the tenants of intent to purchase forms, as provided by the City.

2. In obtaining or soliciting intent to purchase forms from Tenants, Subdividers shall comply with any restrictions set forth in the California Business and Professions Code and Regulations of the Real Estate Commissioner. In calculating the total number of units necessary to satisfy this provision, there shall be included in the [insert number] percent requirement any units in which the Tenant qualified for and has expressed an intent to obtain a lifetime lease pursuant to Subsection 16.36.050A5.

3. Any Tenant intent to purchase forms obtained by way of an inducement of the Subdivider to provide benefits to that tenant beyond those established by the Code shall be so identified and the specific representations of the Subdivider shall be set forth in detail. All such intent to purchase forms shall become a matter of public record and the Subdivider shall be required to comply with his or her representations as conditions of approval.

4. The intent to purchase forms, once signed by a Tenant, shall be irrevocable by said Tenant, for purposes of compliance with this Section, provided, however, that the City shall invalidate any such form upon a determination that the Subdivider has used coercion, fraud, duress, misrepresentation or threat in connection with obtaining or soliciting such form.

4. Owner-Occupancy Requirements for Converted Units [new section]

A. As a condition of approval of the subdivision, all converted units are required to be initially owner-occupied and not rented for a period not less than **[insert number]** years and not rented during this period, except for the following:

1. Tenants in residence at the time of approval of final subdivision map.
2. Temporary rentals when an owner-occupant moves with the expectation of returning to the unit as an owner-occupant within not more than three years and complies with O.M.C. 8.22.360A6
3. When an owner demonstrates that sale of the unit represents a severe financial hardship or cannot be sold to an owner-occupant, pursuant to regulations developed pursuant to this Chapter.
4. A purchaser acquiring ownership through a foreclosure or lender acquiring the unit through a deed in lieu of foreclosure, provided that the unit may be renter-occupied.
5. An owner of a unit who rents the unit in violation of this section may be subject to civil penalties in an amount not to exceed **\$(insert amount)** per year.
6. An owner who rents to a tenant in violation of this section must give the tenant relocation in accordance with section 16.36.020 and an option to purchase and a first right to purchase the units at the discounted price in accordance with section 16.36.050.
7. An appropriate title restriction to implement this restriction shall be recorded in the subdivision map and against every converted unit.

B. For purposes of this Section, "Owner-occupancy" requires occupancy by a person who is an "Owner of Record" in O.M.C. 8.22.320. ("Owner of record" means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.)

5. Relocation Payment Implementation [new section]

Relocation Payment Implementation

A. Eligibility for Relocation Payments. A tenant becomes eligible for relocation payments under Sections 16.36.020, 16.36.030, or 16.36.050 whenever a tenant gives the Subdivider or subsequent owner a notice of intent to vacate or the Subdivider or subsequent owner gives the tenant a notice terminating tenancy or notice to quit.

B. Time for payment. The Subdivider or subsequent owner, as the case may be, must make any relocation payment within fifteen (15) days of either the tenant serving the Subdivider with a notice to vacate or the landlord serving the tenant with a notice to vacate or to quit provided that the tenant agrees not to contest the landlord's notice to terminate tenancy or notice to quit in an unlawful detainer based on the notice to terminate tenancy or notice to quit. If the tenant does not so agree, then the relocation payment is not due unless the owner prevails in the unlawful detainer. If the owner prevails in the unlawful detainer, the relocation payment must be paid to the tenant prior to the owner seeking a writ of possession for the tenant to vacate the unit. In the event that an additional amount is due for first and last months rent pursuant to Sections 16.36.020 or 16.35.030, the Subdivider or subsequent owner must make the additional payment within ten (10) days of receipt of documentation and a request for payment by the tenant.

C. Failure to make relocation payments. Failure to make the relocation payments in the manner and within such times as prescribed in this Section is not a defense to an unlawful detainer action. However, if an owner fails to make the relocation payment as prescribed, the tenant may file an action against the owner and, if the tenant is found eligible for the relocation payments, the tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the tenant's attorney's fees. Should the owner's failure to make the payments as prescribed be found to be in bad faith, the tenant shall be entitled to the relocation payments plus an additional amount of three times the amount of the relocation payments and the tenant's attorney's fees

6. Buildings Where Tenants Evicted

16.36.070 [Revised subsection]

I. Notwithstanding other provisions of this section, the Advisory Agency shall deny approval of a tentative map or tentative parcel map if it finds any of the following:

1. Any Tenant in the property to be subdivided has vacated after being served with a notice to terminate tenancy pursuant to Civil Code § 1946 or any other notice given that does not require fault or improper conduct by the tenant (such as Code of Civil Procedure § 1161) within the [insert number] years preceding the date of the application;

2. 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

3. 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

7. Benefits for Senior Tenants [revised section]

16.36.050

A.6. Rights and benefits Available to Tenants 62 Years or Older.

Whenever unit contains a Tenant sixty-two (62) years or older, the Subdivider must offer to the Tenant either:

a. A life estate in the converted unit under the following terms:

1. The total monthly costs to the tenant equal the tenant's rent on the date the Subdivider is authorized to market the units.

ii. Total monthly costs include the mortgage payment, property taxes, common area expenses, homeowner dues.

iii. The life estate ends on the earlier of the Tenant vacating the unit permanently or the Tenant's death.

iii. The Subdivider or the Subdivider's assignee owns the reversion.

iv. The Subdivider shall assist the Tenant in obtaining however, it the tenant does not obtain financing through other sources, the Subdivider finance the life estate purchase; or

b. A right to purchase a fee interest pursuant to Section 16.36.050 at a purchase discount of [insert number] percent and a closing cost/down payment allowance of [insert number]; or

c. In lieu of a 1 or 2, the Subdivider may offer the Tenant a lease on the following terms:

i. The lease is not terminable by the Subdivider or any subsequent owner of the unit during the tenant's lifetime except up fault or breach by the tenant during the tenant's lifetime.

ii. The tenant may terminate the lease on thirty (30) days notice.

iii. The rent may only be increased annually by 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;

iv. Subsequent rent increases 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.

v. The lease cannot be assigned nor sublet. Roommates as caretakers or close relatives or domestic partners are permitted, provided that any person other than the qualifying tenant must agree to vacate whenever the Tenant vacates.

vi. The lease must be entered into within 30 days after the tenant elects not purchase the agreement under the tenant's purchase rights or the expiration of the purchase right, but in any event before any transfer or sale by the Subdivider.

vii. All terms of the tenant's existing rental agreement not in conflict with the above, shall be incorporated into the lease.

3. The City Administrator may develop regulations and form agreements or terms to implement this Section.

4. The Subdivider must submit all proposed forms of agreements to the City for approval as to compliance with this Section.

8. Former Tenants Rights to Purchase at Discount

16.36.010 Definitions

"Former Tenant" means a Tenant who vacated a rental unit after being served with a notice to vacate pursuant to California Civil Code § 1946 or similar notice used when the Tenant is not at fault within the [insert number] years preceding a Subdivider's application to convert.

Insert the term "Former Tenant" in appropriate places in the following sections:

16.36.020

16.36.040

16.36.050

16.36.150