

## *AGENDA REPORT*

**CITY HALL - ONE FRANK H. OGAWA PLAZA, 2<sup>ND</sup> FLOOR - OAKLAND - CA 94612**

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**SUBJECT:** Modifications to Condominium Conversion Ordinance  
**DATE:** November 21, 2019

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### **RECOMMENDATION**

Councilmember Kalb recommends that the City Council adopt the following:

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 16.36, CONDOMINIUM CONVERSIONS, TO: (1) EXTEND THE CONVERSION RIGHTS REQUIREMENT TO TWO- TO FOUR-UNIT RESIDENTIAL BUILDINGS; (2) LIMIT CONVERSION RIGHTS GENERATION TO RESIDENTIAL BUILDINGS WITH BUILDING PERMITS ISSUED AFTER CONVERSION APPLICATION; (3) ENHANCE TENANT RIGHTS AND NOTICE REQUIREMENTS TO TENANTS; AND (4) MAKE OTHER MODIFICATIONS; AND TO DIRECT CITY ADMINISTRATOR OR DESIGNEE TO STUDY ALTERNATIVE METHODS OF (A) ENSURING ONE-FOR-ONE REPLACEMENT OF RENTAL UNITS IN THE CITY AS A RESULT OF CONDOMINIUM CONVERSIONS AND (B) INCREASING AFFORDABLE HOME OWNERSHIP AND REDUCING DISPLACEMENT OF RENTERS SUBJECT TO CONVERSION; AND ADOPT CEQA EXEMPTION FINDINGS

### **EXECUTIVE SUMMARY**

Councilmember Kalb respectfully asks the City Council to approve new requirements for condominium conversions. This legislation aims to stabilize neighborhoods, protect tenants from displacement, preserve rental housing supply, and stimulate construction of new rental housing.

The need for amendments to the existing Condominium Conversion regulations, as part of Strategies to Prevent Displacement of Long-Time Residents, have been highlighted by the Mayor Schaaf's Housing Cabinet and reflected in Oakland's Housing Element<sup>1</sup> which was adopted by the Oakland City

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<sup>1</sup> City of Oakland Housing Element, <https://cao-94612.s3.amazonaws.com/documents/oak050615.pdf>

Council on December 9<sup>th</sup>, 2014 and in “A Roadmap Toward Equity”<sup>2</sup> from February 2015. The city is undergoing rapid gentrification and displacement. Proposed amendments to the Condo Conversion requirements is one of the steps attempting to slow down those processes that are causing suffering to our tenants and adding to the changing the character and the spirit of our communities.

**ANALYSIS**

**Scope of the Problem – Current Oakland Housing Landscape**

Policies protecting the residential rental housing stock are particularly important in Oakland. Nearly sixty percent of Oakland residents are renters in an estimated 97,254<sup>3</sup> rental units. Renters generally earn less than homeowners. The annual median income for a household renting in Oakland is \$54,048, significantly less than the \$121,901 annual median household income for homeowners<sup>4</sup>. And although a majority of all racial and ethnic groups in Oakland are renters, Black and African American residents are more than twice as likely to rent versus own their housing.

Moreover, the majority of Oakland tenants are already rent burdened, which is defined by the U.S. Department of Housing and Urban Development as spending in excess of 30 percent of household income on housing costs. In addition, over 26,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on housing<sup>5</sup>.

Oakland's residential rental market has been growing increasingly expensive in the last several years. As summarized in the table below, median rental prices increased significantly between July 2014 and July 2015. During the same period, fewer rental units were available to the public.

**Table #1. Price and availability of residential rental market**

Unit Type	Change in Price July 2014 - 2015		Change in Available Supply (Oakland)
	(Oakland)	(Select Neighborhoods)	
Studio	+35%	+38%	-37%
1-Bedroom	+2%	+30%	+13%
2-Bedroom	+40%	+54%	-7%
3-Bedroom	+19%	+36%	-7%

In February 2016, the median rental price for a one-bedroom unit in Oakland was \$2,250 per month (\$27,000 per year), a 13.6 percent increase in costs over February 2015. The median rental price for

<sup>2</sup> A Roadmap Toward Equity, <https://www.policylink.org/sites/default/files/pl-report-oak-housing-070715.pdf>

<sup>3</sup> US Census Bureau, American Community Survey, 2018: ACS 1-Year Estimates Data Profiles, Table ID: DP04 [https://data.census.gov/cedsci/table?q=Total%20Rental%20Housing%20Units%20Oakland%20California&g=1600000US0653000&hidePreview=false&table=DP04&tid=ACS DP1Y2018.DP04&t=Housing%20Units&syar=2020&vintage=2018&cid=DP04\\_0001E&layer=place&lastDisplayedRow=66](https://data.census.gov/cedsci/table?q=Total%20Rental%20Housing%20Units%20Oakland%20California&g=1600000US0653000&hidePreview=false&table=DP04&tid=ACS DP1Y2018.DP04&t=Housing%20Units&syar=2020&vintage=2018&cid=DP04_0001E&layer=place&lastDisplayedRow=66)

<sup>4</sup> US Census Bureau, American Community Survey, 2018: ACS 1-Year Estimates Subject Tables, Table ID: S2503 <https://data.census.gov/cedsci/table?q=renters%20income%20in%20Oakland%20California&g=1600000US0653000&lastDisplayedRow=29&table=S2503&tid=ACSST1Y2018.S2503&t=Income%20and%20Earnings>

<sup>5</sup> City of Oakland Housing Element, <https://cao-94612.s3.amazonaws.com/documents/oak050615.pdf>

a two-bedroom unit in February 2016 was \$2,700 per month (\$32,400 per year), an 18.9 percent increase over costs in February 2015.

Rental prices continued to increase in 2017, 2018 and 2019. In November 2019, the median rental price for a one-bedroom unit in Oakland was \$2,500 per month (\$30,000 per year), a 11.1 percent increase in costs over November 2018, and the median rental price for a two-bedroom unit in November 2019 was \$3,000 per month (\$36,000 per year), an 10.3 percent increase over costs in November 2018<sup>6</sup>.

Due to soaring rental prices, existing Oakland tenants are unlikely to find new rental housing in Oakland if displaced from their unit. Based on the median annual income of households renting in Oakland, a one-bedroom would cost 74 percent of annual household income, or 85 percent for a two-bedroom unit. This may explain in part why Oakland experienced a 24 percent decline in the population of Black and African American residents and a 16.7 percent decline in number of children living in the city between 2000 and 2010.

According to city Planning and Building Department data, since 2005 approximately 978 rental units have been converted to condominiums in two to four unit buildings. Condominium Conversion peaked between 2005 and 2008 with approximately 147, 309, 171, and 129 units converted during each respective year.<sup>7</sup> It would be logical to assume that many of these units had more than one renter living in them just prior to conversion.

**Table #2. Condominium Conversion of 2-4 Unit Properties by Year**

<b>Year</b>	<b>Total Number of Units</b>
2019	17
2018	55
2017	14
2016	51
2015	46
2014	31
2013	9
2012	21
2011	13
2010	40
2009	34
2008	125
2007	150
2006	277
2005	95
<b>Total</b>	<b>978</b>

<sup>6</sup> Zumper National Rent Report: November 2019 <https://www.zumper.com/blog/2019/10/zumper-national-rent-report-november-2019/>

<sup>7</sup> A Roadmap Toward Equity, <https://www.policylink.org/sites/default/files/pl-report-oak-housing-070715.pdf>

Currently, converting a residential property with four or fewer rental units to for-sale condominiums does not require replacement rental units. Buildings with five or more residential units are already required to replace rental units they convert to condominium uses.

**Overview of the Condo Conversion requirements in other communities**

Some of our neighboring cities have also recognized problems associated with losing rental housing stock due to condominium conversions and adopted regulations to mitigate these issues. Table 3 summarizes main legislative components, such as lifetime leases, OMI eviction prohibitions, and restrictions on conversions following certain types of tenant vacancy in the City of Berkeley and San Francisco.

**Table 3. Summary of Condo Conversion: Oakland, Berkeley, SF**

	Oakland (current)	Berkeley (BMC Chapter 21.28, Attachment B)	SF: expedited conversion program (SF Subdivision Code Sec 1396.4, Attachment C)
Lifetime leases	Required for Tenants 62 years old or older (16.36.050(A)(6))	Not required but significantly incentivized by substantial reduction in mitigation fees.	Required to be offered. Reduction in conversion fee for each unit re which a lifetime lease is entered into.
Owner Move In (OMI) eviction prohibitions	None	Prohibited as long as unit remains Tenant’s principal residence.	Not specified in regulations. Presumably OMI not allowed during lifetime lease.
Restrictions on conversions following certain vacancies	None	Apply if within prior: <ul style="list-style-type: none"> <li>• 10 years: OMI or removed from market by demolition;</li> <li>• 5 years: no fault evictions.</li> </ul>	Apply if after 3/31/13 tenant left for reasons other than voluntarily or for cause.

**Berkeley**

Impact Fees and Lifetime leases

Berkeley requires that any owner converting housing units to condominiums pay an affordable housing mitigation fee in order to mitigate the loss of affordability that results from the conversion of rental units to condominium units. (BMC 21.28.070). The formula for calculating that fee is: the difference between condominium ownership costs minus the rental costs, divided by the current fixed mortgage rate. (BMC 21.28.070). [Condominium

ownership costs = mortgage payments, taxes, HOA fees x 12. Rental Costs = current rent x 12 (if not occupied = comparable rental rate x 12)]

This fee is reduced if the owner agrees to limit future rent increases for the life of the property for any resident tenants to no more than 65% of the CPI increase. If the property contains 2 units, the fee for each unit will then be capped at 4% of the sales price of the unit. If the property contains 3 or more units, the fee for each unit will be capped at 8% of the sales price. (BMC 21.28.080).

#### OMI Eviction Prohibitions

No tenant may be evicted for occupancy by the owner or occupancy by any relative of the owner so long as the unit remains the tenant's principal place of residence. (BMC 21.28.090(C)(4)).

#### Restrictions on Conversions

Applications to convert will be denied if: (1) within the preceding 10 years the owner filed a statement to Ellis the property or started proceedings to recover the unit for demolition or for OMI; or (2) within the preceding 5 years a vacancy was created by a no-fault or constructive eviction. (BMC 21.28.090(B))

#### Other Points of Note

- Berkeley allows conversion of only 100 rental units per year. (BMC 21.28.040)
- The mitigation fee is allocated as follows: 10% to Housing Trust Fund program delivery; 10% to Housing Trust Fund monitoring and enforcement; 80% to finance Housing Trust Fund activities. (BMC 21.28.070).
- The owner shall provide all prospective buyers with a report on the seismic safety of the property. (BMC 21.28.090(C)(8))

### **San Francisco**

These procedures apply only to the expedited conversion option, which is available only to certain delineated property categories (related to whether the buildings participated in but were not selected for the 2012 or 2013 lottery and have been at least partially owner-occupied for certain periods of time. (SFSC 1396.4(b)))

#### Impact Fees and Lifetime Leases

Any application for conversion pursuant to 1396.4 must include a certification that any non-purchasing tenants have been given written offers to enter into a lifetime lease. (1396.4(g)(1)). Under a lifetime lease, tenants only need to give 30-days notice, and rent increases are limited. (1396.4(g)(2)(A))

Prior to final approval, owners must record against the building title: offers of lifetime leases; lifetime lease agreements between tenants and property owners; and agreement between the City and property owners re the lifetime lease. (1396.4(g)(3)).

The fee for conversion is \$20,000 per unit. (1396.4(e)) [this amount was established by a nexus study conducted in 2011]. These fees are reduced by the number of lifetime leases entered into the property: for one unit, by 10% for each unit, for two units, by 20% for each unit, for three units, by 30% for each unit. (1396.4(h)).

The agreement between the City and the property owner includes a clause that states that the owner is receiving two types of contributions/incentives in exchange for the lifetime lease: (1) the fee reduction; and (2) the opportunity to convert sooner than via the prior lottery system.

### OMI Eviction Prohibitions

It is not specified in the Code, but presumably Owner Move Ins are prohibited during the duration of the lease.

### Restrictions on Conversions

Applicants must certify that any tenant who vacates after 3/31/13 and before recordation of the final map did so voluntarily or if any eviction occurred it was not pursuant to 37.9(a)(8)-(14). If pursuant to (11) or (14) the applicant must certify the original tenant reoccupied after the temporary eviction. (1396.4(10)). If violation, the department will disprove the application or subject map. (1396.4(11)).

[37.9(a)(8): OMI or relative move-in; (9) recover to see in accord with approved condo conversion; (10) demolish/otherwise permanently remove from housing use; (11) temporarily remove from housing use to carry out capital improvements or rehab work; (12) permanent removal for substantial rehab; (13) Ellis; (14) temporarily recover for lead remediation or abatement work.]

### Other Points of Note

- For buildings converting under the lottery system, only disabled and senior renters got lifetime leases; all other tenants got one-year rent controlled leases

## **OAKLAND CONDOMINIUM CONVERSION LEGISLATION SCOPE – AN OVERVIEW OF THE PROPOSED AMENDMENTS**

Proposed Amendments to the Ordinance will:

- 1. Expand all Condominium Conversion requirements to cover 2-4 unit buildings currently exempted from the replacement unit requirement**

- 2. Require 1-for-1 replacement of converted units through direct development of new housing or acquisition of conversion rights from new construction.**
  - Allows conversion rights to only be generated by housing that starts construction after the condo conversion application is initiated.
  - Allow Accessory Dwelling Unit (ADU)s to be eligible to be used for Conversion Rights.
- 3. Require replacement units to be similar in size and number of bedrooms.**
  - Require replacement units (generating Conversion Rights) must be comparable in size, number of bedrooms and amenities to the units being converted.
  - Tighten up the definition of "substantial rehabilitation" (which can also generate conversion rights)
- 4. Prohibit Condominium Conversions of units for which Conversion Rights have been sold.**
  - Closes the seven-year loophole by disallowing the sale of Conversion Rights and conversion of the same units into condos seven years later. Therefore, replacement units (i.e., units generating Conversion Rights) are kept permanently committed to rental through a recorded deed restriction.
- 5. Provide tenants in converting units with protections against involuntary displacement and rent increases.**
  - Improve current requirement for tenant notifications.
  - Extend the relocation assistance requirements to cover all tenants, not just seniors.
  - Clarify tenant rights that apply to both the current and subsequent owners.
  - Include protections against constructive eviction (construction work and other nuisances causing people to "voluntarily" leave).
  - If eviction and rent protections cannot be enforced, tenants must be provided with substantial relocation benefits.
  - Provide adequate notice for tenants who move in after a condo conversion is initiated.
- 4. Minimize displacement by expanding requirements for lifetime leases to all qualifying tenants.**
  - Include individuals that are permanently disabled.
  - Ensuring a minimum 20-year affordability period for units receiving Conversion Rights credit for lifetime leases.
- 5. Promote affordable homeownership opportunities by including provisions that make it easier for the existing tenants to purchase converted units.**
  - Exempt tenant-purchased units from requirements for 1-for-1 replacement.
  - Provide existing tenants with a 10% discount on purchase of a converted unit.

**6. Enhance notification requirements to all tenants.**

**7. Direct city administration to study alternative methods of dealing with Condo Conversions.**

This policy proposal does not suggest changing the existing priority zones mapping at this time.

### **PUBLIC OUTREACH/INTEREST**

Besides the required posting of this report to the City's website, a robust stakeholder outreach effort has been conducted to obtain community feedback. Councilmember Kalb and his staff met and solicited comments from East Bay Rental Housing Association (EBRHA), Oakland Chamber of Commerce, East Bay Housing Organization (EBHO), ACCE, Oakland Jobs and Housing Coalition and the Bridge Association of Realtors. In addition, the Councilmember and staff reviewed materials from previous attempts to make amendments to this legislation by other elected officials and staff from the City of Oakland and other Bay Area cities.

### **COORDINATION**

This legislation was prepared in close collaboration and consultation with the staff from Mayor's and City Administrator's Offices, Housing and Community Development, Planning and Building Department, Office of the Mayor, and Office of the City Attorney.

### **COST SUMMARY/ IMPLICATIONS**

The ordinance does not halt the processing of condominium conversion applications. It only further regulates their approval; as such, its enactment would have a limited fiscal impact on the City. The conversion and petition fees are legally required to cover costs of administering condominium conversions and petition processes, any fiscal impact to the City would be limited and should not affect discretionary funds. The preparation of permanent revisions to the condominium conversion regulations could take some limited staff time and resources to produce. However, no additional staff time requirements have been intended to implement requirements put forth in this legislation.

The study of alternative methods of dealing with Condo Conversions will require a one-time financial expenditure.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The ordinance is intended to protect the economic vitality of Oakland tenants by maintaining the existing ownership structure for certain residential rental units in Oakland, thereby maintaining the economic security of tenants who reside in two-, three-, and four-unit buildings and

not subjecting them to evictions related to the change in use to permit condominiums in place of rental housing units.

**Environmental:** The ordinance is intended to promote neighborhood stability by reducing tenant turnover in residential rental buildings, which in turn could reduce the environmental impacts of moving from one residential unit to another.

**Social Equity:** The ordinance is intended to promote social equity by protecting Oakland renters, who are in general are less economically secure than Oakland homeowners and are more vulnerable to economic impacts.

### CEQA

This action would be exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), and 15301 (existing facilities), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

For questions regarding this report, please contact Olga Bolotina, Special Advisor, Office of Councilmember Dan Kalb at 510-238-7240.

Respectfully submitted,



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Council President Pro Tempore Kalb

*Prepared by:*

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### **Attachments (4):**

**Attachment A:** California-Wide Condominium Conversion Ordinance Survey

**Attachment B:** Condominiums and other common interest subdivisions, Berkeley Ordinance

**Attachment C:** Condominium conversion fee and expedited conversion program, San Francisco Ordinance

**Attachment D:** Oakland Guide to Condominium Conversion (current)

**Attachment E:** Oakland Condominium Conversion Map – Zones

## Attachment A

### California-Wide Condominium Conversion Ordinance Survey

City & ordinance name	Impact fee?	Affordable housing component?	Summary
Berkeley Condominium Conversion Ordinance ("CCO")	<ul style="list-style-type: none"> <li>• Yes ("housing mitigation fee"), imposed since 1992. Mitigation fee formula are 1) Nexus- based to mitigate entire loss of affordability. Divide difference between cost of owning unit as a condo less the rental costs by the current fixed mortgage rate. 2) Affordable housing mitigation fee cap (see next column)</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. Affordable housing mitigation fee cap provides fee reductions if converter agrees to limit future rent increases for life of property to any resident tenant at time of conversion to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers. Affordable housing mitigation fee capped at 8% of sale price, or 4% for 2-unit properties.</li> </ul>	<ul style="list-style-type: none"> <li>• Revenue from housing mitigation fee accrue to Berkeley Housing Trust Fund to finance construction and rehab of permanent affordable housing in Berkeley</li> <li>• Cap on affordable housing mitigation fee for conversion to condos to encourage conversion to condos, rather than tenancies in common</li> <li>• No more than 100 rental units/ year may be approved for conversion</li> <li>• If owners provide add'l tenant protections specified in CCO, they receive substantial decrease in affordable housing mitigation fee. Tenant protections include: <b>exclusive right to purchase</b> (year-long right of a resident tenant to purchase the unit he/ she occupies after receiving notice that the unit will be made available to others)</li> </ul>
City of Larkspur Condominium Ordinance	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. Requirement when project includes 10 or more units that 15% must be low-income housing. Limit on rent increases</li> </ul>	<ul style="list-style-type: none"> <li>• Application for condo use permit will not be accepted or processed if vacancy rate for multifamily rental apartments in Lower Ross Valley is below 5%</li> <li>• For projects of 10+ units, 15% shall be made available at costs or rents affordable to low-income households</li> </ul>

City & ordinance name	Impact fee?	Affordable housing component?	Summary
		and lifetime or long-term leases for certain tenants.	<ul style="list-style-type: none"> <li>• 40% of units in condo shall be retained in perpetuity as rental apartments</li> <li>• Limit on rent increases for certain types of workers, elderly and handicapped tenants</li> <li>• Lifetime leases or long-term leases guaranteed for elderly and disabled tenants</li> </ul>
Los Altos Conversions to Community Housing	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• No application for approval of “tentative map for the conversion or redevelopment of an existing apartment building” into condos can be filed unless there is a vacancy surplus of rental apartments</li> <li>• Tenant protection provisions include notice of tentative map hearing, <b>exclusive right to purchase</b> for 60 days after issuance of public report; option of continuing right of occupancy for one year</li> </ul>
San Diego Condominium Conversion Regulations	<ul style="list-style-type: none"> <li>• Yes. Inclusionary affordable housing fee; alternatively, developer can set aside at least 5 percent of total number of for-sale units for households earning no more than 100% of area median income.</li> <li>• Also requires applicant for condo conversion to provide relocation assistance in amount of three months rent based on HUD’s annual Fair</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. Coastal Affordable Housing Replacement Regulations limits conversion in coastal zone and places requirements on developers for one-to-one replacement through various methods.</li> <li>• Yes. Inclusionary affordable housing fee; funds go to City of San Diego’s Affordable Housing fund to help meet needs of very low-, low-, and median-income households</li> </ul>	<ul style="list-style-type: none"> <li>• Noticed public hearing on tentative map for condo conversion; applicant for condo conversion has to notify all rental tenants and submit certification for noticing requirements (180 days prior to termination of tenancy after tentative map is approved; 60 days prior to filing of tentative map; within 10 days of approval of map; within 10 days of submitting public report; 90 day period of first right of refusal to purchase; 60 days prior to vacating)</li> <li>• Limits on conversion of units in Coastal Zone to preservice existing units occupied by low to moderate income tenants. Prohibits conversion of these units unless there is one-to-one replacement of the units.</li> <li>• Requirements of Relocation Assistance, Inclusionary Housing Ordinance, and Coastal Zone Affordable Housing Replacement Regulations not additive; only apply most restrictive</li> </ul>

City & ordinance name	Impact fee?	Affordable housing component?	Summary
	Market Rent for apartment size for San Diego region.		
San Francisco Condominium Conversion <sup>1</sup>	<ul style="list-style-type: none"> <li>• Yes. \$20,000 - \$22,000 (expedited conversion fee) per unit</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. Conversion fees are allocated 25% to Mayor's Office of Housing and 75% to Citywide Affordable Housing Fund.</li> </ul>	<ul style="list-style-type: none"> <li>• Strict restrictions on when certain buildings may apply for conversion based on number of units, owner occupancy, and previous evictions</li> <li>• Tenant protections for disabled tenants, tenants who are 60+ y.o., and tenants with children, depending on how long they have lived on the property</li> <li>• Tenants in occupancy during conversion have <b>right to buy</b> and/or <b>right to a lifetime, rent-controlled lease</b></li> </ul>
Santa Rosa Condominium Conversion Ordinance	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• Extensive tenant notification requirements; applicant for condo conversion has to notify all rental tenants and submit certification for noticing requirements (180 days prior to termination of tenancy after tentative map is approved; 60 days prior to filing of tentative map; within 10 days of approval of map; within 10 days of submitting public report; 90 day period of first right of refusal to purchase; 60 days prior to vacating)</li> <li>• Conversion only allowed if the rental vacancy rate is at 3% or above.</li> </ul>
Sonoma Condominium Conversion Ordinance	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• Developer required to give notice to all existing or prospective tenants when tentative map is filed and before any public hearings on the map.</li> </ul>
Alisa Viejo (Orange County)	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. 15% of total number of units must be set aside for provision of affordable</li> </ul>	<ul style="list-style-type: none"> <li>• Current tenant (90 days prior to filing of application for conversion, within 10 days of</li> </ul>

			approval of
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<sup>1</sup>Exhibit A: Condominium Conversion in San Francisco: <https://g3mh.com/wp-content/uploads/2017/10/2017-Condo-Conversion-FAQs.pdf>

City & ordinance name	Impact fee?	Affordable housing component?	Summary
Condominium Conversion		housing; of these units, minimum of 1/3 shall be set aside and sold to households whose income does not exceed 50% of then-current area median household income	<p>application, and 180 days prior to notice to vacate) and prospective tenant notification requirements</p> <ul style="list-style-type: none"> <li>• <b>Exclusive right to purchase</b> for 90 days following date of issuance of subdivision public report</li> <li>• Developer required to submit tenant relocation plan including reports and transportation to locate comparable housing; payment of relocation fee of at least \$1,500</li> <li>• Developer required to provide special assistance to seniors and disabled persons</li> <li>• Conditional use permit for conversion will not be approved if rental vacancy rate from 12 prior months is greater than 5% ; however, there may be exceptions, and developer can propose measures that would mitigate displacement and adverse effects on housing stock</li> </ul>
Laguna Hills (Orange County)	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• Developer must provide relocation plan for each eligible tenant that may include financial or other assistance like cost of moving, first and last months rent, deposits, etc.</li> <li>• City shall also require applicant to “sell a specified number of residential condominiums” as affordable housing units</li> <li>• Developer to notify tenants of <b>exclusive right to purchase</b> for 90 days following date of issuance of subdivision public report</li> <li>• Current tenant (60 days prior to filing of application for conversion</li> </ul>

and within 180 days prior to notice to vacate) and prospective tenant notification requirements

- Conditional use permit for conversion will not be approved if it will displace a significant percentage of

City & ordinance name	Impact fee?	Affordable housing component?	SummarySummary
			very low or LMI households or delete a significant number of very low or LMI rental units from housing stock
Sausalito Condominium Conversion Permits	<ul style="list-style-type: none"> <li>No.</li> </ul>	<ul style="list-style-type: none"> <li>Yes. Inclusionary unit requirement of 15% for conversions affecting 5 or more units.</li> </ul>	<ul style="list-style-type: none"> <li>Proposed project not approved if it adversely affects the provision of housing for all segments of the community, there is not adequate replacement housing for displaced tenants, the propose project coverts more than 5% of the potentially convertible rental units in the City during the calendar year, the project results in the eviction of a senior tenant, or the project results in a loss of low and moderate income housing stock</li> <li>For conversions affecting 5 or more existing dwelling units, lifetime leases for existing tenants 62+ y.o. with limited rent increases; 15% of units and not less than 1 shall be provided as inclusionary units for affordable housing; reimbursement to tenants who move at time of conversion for moving expenses</li> </ul>

<p>Mountain View Residential Condominium Conversions</p>	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> </ul>	<ul style="list-style-type: none"> <li>• Notice to existing tenants requirements (60 days prior filing tentative map; 10 days prior to submitting application for public report; 5 days after receipt of public report; within 10 days of approval of map; 180 days prior to termination of tenancy; notice of 90-day <b>exclusive right to purchase</b> 5 days after receipt of public report) and prospective tenants</li> <li>• If tenant previously renting unit, who then agrees to purchase unit, is displaced during conversion, developer required to provide temporary housing and to pay moving fees; otherwise, <b>Tenant Relocation Assistance Ordinance</b> applies to all tenants who have not agreed to purchase unit after conversion (for conversions involving 4 or more units)</li> </ul>
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City & ordinance name	Impact fee?	Affordable housing component?	Summary
			<ul style="list-style-type: none"> <li>• Application will not be approved if building represents a unique and needed housing resource in the city or neighborhood</li> </ul>

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## Attachment B: Berkeley

### Chapter 21.28: CONDOMINIUMS AND OTHER COMMON INTEREST SUBDIVISIONS

#### 21.28.010 Requirements of chapter, additional to other legal requirements.

In addition to any other applicable requirements of local, state or federal law, conversions of rental housing to condominiums, community apartments, and stock cooperatives shall be subject to the requirements provided by this chapter. For purposes of this chapter a parcel map shall be processed in the same manner as a tentative map. (Ord. 7025-NS § 1, 4/22/08)

#### 21.28.020 Purpose and findings.

A. The City Council finds and declares as follows:

1. There is a need to protect tenants from evictions deriving from incentives to convert rental housing stock, including tenancies in common with rentals, to condominiums.
2. There should be a reasonable balance in the availability of rental and ownership housing in the City, and opportunities for individual choice in the tenure, type, cost and location of housing.
3. The City of Berkeley encourages intentional community formation integrated with home ownership opportunities and forms that reduce personal financial and legal risk.
4. The City of Berkeley discourages tenancies in common (TICs) as a less desirable form of home ownership because this form of ownership may be less separable while carrying greater financial and legal risks, despite initial costs appearing more affordable than condominiums, community apartments and stock cooperatives.
5. The City of Berkeley should provide a transparent process to facilitate conversion of rental and TIC units to condominiums, community apartments and stock cooperatives.
6. The conversion of rental units to condominium ownership reduces the stock of affordable rental units in Berkeley.
7. To mitigate loss of affordable rental housing resulting from conversion, the City of Berkeley will apply an affordable housing mitigation fee whose revenues accrue directly to the City's Housing Trust Fund Program to construct, rehabilitate, or acquire permanently affordable rental housing in Berkeley, and to operate the program.

B. This chapter is intended to implement the following policies, and shall be interpreted in the manner that best serves these policies:

1. To take actions to protect tenants from large rent increases, arbitrary evictions, hardship from relocation, and the loss of their homes (Housing Element Policy H-3).
2. To preserve existing rental housing by limiting through regulation the subdivision of land for the purpose of converting rental properties to condominiums (Housing Element Policy H-7).

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3. To prevent blight and deterioration of housing units resulting from deferred maintenance (Housing Element Policy H-11).
4. To encourage eviction prevention and fair and accessible housing (Housing Element Policy H-32).

C. The City makes the following findings related to the affordable housing mitigation fee imposed by this chapter:

1. A housing shortage exists which is inconsistent with the purposes of this chapter, and with the adopted goals and policies of the City as set forth in the Housing Element of the City's General Plan.
2. Conversions permitted by this chapter will diminish the supply of rental housing affordable to low-income households, thereby creating undue hardships for low-income residents displaced by conversion, and will otherwise adversely affect the availability and cost of housing affordable to low-income families throughout the City.
3. An affordable housing mitigation fee imposed on conversions of existing residential rental units into condominiums (as defined in Section 1350 of the Civil Code and Sections 11004 and 11003.2 of the Business and Professions Code, respectively) will be used to mitigate reduction of the rental housing supply by funding preservation and development of permanently affordable housing for low-income persons in Berkeley.
4. The City Council further finds that the cost estimates regarding the amount of loss of affordability contained in the council report submitted to the City Council on November 10, 1992, and discussed at the hearing on this matter on November 10, 1992, as modified and reduced in March 1997, are reasonable, and the fees expected to be generated by the conversions envisioned herein will not exceed the total amount of these costs. The City of Berkeley shall maintain on file the detailed formulas and calculations that the City has made of this mitigation impact and its offsetting actions and fees contained herein and this document shall be made available upon request.
5. The City Council would not permit conversion of rental property to condominiums or cooperatives, but for the provision that the adverse effects of such conversions on low-income households will be mitigated by the affordable housing fee described herein.

D. The City Manager shall provide an annual report to the City Council no later than November of each year, which includes an assessment of the condominium conversion program, including, but not limited to, the number of condominium conversion applications received, the number of condominium conversions approved, the number and type of converted units sold, the amount and type of affordable housing mitigation fees received, and any recommendations for changes to this chapter.

#### **21.28.030 Definitions.**

As used in this chapter:

- A. "Date of conversion" or "conversion date" means the date of final action by the City approving a parcel map or final subdivision map.
- B. "Elderly tenant" means a tenant who is sixty years of age or older.
- C. "Exclusive right to purchase" or "ERP" means the right of a resident tenant at the date of conversion to purchase the unit that he or she occupies, as set forth in the "Notice of Tenants' Rights" required pursuant to Section 21.28.060. The period of the ERP begins on the date written notice is given to the resident tenant that

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the unit will be made available for purchase to persons other than the resident tenant, and lasts for one year except as set forth in Section 21.28.090.C.2.

D. "Limited equity housing cooperative" means a corporation that meets the criteria of Business and Professions Code Section 11003.2 and which also meets the criteria of Health and Safety Code Section 33007.5.

E. "Owner-occupant" means an individual who utilizes the unit he or she owns as his or her principal place of residence. An occupant will only be considered an owner-occupant if the share of the building that he or she owns is within 10% of the pro rata appraised value of the unit in which he or she resides.

F. "Price index" means the index for all urban consumers, San Francisco Bay Area Average, as published by the United States Bureau of Labor Statistics, or, in the event such index is discontinued, any comparable index.

G. "Resident tenant" means a tenant residing in the unit and paying rent for the accommodations as his or her principal place of residence on the date of conversion or at the time of sale of the first unit on the property.

H. "Unit" means any residential dwelling unit or apartment unit containing its own bathroom and kitchen facilities and used primarily for residential accommodations and joint living and working quarters that can serve as a permanent residence. For purposes of this chapter dormitories, fraternity and sorority houses, boarding houses, and residential hotels, and other forms of transient lodging shall not be considered residential units and shall not be subject to this chapter.

**21.28.040 Conversion of rental units to condominiums and related forms of owner occupancy -- Limits -- Exceptions.**

A. This chapter does not apply to buildings for which a condominium map has been approved prior to the date on which any unit in the building has been rented.

B. No more than 100 rental units per year may be approved for conversion to condominiums, community apartments or stock cooperative units (collectively, hereinafter "condominiums"). To the extent the number of units approved for conversion in any given year is less than 100, the quota for the following year may be increased by an equivalent amount, which may be carried forward from year to year, but shall not exceed a total of 200 rental units in any given year. This subdivision shall not apply to applications that were complete as of January 1, 2009.

C. The following categories of units shall not be counted against the 100-unit quota in subsection B of this section:

1. Existing inclusionary units in any building that has inclusionary units provided under the City's inclusionary zoning ordinance; and
2. Two, three and four unit properties with owner-occupied units eligible for a mitigation fee cap of 5% or less under Sections 21.28.080.C.2 and 3.

D. This chapter shall not apply to:

1. Applications involving proposed or newly constructed buildings that contain units not previously rented or leased. Where a new unit or units are added to an existing residential unit or units, this chapter does not apply to a proposed subdivision of the new unit(s) from the existing unit or units;
2. Buildings lawfully designed and used for other than residential purposes;

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3. Conversions to limited equity housing cooperatives; or
4. Conversion of properties which are already subdivided into condominiums, stock cooperatives or community apartments to a different type of subdivision except that if the subdivision contains multiple units that were required to remain in a single parcel within the subdivision due to their previous status as rental units, these units must continue to be owned in a single parcel or right of exclusive occupancy.

**21.28.050 Request for determination as to compliance with local laws -- Corrections required.**

- A. A person who wishes to apply for a tentative map or parcel map to convert to condominiums may request a determination as to whether any building to be converted complies with applicable local laws on the form required by the City.
- B. Upon receipt of a request for determination the City shall perform a record review and site inspection, and provide a determination regarding compliance with such local laws.
- C. Determinations under this section shall state what work must be corrected prior to recordation of a final map, what actions, if any, must be taken in order to bring the property into compliance, and shall require full disclosure of all remaining violations, including unpermitted work, to the homeowners' association and all purchasers of each unit to be created. The disclosure must also be recorded with the County and may not be removed until the City confirms that all violations have been corrected.
- D. Only the following types of violations must be corrected prior to recordation of the final map:
  1. Violations of the Zoning Ordinance that result in the creation of new units or the addition of 100 square feet or more of habitable space on the property; and
  2. Visible violations of local laws that govern the structural or fire safety of buildings, the safety of their major systems, such as plumbing, electrical and mechanical systems, or Health and Safety Code Section 17920.3, to the extent that they are likely to endanger the occupants or the public.
- E. A determination under this section shall not constitute approval of any work that was done without a permit or any other violation of any applicable code or ordinance or preclude the City from requiring correction of identified violations subsequent to recordation of a final subdivision map, and shall not preclude the City from requiring additional corrective action if additional noncomplying conditions are discovered.

**21.28.060 Application for condominium conversion.**

In addition to the information required by Section 21.16.020, an application for a tentative map or parcel map to convert to condominiums shall include all of the following information:

- A. A determination pursuant to Section 21.28.050 as to the whether the building complies with applicable local laws and the remedial actions that must be taken to bring it into compliance.
- B. A detailed rental history of each unit within the building that is to be converted, under penalty of perjury, that includes the name and current contact information (if known) of each tenant who has resided there within the 5 years immediately prior to the date of the application.
- C. A statement under penalty of perjury that:
  1. Within the 10 years immediately prior to the date of the application:

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- a. No owner of the building has filed with the City of Berkeley a statement of intent to go out of the rental business; or
  - b. No owner has initiated proceedings to recover possession of any unit at the property pursuant to Section 13.76.130.A.8 or 9 of this Code;
2. Within the five years immediately prior to the date of the application no owner has initiated proceedings to recover possession of any unit at the property pursuant to Section 13.76.130.A.8 or 9 of this Code, if such proceedings were initiated prior to October 27, 2005;
3. Five years immediately prior to the date of the application no vacancy has been created by the termination of a tenancy:
- a. Within one year after the service by the owner of a termination of tenancy notice pursuant to either Civil Code Section 1946 or Civil Code Section 1946.1;
  - b. Within one year after a change in the terms of the tenancy noticed pursuant to Civil Code Section 827, including the owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant;
  - c. By the tenant being constructively evicted because the unit had been cited in an inspection report as containing serious health, safety, fire, or building code violations that were not caused by the tenant beyond normal wear and tear and one or more of the violations had not been abated by the date of the termination;
  - d. By the tenant household vacating the property and subsequently bringing an action for constructive or wrongful eviction that is pending at the time the application to convert is filed, or that resulted in a judgment for the plaintiff;
  - e. As the result of a rent increase greater than 10% of the prior rent in effect, but for which the tenant would not have vacated the unit, unless that rent increase was approved by the Rent Stabilization Board.
- D. A statement from the owner(s) as to whether he or she agrees to limit future rent increases for the life of the building for all occupants at the time of conversion to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers after conversion.
- E. An agreement by the owner(s) that, at the time of sale of each unit, an affordable housing mitigation fee as described in this chapter will be paid to the City.
- F. An agreement by the owner(s) that the owner(s) will not opt out of any contract or recorded agreement with a governmental agency that provides for a rent subsidy to any qualified tenant, except for cause as defined in 24 CFR 982.310 (except (d)(iii) and (d)(iv) thereof), from the date of the application until at least 2 years after the date the application is approved, unless the program under which the subsidy is provided terminates.
- G. 1. Proof of service of a Notice of Tenants' Rights Regarding Condominium Conversion, on the form required by the City, on each tenant household at the property, no earlier than 60 days prior to the date of the application. The Notice shall include, but not be limited to, the tenant's right to a life lease pursuant to Section 21.28.090.C.4, information concerning any agreement by the owner to limit rents under Section 21.28.080.B, and the tenant's exclusive right to purchase the unit under Section 21.28.090.C.2.
2. Signed copies from each tenant of a Notice of Intent to Convert or evidence that a certified letter of notification was sent to each tenant for whom a signed copy of said notice is not submitted.

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- H. Applicants shall submit the documents identified in subsection G of this section for each new tenant that occupies a unit prior to conversion.
- I. Proof that a conspicuous notice has been posted on the property in a location that is readily visible from the street on which the structure has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
- J. Applications to convert shall be processed as set forth in Chapter 21.16, 21.18 or 21.24, as applicable.
- K. Any application that includes a false statement under penalty of perjury may be denied upon discovery of such false statement.

**21.28.070 Affordable housing mitigation fee.**

- A. Except as provided in Section 21.28.080, any conversion of other types of housing units to condominium units pursuant to this chapter shall be subject to the payment of an affordable housing mitigation fee, unless otherwise exempted. The purpose of the fee is to mitigate the loss of affordability that results from the conversion of rental units to condominium units. The formula for calculating this nexus-based mitigation fee is as follows:
1. The costs of occupying a unit as a condominium will be determined by adding monthly mortgage payments, taxes, and homeowners' association fees, and multiplying the sum by 12. Mortgage payments will be the current average fixed rate 30-year mortgage as reported by the Federal Housing Administration applied to 95% of the purchase price.
  2. Rental costs shall be the current rent of the unit at the time of filing an application for conversion under this chapter, also multiplied by 12. If the unit is owner-occupied or has not been rented within the previous 12 months, the rental costs shall be the monthly rental rate for comparable recently rented dwelling units within a reasonable radius of the property. "Comparable units" are as defined in California Civil Code Section 1954.51(a).
  3. The difference between the condominium ownership costs of the unit less the rental costs shall then be divided by the current fixed mortgage rate as set by the Federal Housing Administration to determine this fee.
- B. In the event a converted unit is sold, the affordable housing mitigation fee under this chapter shall be based on the actual sale price. If the sale price is questioned by the City as being unreasonably low, based on comparable sales or other similar evidence, it must be supported by a credible appraisal performed by a Certified Residential Appraiser (AR) licensed by the California Office of Real Estate Appraisers. If the appraisal is within 10 percent of the actual sales price, the cost of the appraisal shall be deducted from the total mitigation fee amount owed to the City.
- C. All of the sums collected pursuant to this chapter shall be apportioned as follows:
1. Not more than 10% of revenues shall be used for Housing Trust Fund program delivery.
  2. Not more than 10% of revenues shall be used for Housing Trust Fund program and project monitoring and enforcement.
  3. Not less than 80% of revenues shall be placed into the City of Berkeley Housing Trust Fund to finance activities described as eligible in the City of Berkeley Housing Trust Fund Program Guidelines.

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D. A fee agreement, in a form specified by the City, indicating the formula by which the affordable housing mitigation fee shall be calculated and which implements the requirements of this chapter shall be executed and recorded with the County Recorder on the date of conversion. Such agreement shall be supplemented by a promissory note and deed of trust in favor of the City in an amount equal to the estimated affordable housing mitigation fee for each converting unit. The City shall agree to subordinate the deed of trust for purposes of refinancing property as long as doing so will not in its reasonable judgment impair the adequacy of its security. Upon full payment to the City of the fee for any unit(s) or for the entire property, the City shall record a release of the promissory note and deed of trust with the County Recorder, against any unit(s) for which the fee was paid.

**21.28.080 Affordable housing fee -- Exemptions -- Reductions.**

A. Existing inclusionary units created pursuant to Chapter 23C.12 shall be exempt from any affordable housing fee.

B. Rent Limitation Fee Reduction. The affordable housing fee shall be reduced as set forth in this chapter if the owner converting the property has agreed as part of the application to limit future rent increases for the life of the property for any resident tenants at the time of conversion to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers.

1. If the property contains two units, the affordable housing mitigation fee for each unit shall be capped at 4 percent of the sales price of the unit.
2. If the property contains three or more units, the affordable housing mitigation fee for each unit shall be capped at 8 percent of the sales price of the unit.

C. If the property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010.

D. In addition to any other fee reductions under this section, the affordable housing mitigation fee for a unit shall be reduced by 25 percent when it is paid no later than the date of conversion. In such cases, the sale price of the unit shall be deemed to be the appraised value as determined by a Certified Residential Appraiser licensed by the California Office of Real Estate Appraisers.

E. Applicants with applications pending before the City as of March 24, 2009, may elect to pay the affordable housing mitigation fee pursuant to this chapter in effect as of March 24, 2009, or as it was between August 16, 2007, and March 23, 2009, so long as the City has taken final action approving a parcel map or final subdivision map no later than December 31, 2012.

**21.28.090 Approval of subdivisions -- Findings -- Conditions to be imposed.**

A. The Planning Commission or City Manager or his/her designee shall not approve an application to convert to condominiums unless the Commission or City Manager or his/her designee finds that all the provisions of this chapter are met.

B. An application to convert to condominiums shall be denied if:

1. Within the immediately preceding 10 years:

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- a. Any owner of the building has filed with the City of Berkeley a statement of intent to go out of the rental business; or
  - b. Any owner has initiated proceedings to recover possession of any unit at the property pursuant to Section 13.76.130.A.8 or 9 of this Code;
2. Within the immediately preceding 5 years any owner has initiated proceedings to recover possession of any unit at the property pursuant to Section 13.76.130.A.8 or 9 of this Code, if such proceedings were initiated prior to October 27, 2005;
3. Within the immediately preceding 5 years a vacancy has been created by the termination of a tenancy:
- a. Within one year after the service by the owner of a termination of tenancy notice pursuant to either Civil Code Section 1946 or Civil Code Section 1946.1; or
  - b. Within one year after a change in the terms of the tenancy noticed pursuant to Civil Code Section 827, including the owner's termination or nonrenewal of a contract or recorded agreement with a governmental agency that provides for a rent limitation to a qualified tenant; or
  - c. By the tenant being constructively evicted because the unit had been cited in an inspection report as containing serious health, safety, fire, or building code violations that were not caused by the tenant beyond normal wear and tear and one or more of the violations had not been abated by the date of the termination; or
  - d. By the tenant household vacating the property and subsequently bringing an action for constructive or wrongful eviction that is pending at the time the application to convert is filed, or that resulted in a judgment for the plaintiff; or
  - e. As the result of a rent increase greater than 10% of the prior rent in effect but for which the tenant would not have vacated the unit, unless that rent increase was approved by the Rent Stabilization Board.
- C. The Planning Commission or City Manager or his/her designee shall impose the following conditions on any application to convert rental units:
1. The owner shall complete all the remedial actions and provide all the disclosures set forth in the determination as to whether the building complies with applicable local laws that was submitted with application.
  2. The owner shall notify each resident tenant in writing when the ERP period starts for the unit he or she occupies by serving a copy of an ERP on each tenant. The owner shall provide a copy of this notice with proof of service on all tenants and to the City at the same time. No ERP period may start to run prior to the City's approval of a final or parcel map for the property, regardless of when an ERP is provided to a tenant. The ERP shall include but not be limited to a good faith sale price and terms of sale for the unit occupied by the resident tenant, which may include an inflation/deflation factor. The ERP shall also state that the resident tenant may voluntarily waive the ERP in writing at any time during the ERP period, and that the tenant may wish to consult with the Berkeley Rent Stabilization Board before choosing to waive this right, and shall provide contact information to the Berkeley Rent Stabilization Board. No waiver of a resident tenant's ERP is valid unless executed after the tenant's receipt of the notice of ERP from the owner. An ERP may not be waived within 30 days after it is received, and any such waiver during that period shall be invalid, except that a tenant may waive an ERP at any time by voluntarily vacating his or her unit.

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3. The owner shall satisfy the affordable housing fee requirements by paying the fee, or having recorded documents in a form required by the City, indicating the indebtedness to the City and a willingness to pay at time of transfer as defined therein. For purposes of this chapter, reconveyance of a unit from tenancy in common ownership to the individual member of the tenancy in common who occupies that unit shall not be a transfer that triggers an obligation to pay any affordable housing mitigation fee required by this chapter. Subsequent conveyance by the individual member of the tenancy in common shall trigger the obligation to pay an affordable housing mitigation fee required by this chapter.
  4. No tenant may be evicted for the purpose of occupancy by the owner, or occupancy by any relative of the owner, so long as the unit remains the tenant's principal place of residence. In the event the tenant does not exercise his or her right to purchase within the time period set forth in this section, the owner may transfer the unit without any price restriction to the tenant or any other person. However, in the event such transfer is to someone other than the tenant, the transfer shall be expressly made subject to the rights of the tenant to continue to occupy the unit as provided for in this chapter.
  5. The owner may not opt out of any contract or recorded agreement with a governmental agency that provides for a rent subsidy to any qualified tenant for 2 years from the date the application is approved, except for cause as defined in 24 CFR 982.310 (except (d)(iii) and (d)(iv) thereof), unless the program under which the subsidy is provided terminates.
  6. Where improvements are required as conditions of approval of the tentative map or parcel map or by City ordinance, any required improvement plan submitted pursuant to Chapter 21.44 shall include an analysis of potential harmful impacts on tenants of the repair and alteration process due to noise, blocked access, temporary displacement, increased rents, or other harms, and a plan for mitigation of harmful impacts.
  7. Where the owner proposes or intends to make improvements other than pursuant to the foregoing paragraph, the owner shall submit to the Planning Commission an analysis of potential harmful impacts on tenants of the repair and alteration process due to noise, blocked access, temporary displacement, increased rents, or other harms, and a plan for mitigation of harmful impacts.
  8. The owner shall provide all prospective buyers with a report on the seismic safety of the property.
- D. In addition to the foregoing, the Planning Commission or City Manager or his/her designee shall not permit a map to issue as to the conversion of rental units in a property with inclusionary units unless the inclusionary provisions for sale properties are applied to the inclusionary rental units. Where the property received a density bonus or other public subsidy in return for providing below-market-rate units, the below-market-rate for-sale units shall meet the level of affordability required of the units in order to qualify for the density bonus or other subsidy.

**21.28.100 Fraud prohibited.**

- A. It shall be unlawful to offer for sale, to offer to purchase, to agree to sell or buy, to sell or buy, or to assist in the sale or purchase of any condominium, community apartment or stock cooperative if the creation of such condominium or other form of ownership fails to comply with any provision of this chapter or the claimed compliance was procured by fraud, misrepresentation, threat or payment of sums of money not authorized by this chapter. Any such transaction is hereby declared to be contrary to public policy, and null and void.
- B. All appraisals under this chapter shall be performed by a qualified appraiser hired by the City at the applicant's expense. If the applicant desires to dispute an appraisal, the City and the applicant shall select another qualified appraiser to determine the appraisal, with the City and the applicant sharing equally in the

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cost. However, nothing in this section precludes the City and the applicant from agreeing based on the sales prices of comparable properties, in lieu of an appraisal.

**21.28.110 Remedies.**

A. The City Attorney may bring an action on behalf of the City of Berkeley seeking injunctive relief to restrain or enjoin any violation of this chapter. In any such action all relief which may redress violation of this chapter may be awarded including but not limited to an order to make whole any individuals aggrieved by such violation.

B. Any resident of the City of Berkeley may bring an action seeking injunctive relief to restrain or enjoin any violation of this chapter, damages and penalties.

C. In any action brought under this section, the court shall award reasonable attorney's fees to any prevailing plaintiff, including the City, and any consequential damages to any person, including the City, injured by violation of this ordinance. In addition, in any such action a civil penalty in the amount of up to ten thousand dollars for each unit sold or offered for sale in violation of this chapter shall be assessed against any seller, and against any person who assists a seller, including any real estate broker, who knowingly violates the provisions of this chapter.

D. The remedies provided by this section shall be in addition to any other remedies provided by law.

**21.28.120 Fees.**

The City Council, by resolution, may adopt fees for the administration and implementation of this chapter.

**21.28.200 New residential condominiums.**

New residential condominiums shall comply with all applicable requirements and procedures as set forth in all other chapters of this title (e.g. Chapter 21.16, Tentative Maps; Chapter 21.20, Final Maps; Chapter 21.24, Parcel Maps), other local ordinances and the Subdivision Map Act.

**21.28.300 New commercial condominiums.**

New commercial condominiums shall comply with all applicable requirements and procedures as set forth in all other chapters of this title (e.g. Chapter 21.16, Tentative Maps; Chapter 21.20, Final Maps; Chapter 21.24, Parcel Maps), and other local ordinances and the Subdivision Map Act.

**21.28.400 Commercial condominium conversions.**

Commercial condominiums shall comply with all applicable requirements and procedures as set forth in all other chapters of this title (e.g. Chapter 21.16, Tentative Maps; Chapter 21.20, Final Maps; Chapter 21.24, Parcel Maps), and other local ordinances and the Subdivision Map Act.

**21.28.500 Application, reports and other required information.**

In addition to required tentative or parcel map submittals, a condominium conversion application and questionnaire shall be submitted by the applicant as required by the Director of Planning.

**21.28.600 Notice of requirements for public hearings.**

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Notice of any public hearing required by the Subdivision Map Act relative to condominium conversions shall conform to Section 21.16.045.

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## Attachment C: San Francisco

### SEC. 1396.4. CONDOMINIUM CONVERSION FEE AND EXPEDITED CONVERSION PROGRAM.

(a) **Findings.** The findings of Planning Code Section 415.1 concerning the City's inclusionary affordable housing program are incorporated herein by reference and support the basis for charging the fee set forth herein as it relates to the conversion of dwelling units into condominiums.

(b) Any building may be exempted from the annual lottery provisions of Section 1396 if the building owners for said building comply with Section 1396.3 (g)(1) and all the requirements of this Section 1396.4. Notwithstanding the foregoing, no property or applicant subject to any of the prohibition on conversions set forth in Section 1396.2, in particular a property with the eviction(s) set forth in Section 1396.2 (b), is eligible for the Expedited Conversion program under this Section 1396.4. Eligible buildings as set forth in this Section (b) may exercise their option to participate in this program according to the following requirements:

(1) Any building that participated in but was not selected for the 2012 or 2013 condominium conversion lottery consisting of (a) four units or less in which one unit has been occupied continuously by one of the applicant owners of record for no less than five years prior to April 15, 2013, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by the applicant owners of record for no less than five years as of April 15, 2013, is eligible for conversion under this Subsection. The applicant(s) for the subject building seeking to convert under this Subsection shall pay the fee specified in Subsection (e) no later than April 14, 2014 for the entire building along with additional information as the Department may require including certification of continued eligibility; however, the deadline for an applicant to pay the fee may be extended pursuant to (j)(3) of this Section.

(2) Any building that participated in but was not selected for the 2012 or 2013 condominium conversion lottery consisting of (a) four units or less in which one unit has been occupied continuously by one of the applicant owners of record for no less than three years prior to April 15, 2014, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by the applicant owners of record for no less than three years as of April 15, 2014, is eligible for conversion under this Subsection. The applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2014 and shall pay the fee specified in Subsection (e) no later than January 23, 2015 along with additional information as the Department may require including certification of continued eligibility; however, the deadline for an applicant to pay the fee may be extended pursuant to (j)(3) of this Section.

(3) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years as of April 15, 2015 or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2015, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2015 and shall pay the fee specified in Subsection (e) no later than January 22, 2016 along with additional information as the Department may require including certification of continued eligibility.

(4) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years as of April 15, 2016, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2016, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2016 and shall pay the fee specified in Subsection (e) no later than January 20, 2017 along with additional information as the Department may require including certification of continued eligibility.

(5) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years as of April 15, 2017, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2017, the applicant(s) for the subject building may

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apply for conversion under this Subsection on or after April 15, 2017 and shall pay the fee specified in Subsection (e) no later than January 19, 2018 along with additional information as the Department may require including certification of continued eligibility.

(6) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years prior to April 15, 2018, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2018, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2018 and shall pay the fee specified in Subsection (e) no later than January 25, 2019 along with additional information as the Department may require including certification of continued eligibility.

(7) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years prior to April 15, 2019, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2019, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2019 and shall pay the fee specified in Subsection (e) no later than January 24, 2020 along with additional information as the Department may require including certification of continued eligibility. An Additionally Qualified Building subject to Subsection 9(A) shall be eligible to convert pursuant to this Subsection as long as there is fully executed written agreement in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units and 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of January 24, 2020.

(8) For applications for conversion pursuant to Subsections (3)-(7) only, a unit that is "occupied continuously" shall be defined as a unit occupied continuously by an owner of record for the six year period without an interruption of occupancy and so long as the applicant owner(s) occupied the subject unit as his/her principal place of residence for no less than one year prior to the time of application.

(A) Notwithstanding the occupancy requirements set forth above, each building may have one unit where there is an interruption in occupancy for no more than a three month period that is incident to the sale or transfer to a subsequent owner of record who occupied the same unit. For any unit with an interruption of occupancy, the applicant shall provide evidence to establish to the satisfaction of the Department that the period did not exceed three months.

(B) Notwithstanding the occupancy requirements set forth above, each building may have one unit where there is an interruption in occupancy for no more than a one year period if the sale or transfer to a subsequent owner of record who occupied the same unit was delayed during the term of a bank foreclosure against the former owner's interest in the building related to the subject unit. For any unit with an interruption of occupancy as a result of a foreclosure as described in Subsection (B), the applicant shall provide evidence to establish to the satisfaction of the Department that the period did not exceed one (1) year.

(9) An "Additionally Qualified Building" within the meaning of this Section is defined as a building in which the initially eligible applicant owners of record have a fully executed written agreement as of April 15, 2013 in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units; provided, however, that said agreement can be amended to include new applicant owner(s) of record as long as the new owner(s) satisfy the requirements of Subsection (8) above. In addition to the requirements listed in this Subsection (8), an Additionally Qualified Building also includes a five or six unit building that: (A) on April 15, 2013, had 50 percent or more of the units in escrow for sale as a tenancy-in-common where each buyer shall have an exclusive right of occupancy to an individual unit in the building to the exclusion of the owners of other units or (B) is subject to the requirements of Section 1396.2 (f) and 50 percent or more of the units have been occupied continuously by owners of record for no less than ten years prior to the date of application as set forth in Subsections (3)-(7).

(10) In addition to all other provisions of this Section, the applicant(s) must meet the following requirements applicable to Subdivision Code Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387,

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1388, 1389, 1390, 1391(a) and (b), 1392, 1393, 1394, and 1395. Also, the applicant(s) must certify that to the extent any tenant vacates his or her unit after March 31, 2013 and before recordation of the final parcel or subdivision map, such tenant did so voluntarily or if an eviction or eviction notice occurred it was not pursuant to Administrative Code Sections 37.9(a)(8)-(14). If an eviction has taken place under 37.9(a)(11) or 37.9(a)(14) then the applicant(s) shall certify that the original tenant reoccupied the unit after the temporary eviction.

(11) If the Department finds that a violation of this Section occurred prior to recordation of the final map or final parcel map, the Department shall disapprove the application or subject map. If the Department finds that a violation of this Section occurred after recordation of the final map or parcel map, the Department shall take such actions as are available and within its authority to address the violation.

**(c) Decisions and Hearing on the Application.**

(1) The applicant shall obtain a final and effective tentative map or tentative parcel map approval for the condominium subdivision or parcel map within one (1) year of paying the fee specified in Subsection (e).

(2) No less than twenty (20) days prior to the Department's proposed decision on a tentative map or tentative parcel map, the Department shall publish the addresses of building being considered for approval and post such information on its website. During this time, any interested party may file a written objection to an application and submit information to the Department contesting the eligibility of a building. In addition, the Department may elect to hold a public hearing on said tentative map or tentative parcel map to consider the information presented by the public, other City department, or an applicant. If the Department elects to hold such a hearing it shall post notice of such hearing and provide written notice to the applicant, all tenants of such building, any member of the public who submitted information to the Department, and any interested party who has requested such notice. In the event that an objection to the conversion application is filed in accordance with this Subsection, and based upon all the facts available to the Department, the Department shall approve, conditionally approve, or disapprove an application and state the reasons in support of that decision.

(3) Any map application subject to a Departmental public hearing on the subdivision or a subdivision appeal shall have the time limit set forth in this Subsection (c)(1) extended for another six (6) months.

(4) The Director of the Department of Public Works is authorized to waive the time limits set forth in this Subsection (c)(1) as it applies to a particular building due to extenuating or unique circumstances. Such waiver may be granted only after a public hearing and in no case shall the time limit extend beyond two (2) years after submission of the application.

(d) Should the subdivision application be denied or be rejected as untimely in accordance with the dates specified above, or the tentative subdivision map or tentative parcel map disapproved, the City shall refund the entirety of the applicant's fee specified in Subsection (e).

(e) The fee amount is \$20,000.00 per unit for all buildings that seek to convert under Subsection (b)(1)-(7). Said fee shall be adjusted annually in accordance with the terms of Section 1315(f). Said fee is reduced for each year the building has participated in the condominium conversion lottery up to and including the 2013 lottery in accordance with the following formula:

- (1) 2 years of participation, 20% fee reduction per unit;
- (2) 3 years of participation, 40% fee reduction per unit;
- (3) 4 years of participation, 60% fee reduction per unit; and
- (4) 5 or more years of participation, 80% fee reduction per unit.

(f) For purposes of Section (e), a building's owner(s) shall get credit only for those years that he or she participated in the lottery even though such building could have qualified for and participated in other condominium conversion lotteries.

**(g) Life Time Lease for Non-purchasing Tenants.**

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(1) Any application for conversion under this Section shall include a certification under penalty of perjury by the applicants that any non-purchasing tenant(s) in the building has been given a written offer to enter into a life time lease in the form and with the provisions published and prescribed by the Department in consultation with the Rent Board. Such written offer for a life time lease shall be executed by the owners of the building(s) and recorded prior to the time of Final Map or Parcel Map approval. Any life time leases made pursuant hereto shall expire only upon the death or demise of the last such life-tenant residing in the unit or the last surviving member of the life-tenant's household, provided such surviving member is related to the life-tenant by blood, marriage, or domestic partnership, and is either disabled, catastrophically ill, or aged 62 or older at the time of death or demise of any such life-tenant, or at such time as the life-tenant(s) in the unit voluntarily vacates the unit after giving due notice of such intent to vacate.

(2) (A) Each lease shall contain a provision allowing the tenant to terminate the lease and vacate the unit upon 30 days' notice and a provision that rent charged during the term of the lease shall not exceed the rent charged at the time of filing of the application for conversion, plus any increases proportionate to the increases in the residential rent component of the "Bay Area Cost of Living Index, U.S. Dept. of Labor," provided that the rental increase provisions of this Section shall be operative only in the absence of other applicable rent increase or arbitration laws.

(B) The lease also shall state that it 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, 1941.2, 1941.3, and 1941.4 of the California Civil Code and that there shall be no decrease in dwelling unit maintenance or other services historically provided to such units and such life-tenants.

(C) The lease shall include the following language:

Tenant agrees that this Lease shall be subject and subordinate at all times to (i) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Real Property or any portion thereof; (ii) the lien of any mortgage, deed of trust, assignment of rents and leases or other security instrument (and any advances thereunder) that may now exist or hereafter be executed in any amount for which the Real Property or any portion thereof, any ground leases or underlying leases or Landlord's interest or estate therein, is specified as security; and (iii) all modifications, renewals, supplements, consolidations and replacements thereof, provided in all cases the mortgagees or beneficiaries named in mortgages or deeds of trust hereafter executed or the assignee of any assignment of rents and leases hereafter executed to recognize the interest and not disturb the possession, use and enjoyment of Tenant under this Lease, and, in the event of foreclosure or default, the lease will continue in full force and effect by operation of San Francisco Administrative Code Chapter 37, Section 37.9D, and the conditions imposed on each parcel or subdivision map pursuant to Section 1396.4 (g), as long as Tenant is not in default under the terms and conditions of this Lease. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional reasonable documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, mortgages, deeds of trust, assignment of rents and leases or other security instruments. Subject to the foregoing, Tenant agrees that Tenant shall be bound by, and required to comply with, the provisions of any assignment of rents and leases with respect to the Building.

(3) The Department shall impose the following tentative map conditions on each parcel and subdivision map subject to this Subsection 1396.4 (g) and require that the conditions be satisfied prior to Final Subdivision Map or Parcel Map approval: (A) the property owner(s) of the building provide a written offer for a life time lease pursuant to this Subsection to the tenant(s) in the building and record such offer against the building's title, (B) at the time the tenant(s) accepts the life time lease offer, and even if such acceptance occurs after map approval, a binding agreement between the tenant(s) and the property owner(s) shall be executed and recorded against the property's title, and (C) a binding agreement between the City and the property owner(s) concerning the requirements of this Subsection be recorded against the property's title. For purposes of this Subsection, the Board of Supervisors delegates authority to the DPW Director, in consultation with the Mayor's Office of Housing, to enter in said agreement on behalf of the City and County of San Francisco.

(4) If the owner(s) of a building subject to the life time lease provisions of this Section 1396.4 (g) enters into any contract or option to sell or transfer any unit that would be subject to the lifetime lease requirements or

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any interest in any unit in the building that would be subject to the lifetime lease requirements at any time between the initial application and recording of the final subdivision map or parcel map, said contract or option shall be subject to the following conditions: (a) the contract or option shall include written notice that the unit shall be subject to the life time lease requirements of Subdivision Code Section 1396.4 (g), (b) prior to final execution of any such contract or option, the owner(s) shall record a notice of restrictions against the property that specifically identifies the unit potentially subject to the life time lease requirements and specifies the requirements of the life time lease as set forth in Section 1396.4 (g)(1), and (c) the recorded notice of restrictions shall be included as a note on the final subdivision map or parcel map. Prior to approval of a final subdivision map or parcel map, the applicant(s) shall certify under penalty of perjury to the Department that he, she, or they have complied with the terms of this Subsection as it applies to a building. Failure to provide this certification from every current owner of a building shall result in disapproval of the map. The content of the notices and certifications required by this Subsection shall comply with the instructions and procedures developed by the Department.

(h) In recognition of the rental requirements of Section (g), the fee for each unit in which a non-purchasing tenant resides at the time specified in Section (g) who is offered a life time lease and is unrelated by blood, marriage, or domestic partnership to any owner of the building shall be refunded to the subdivider under the following formula:

- (1) One unit, 10% fee reduction for such unit;
- (2) Two units, 20% fee reduction for each unit;
- (3) Three units, 30% fee reduction for each unit.

(i) Upon confirmation of compliance with the rental requirement, DPW or the City department in possession of the fee revenue shall refund the amount specified in Section (h) to the subdivider and have all remaining fee revenues transferred to the Citywide Affordable Housing Fund, established in Administrative Code Section 10.100-49, in the following percentage allocations:

- (1) 25% to the Mayor's Office of Housing and Community Development's program for small site acquisition to purchase market rate housing and convert it to affordable housing; and
- (2) 75% for the purpose of expanding affordable housing opportunities for low or moderate income households in San Francisco, including, but not limited to, expanding public housing opportunities.

**(j) Waiver or Reduction of Fee Based on Absence of Reasonable Relationship.**

(1) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged.

(2) Any appeal of requests under this clause shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid to the Treasurer the fee as required in this Section. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. Upon receipt of the appeal, the Clerk of the Board of Supervisors shall review the appeal in consultation with the City Attorney. If the Clerk of the Board determines that the appeal on its face challenges, on a factual or legal basis, the relationship or nexus between the impact of development and the amount of the fee charged, then the Clerk of the Board shall schedule a hearing under Subsection (3). If the Clerk of the Board in consultation with the City Attorney determines that the appeal on its face does not challenge, on a factual or legal basis, the relationship or nexus, then the Clerk of the Board shall notify the members of the Board of Supervisors within three business days of the Clerk's receipt of the appeal. If any one member of the Board of Supervisors requests within three business days of the Clerk's notification that the Clerk schedule a hearing on the appeal, then the Clerk shall schedule a hearing under Subsection (3). If no member of the Board requests that the Clerk schedule a hearing, then the Clerk shall inform the appellant and the Department of Public Works, within ten business days from the date of the filing, that the filing does not allege a proper basis for appeal, and shall reject the appeal on behalf of the Board of Supervisors.

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(3) If the Clerk of the Board schedules a hearing under this Section, the Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical information to support appellant's position. If a reduction, adjustment, or waiver is granted, any change of use or scope of the project shall invalidate the waiver, adjustment or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer and Department of Public Works.

(k) **Deferred Payment Based Upon Limited Means.** A project applicant may apply to the Department of Public Works for a deferral of payment of the fee applied to a specific unit as described in Subsection (e) for the period beginning when the Department receives a complete application until six (6) months after recordation of the final parcel or subdivision map, provided that for the twelve months prior to the date of application, the applicant resided in his or her unit in the subject property as his or her principal place of residence and the applicant's household income was less than 120% of median income of the City and County of San Francisco as determined by the Mayor's Office of Housing. Prior to the final approval of a parcel or subdivision map for any building where an applicant(s) has obtained a fee deferral, the Department shall cause the recordation of a notice of restrictions or other similar document against the title of all owners of the subject property that guarantees payment of the deferred fee at the time set forth in this Subsection.

(l) Buildings that convert pursuant to this Section shall have no effect on the terms and conditions of Section 1341A, 1385A, or 1396 of this Code.

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Community and  
Economic  
Development Agency

**A Guide to**

# **Condominium Conversions**

**in the City of Oakland**

# A GUIDE TO CONDOMINIUM CONVERSIONS IN THE CITY OF OAKLAND

## *What constitutes a “conversion”?*

- a change in the type of ownership from residential rental realty to a stock cooperative, a condominium, or community apartment project
- applies only to buildings for which a certificate of occupancy has been issued for a multifamily building (new construction that is not yet occupied is exempt from these requirements)

## *The condominium conversion regulations consist of five main components:*

1. Tenant notification and assistance (tenant rights)
2. Replacement rental units, called “conversion rights”
3. Tentative and Final Map preparation and City review
4. Noise insulation and building code upgrades
5. Property inspection and report

## 1. TENANT RIGHTS

### **Tenant notification (16.36.020 – 040)**

- 60 days prior to filing a tentative parcel map, a subdivider must provide all existing and prospective tenants with:
  - notice of intent to convert,
  - description of the conversion process,
  - notice of tenant rights,
  - copy of the subdivider’s “preliminary tenant assistance program”
- If the subdivider fails to give notice to a prospective tenant who then becomes a tenant and was entitled to such notice, he or she shall pay to the tenant:
  - actual moving expenses incurred while moving from the subject property, not to exceed \$500
  - first month’s rent on tenant’s new unit, but not to exceed \$500
- The City must provide tenants with notice of any public hearings held on the tentative map, as well as copies of reports and recommendations concerning tentative parcel map approval, decisions, etc. In order to do this, the subdivider must provide to the City the names and addresses of all tenants.
- Tenant notification requirements may be waived by Director of City Planning if the building proposed for conversion is not tenant-occupied at the time of tentative parcel map application (16.36.060B).

**Tenant rights (16.36.050(A)):**

- Tenants are guaranteed the following minimum rights (these must be included in the “notice of tenant rights”):
  - tenants may terminate their lease or rental agreement without penalty within 30 days of receipt of “notice of intent to convert”
  - no rent increase is permitted until at least 12 months after subdivider files the tentative map application
  - no remodeling of the interior of tenants’ units may occur until at least 30 days after issuance of the final subdivision report, or after the start of the sales program
  - tenants have the exclusive right to contract for the purchase of their unit, or 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 – this right runs for at least 90 days from the issuance of the final subdivision report
  - tenants have a right of occupancy of at least 180 days from the issuance of final subdivision report, or the start of the sales program

**Rights of tenants of units containing a tenant 62 years of age or older (16.36.050(A)(6)):**

- Tenants who are 62 years of age or older are guaranteed the following additional rights (these must be included in the “notice of tenants rights”):
  - option of a lifetime lease on his or her unit, or, at tenant’s option, on any other available unit in the building
  - limitations on base monthly rent and % increase (based on rent price one year prior to filing of the tentative parcel map, with increases tied to the consumer price index (CPI) for the Bay Area)
  - tenants cannot be evicted except for just cause
  - except as listed above, the terms and conditions of the lifetime lease shall be the same as those contained in the tenants current lease or rental agreement.

**Tenant assistance program (16.36.050(B)):**

- The subdivider must develop a tenant assistance program that includes:
  - incentives and inducements that would increase the potential for, and ability of, tenants to become owners in the conversion
  - actions and procedures to enable hard-to-relocate tenants to remain as tenants
  - relocation and moving assistance and information to be provided to each tenant and all the steps the subdivider will take to ensure the successful relocation of each tenant
  - specific steps that will be taken to assist elderly, disabled, and other tenants who may encounter difficulty in finding new quarters

**Other provisions (16.36.070(C)):**

- A subdivider may not vacate units in a building proposed for conversion in order to avoid providing payments and other benefits to tenants as described in the tenant assistance program.

## 2. CONVERSION RIGHTS – REPLACEMENT RENTAL UNITS

### Where and when the requirements apply (16.36.070 (A) and (G)):

- In the “conversion impact area” (see attached map), the conversion of any number of units requires “conversion rights” equal in number to the units proposed for conversion:
  - in the “primary impact area,” those units must be generated within the primary impact area
  - in the “secondary” impact area, those units can be generated from either the primary or secondary area
- In the remainder of the city, the conversion of five or more units requires “conversion rights” equal in number to those proposed for conversion and may be generated anywhere in the city.

### How “conversion rights” may be generated (16.36.070(B), (C), and (D)):

- Conversion rights for a condominium conversion may be created in any of the following ways:
  - new rental construction
  - increasing the number of units in an existing residential rental building
  - converting a non-residential building to residential rental units
  - major rehabilitation of a residential rental building that has been vacant for at least one year (rehabilitation is considered “major” if it equals at least 20% of the total value of building after rehabilitation). The conversion rights may also be applied to the building being rehabilitated (i.e. rehabilitating a vacant 10-unit apartment building into 5 condominium units and 5 rental units – the 5 rental units qualify as conversion rights for the 5 condominiums)
  - construction of a condominium, community apartment, or stock cooperative project if the owner of such project “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 units.”

### Time limit (16.36.070(E)):

- Tentative map approval of the condominium conversion must take place no later than **seven years** from the issuance of a certificate of occupancy on the projects generating the conversion rights (i.e. new rental construction can qualify for conversion rights only if it was built within the last seven years).

## 3. TENTATIVE & FINAL MAP PREPARATION AND CITY REVIEW

### Tentative map (16.36.060):

- Condominium conversions require the conduct of a survey and the preparation of a tentative and final map by a licensed land surveyor.
  - Condominium conversions for four or fewer residential units require an application for a Tentative Parcel Map with the Planning & Zoning Department. The Planning & Zoning Department will hold a 10-day public comment period, with notices being sent to all properties within 300-feet of the proposed condominium conversion. Upon approval by the Planning & Zoning Department, a final Parcel Map must be submitted to the Building Services Department for engineering review, prior to being filed with the Alameda County Recorder.

- Condominium conversions for five or more residential units require an application for a Tentative Tract Map with the Planning & Zoning Department. A Planning Commission public hearing will be held, with notices being sent to all properties within 300-feet of the proposed condominium conversion. Upon approval by the Planning & Zoning Department, a final Tract Map must be submitted to the Building Services Department for engineering review and approval by the City Council, prior to being filed with the Alameda County Recorder.

**Information to be filed with final map (16.36.090):**

- The following items must be filed along with the final Parcel Map or Tract Map with the Alameda County Recorder:
  - a copy of the tenant assistance program described above
  - for projects involving 5 or more units: a copy of the final subdivision public report issued by the state Department of Real Estate
  - for projects involving 4 or fewer units: the written notice by the subdivider of the start of the sales program
  - a certificate of occupancy for the building(s) being converted that was issued by the Building Services Department prior to the application date for the Tentative Parcel Map or Tentative Tract Map
  - a copy of the property inspection reports described in section #5 below.
  - for projects involving conversion rights: evidence that the subdivider owns conversion rights equal in number to the units to be converted

**4. NOISE INSULATION AND BUILDING CODE UPGRADES**

**Noise insulation (16.36.130):**

- Residential rental units converted into condominiums cannot be offered for sale until they conform to the noise insulation standards contained within Title 25 of the California Administrative Code. This may require physical modification of the building. Contact the Building Services Department for further information regarding this requirement.

**Building Code upgrades:**

- Additional building code upgrades requiring physical modification of the building may be required. These can include fire wall separation, protection of window openings near property lines, and independent utility meters. Contact the Building Services Department for further information regarding these requirements.

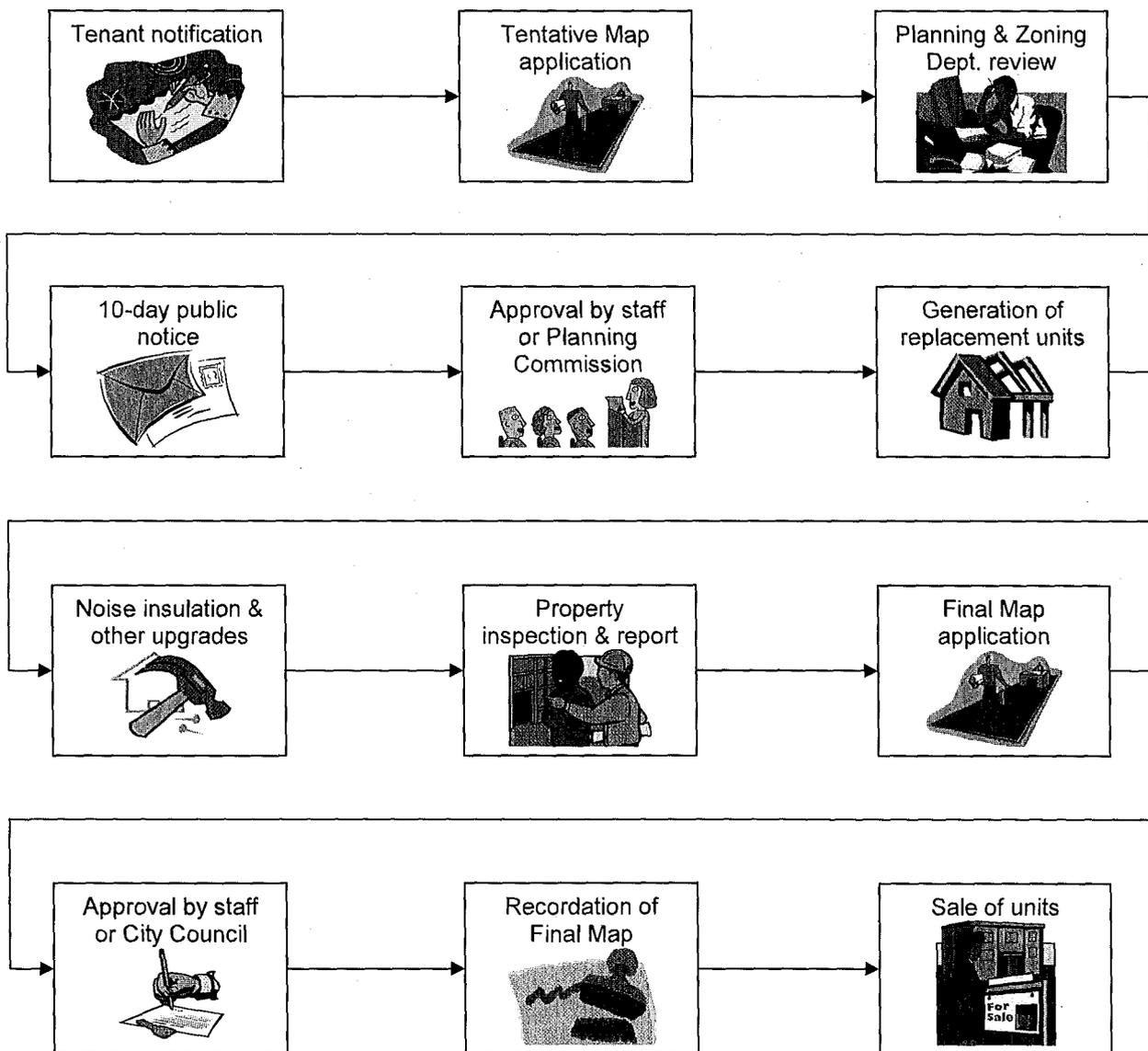
**5. PROPERTY INSPECTION AND REPORT**

**Information to be given to prospective buyers (16.36.120):**

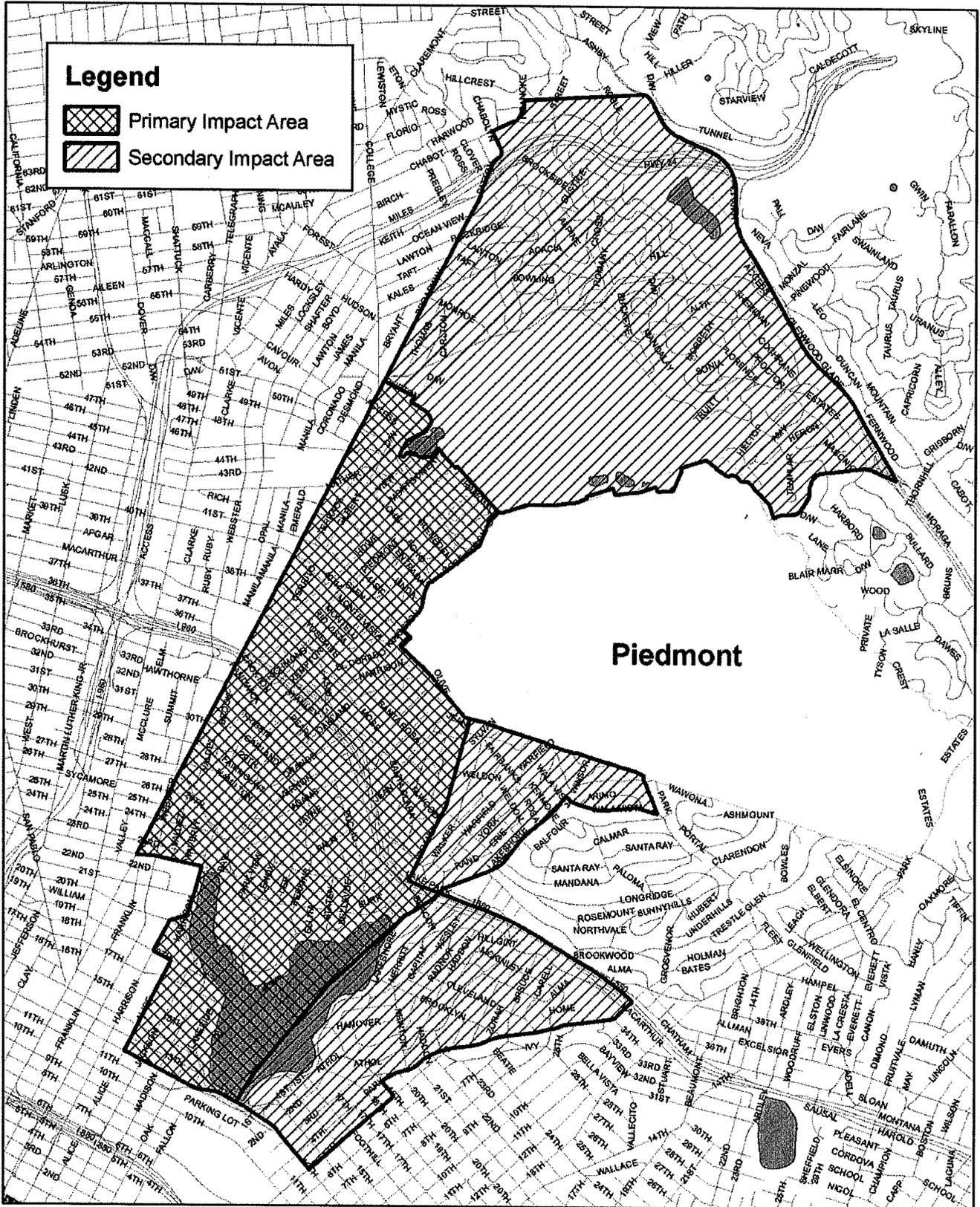
- All prospective buyers of condominium conversion units shall be given a 72-hour period following an agreement to purchase, during which time they may withdraw from the agreement to purchase, without penalty or cost. Notice of this 72-hour period shall be given in writing to all prospective buyers, along with the following property inspection reports: *(see next page)*

- a property report prepared and signed by an appropriately licensed contractor or engineer that shall 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 an estimate of future property maintenance costs
- a structural pest report prepared and signed by a licensed pest control operator
- a report describing the building with regard to whether utilities are separately metered; location of water shutoff valves; availability of protected storage space in addition to closet space ordinarily contained within a unit; and laundry facilities, if any
- 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 contained within Title 25 of the California Administrative Code

## CONDOMINIUM CONVERSION FLOW CHART



# CONDOMINIUM CONVERSION IMPACT AREA



# OAKLAND CITY COUNCIL

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

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**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 16.36, CONDOMINIUM CONVERSIONS, TO: (1) EXTEND THE CONVERSION RIGHTS REQUIREMENT TO TWO- TO FOUR-UNIT RESIDENTIAL BUILDINGS; (2) LIMIT CONVERSION RIGHTS TO RESIDENTIAL BUILDINGS WITH BUILDING PERMITS ISSUED AFTER CONVERSION APPLICATION; (3) ENHANCE TENANT RIGHTS AND NOTICE REQUIREMENTS TO TENANTS; AND (4) MAKE OTHER MODIFICATIONS; AND TO DIRECT CITY ADMINISTRATOR OR DESIGNEE TO STUDY ALTERNATIVE METHODS OF (A) ENSURING ONE-FOR-ONE REPLACEMENT OF RENTAL UNITS IN THE CITY AS A RESULT OF CONDOMINIUM CONVERSIONS AND (B) INCREASING AFFORDABLE HOME OWNERSHIP AND REDUCING DISPLACEMENT OF RENTERS SUBJECT TO CONVERSION; AND ADOPT CEQA EXEMPTION FINDINGS**

**WHEREAS**, the City of Oakland is experiencing a severe housing affordability crisis; and

**WHEREAS**, the Housing Element of the City's General Plan specifically includes policies to help prevent displacement of current Oakland residents and to limit the loss of rental housing units due to their conversion to condominiums; and

**WHEREAS**, the housing affordability crisis threatens the public health, safety and/or welfare of our citizenry; and

**WHEREAS**, 60 percent of Oakland residents are renters, many who would not be able to locate housing that is affordable within the City if displaced by rent increases (U.S. Census Bureau, ACS 2017 Table S1101); and

**WHEREAS**, in November 2019, the median rental price for a one-bedroom unit in Oakland was \$2,500 per month (\$30,000 per year), a 11.1 percent increase in costs over November 2018, and the median rental price for a two-bedroom unit in November

2019 was \$3,000 per month (\$36,000 per year), an 10.3 percent increase over costs in November 2018 (Zumper National Rent Report: November 2019); and

**WHEREAS**, Oakland's rental housing costs are the fourth highest in the nation, behind San Francisco, New York, and Boston (Zumper National Rent Report: November 2019); and

**WHEREAS**, in 2017, the estimated annual median household income for households that rented in Oakland was \$52,008, which would result in a household earning the annual median household income paying 58 percent of household income for a one-bedroom unit or 69 percent of household income for a two-bedroom unit (U.S. Census Bureau, ACS 2017, Table S2503); and

**WHEREAS**, the affordable rent for a family earning an annual income of \$52,008 is defined as only paying 30 percent of income on housing, which is approximately \$1,300 per month; and

**WHEREAS**, the median rent for all apartments rented in February of 2016 reached an all-time high of just over \$3,000 per month, according to research from Trulia; and

**WHEREAS**, 22.5 percent of Oakland's households are "housing insecure," defined as facing high housing costs, poor housing quality, unstable neighborhoods, overcrowding, or homelessness; and

**WHEREAS**, over 25,000 Oakland households are severely rent burdened, which is defined as spending 50 percent or more of monthly household income on rent (Oakland Consolidated Housing Needs Assessment 2015 Analysis of HUD Data, as reported in the City's March 2016 Oakland at Home report, pp. 10-11); and

**WHEREAS**, displacement through evictions and dramatic rent increases has a direct impact on the health, safety and/or welfare of Oakland's citizens by uprooting children from their schools, disrupting longstanding community networks that are integral to citizens' welfare, forcing low-income residents to pay unaffordable relocation costs, segregating low-income residents into less healthy, less safe and more overcrowded housing that is often further removed from vital public services and leaving residents with unhealthy levels of stress and anxiety as they attempt to cope with the threat of homelessness; and

**WHEREAS**, the conversion of rental housing to for-sale condominium units reduces the supply of rental housing available to Oakland residents, which drives rents still higher; and

**WHEREAS**, the City's current condominium conversion regulations (Oakland Municipal Code (O.M.C.) Chapter 16.36) permit the conversion of rental housing to for-sale condominium units, regardless of the number of units in the development; and

**WHEREAS**, the City's current condominium conversion regulations require owners to provide replacement rental units prior to the approval of an application to convert five or more rental units to for-sale condominium units, but does not require the same rental housing replacement requirements for the conversion of two-, three-, or four-unit rental housing developments except within areas designated as conversion impact areas pursuant to O.M.C. Section 16.36.060(G);; and

**WHEREAS**, without a rental housing replacement requirement, the conversion of two-, three-, or four-unit rental housing developments exacerbates the housing crisis by permitting an owner to convert rental units to ownership units, which may be less affordable to Oakland residents and can result in the displacement of Oakland residents from their homes and communities; and

**WHEREAS**, the City's current condominium conversion regulations allow conversion rights to be generated by buildings completed up to seven years prior to the proposed conversion, even though such buildings do not provide replacement for lost rental units; and

**WHEREAS**, the City's current condominium conversion regulations allow the units that conversion rights were sold for to still convert to condominiums seven years later causing further loss of rental housing; and

**WHEREAS**, loss of rental units and livable units overall occurs when building owners convert 5-unit buildings into 4 units to be able to take advantage of current condominium conversion law and convert rental units into condominiums; and

**WHEREAS**, the City wants to stimulate more construction of rental units by providing another avenue to finance projects that need extra funding from capitalizing on conversion rights; and

**WHEREAS**, the City seeks to amend the condominium conversion regulations to extend the requirement for replacement units to 2-4 unit buildings in all parts of the City, to remove the provision allowing the generation of conversion rights by newly constructed condominium units that are offered as rental units for seven or more years, to acknowledge the applicability of the Oakland Just Cause for Eviction Ordinance, enacted by voters in 2002 (O.M.C. section 8.22.300 et seq.), and corresponding regulations, and the Oakland Rent Adjustment Ordinance (O.M.C. section 8.22.010 et seq.) and corresponding regulations, and to afford greater rights and protections to existing tenants; and

**WHEREAS**, the City Council directs City Staff to study alternative methods of ensuring the one-for-one replacement of rental units in the City as a result of condominium conversions; and

**WHEREAS**, the City Council directs City Staff to report back on its findings regarding the other alternative methods to ensure one-for-one replacement of rental units;

**WHEREAS**, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or welfare of its residents; and

**WHEREAS**, the City desires to further the public health, safety and/or welfare by requiring the rental housing replacement requirement to the conversion of two-, three-, or four-unit rental housing developments; and

**WHEREAS**, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs; and

**WHEREAS**, the Subdivision Map Act provides that regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies, and that the City shall, by ordinance, regulate and control subdivisions that require a tentative and final or parcel map; and

**WHEREAS**, this Ordinance meets constitutional standards, the Subdivision Map Act, the Oakland City Charter, the O.M.C., and the City's General Plan; and

**WHEREAS**, after a duly noticed public meeting on December 3, 2019, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

**WHEREAS**, the City Council held a duly noticed public meeting on \_\_\_\_\_, to consider the proposed amendments, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

**WHEREAS**, this action is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), and 15301 (existing facilities), each as a separate and independent basis, and when viewed collectively provide an overall basis for CEQA clearance; now, therefore

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

**SECTION 1. Recitals.** The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

**SECTION 2. Amendment of Chapter 16.36 of the Oakland Municipal Code.** Oakland Municipal Code Chapter 16.36 is hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

## Chapter 16.36 – CONDOMINIUM CONVERSIONS

### 16.36.005 - Applicability.

The regulations, requirements, and provisions of this Chapter shall apply to any application for condominium conversion in the City of Oakland.

Nothing in this Chapter shall be construed as waiving, reducing, or modifying any other requirements under any other law that may provide tenants with greater rights or protections, including but not limited to the Oakland Just Cause for Eviction Ordinance, (O.M.C. section 8.22.300 et seq.), and corresponding regulations, the Oakland Rent Adjustment Ordinance (O.M.C. section 8.22.010 et seq.) and corresponding regulations, and the Oakland Tenant Protection Ordinance (O.M.C. section 8.22.600 et seq.) and corresponding regulations.

### 16.36.010 - Conversion Defined Definitions.

"Advisory Agency" means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property, the imposing of requirements or conditions thereon, or having the authority by local ordinance to approve, conditionally approve or disapprove maps. (O.M.C. section 16.04.030(B) and California Government Code Section 66415.) Pursuant to O.M.C. section 16.04.050, the Planning Commission is designated as the "Advisory Agency" with the duty of making investigations and reports on the design and improvement of proposed subdivisions requiring approval of tentative and final maps under the Subdivision Map Act. Pursuant to O.M.C. section 16.24.030, the Director of City Planning (herein, the "Planning and Building Director") is designated as the Advisory Agency for the purpose of the approval, conditional approval, or disapproval of tentative parcel maps and parcel maps.

"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 containing two or more residential units, any attempt thereafter to make the project a condominium, community apartment, or stock cooperative shall constitute a conversion. Those multifamily residential buildings of two or more units 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.

"Disabled" has the same meaning as in O.M.C. section 8.22.410.

“Residential Rental Realty” means a parcel containing one or more Rental Units, including a parcel containing five or more units with a recorded condominium map but without evidence of a valid public report from the Department of Real Estate (DRE).

“Rental Unit” means any unit in any real property, regardless of zoning status, including the land appurtenant thereto, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes).

“Sales Program” means the marketing of the units to the general public.

“Subdivider” means a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or others.

“Tenant” has the same meaning as in O.M.C. section 8.22.340.

“Tenant Household” has the same meaning as in O.M.C. section 8.22.810.

**16.36.020 - Preliminary Notice to existing tenants of intention to convert prior to filing an application for tentative map or tentative parcel map.**

At least sixty (60) days prior to filing an application with the City for a tentative map or tentative parcel map for a conversion, the subdivider shall provide all tenants of the building to be converted 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 Government Code 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)

The following language shall be printed in at least 14 point bold face type: “This present notice is not a notice to terminate your tenancy; it is not a notice that you must now vacate the premises.”

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, or if no subdivision public report is required the approximate date on which the subdivider expects to start the sales program.

Also accompanying this notice will be the Notice of Tenant Rights and the subdivider's Preliminary Tenant Assistance Program, both as set forth in O.M.C. section 16.36.050, and the information concerning tenant notifications as set forth in O.M.C. 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 Planning and Building Director as to form, correctness, and completeness.

Notice shall be given by posting in a conspicuous place on the premises of the subject property involved in the application. The written Nnotice to tenants required by this section shall also be given by mail, and shall be deemed satisfied if it complies with the legal requirements for service by mail pursuant to Government Code Section 66452.18 and California Code of Civil Procedure Section 1013.

**16.36.030 - Notice to prospective tenants of intention to convert.**

Commencing at a date not less than sixty (60) days prior to the filing of a tentative map or tentative parcel map application, 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 and prior to the execution of any rental agreement.

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 of Oakland and, if five (5) 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 Government Code Sections 66451.3 and 66452.5, and you have the right to appear and the right to be heard at any such hearing.

If the building is converted to condominiums, you may not qualify for relocation assistance under condominium conversion law. You should still verify whether you may be eligible for other protections such as those under the Just Cause for Eviction Ordinance.

\_\_\_\_\_  
(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 O.M.C. section 16.36.020 and all documents set forth in O.M.C. sections 16.36.040 and 16.36.050.

If the subdivider fails to give timely notice pursuant to this Section, he or she shall pay to each prospective tenant (1) who becomes a tenant and who was entitled to such notice; and (2) who does not purchase his or her unit pursuant to O.M.C. section 16.36.040<sup>32</sup> and vacates, an amount equal to the amounts set forth below:

- A. Tenants who vacate for Code Compliance repairs shall be paid relocation payments pursuant to O.M.C. chapter 15.60. Tenants who vacate due to owner or relative move-in shall be paid relocation payments pursuant to OMC section 8.22.850. Tenants who vacate due to an Ellis Act eviction shall be paid relocation payments pursuant to O.M.C. section 8.22.450.
- B. Tenants who vacate for any other reason, unless evicted for Tenant fault, shall be paid relocation payments in amounts pursuant to OMC Section 8.22.820.
  - i. If the tenant voluntarily vacates the premises, the Owner shall make the payment directly to an eligible Tenant Household no later than ten (10) days

before the expected vacation date. If less than ten (10) days' advance notice of vacation is given, then the payment by the Owner to the Tenant Household is due no later than the actual time of vacation.

- ii. If the owner is requiring the tenant to vacate, the owner must pay the Tenant Household half of the relocation payment when the termination notice is given to the household and the remaining half when the tenant vacates the unit provided that the tenant agrees, in writing, not to contest an unlawful detainer based on the notice to terminate tenancy for the owner or relative moving in to the tenant's rental unit. If the tenant does not so agree, then the entirety of 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.
- C. For the purpose of this paragraph, the Tenant is not evicted for Tenant fault if (1) the Tenant vacates within one hundred twenty (120) days after the effective date of a rent increase notice of more than ten (10) percent; and (2) the rent increase notice is issued within one (1) year after the issuance of the final subdivision public report on the conversion of a building with five (5) or more units or the start of the sales program in a building of four (4) units or less.

~~A. A Tenant who is also eligible for relocation under the City of Oakland's code compliance relocation program (O.M.C. Chapter 15.60), must elect for either relocation payments under this Section or O.M.C. Chapter 15.60 and may not receive relocation payments under both.~~

~~B. A Tenant who is also eligible for relocation assistance under Section 16.36.050 (Preliminary Tenant Assistance Program) must elect for either relocation payments under this Section or Section 16.36.050, and may not receive relocation payments under both.~~

**16.36.031 - Notice to existing tenants of intention to convert.**

The subdivider shall give written notice of the intent to convert at least one hundred eighty (180) days prior to the effective date of a notice of termination of tenancy, but not before the City has approved tentative parcel map for the conversion, to each tenant of the subject property in the form outlined below. The following language shall be printed in at least 14 point bold face type: "This present notice is not a notice to terminate your tenancy; it is not a notice that you must now vacate the premises."

To the occupant(s) of

(Address)

The owner(s) of this building, at (address), plan(s) to convert this building to a (condominium, community apartment or stock cooperative project). This is a

notice of the owner's intention to convert the building to a (condominium, community apartment or stock cooperative project).

A tentative parcel map to convert the building to a (condominium, community apartment or stock cooperative project) was approved by the City on \_\_\_\_\_ . If the City approves a final parcel map, you may be required to vacate the premises, but that cannot happen for at least 180 days from the date this notice was served upon you.

Any future notice given to you to terminate your tenancy because of the conversion cannot be effective for at least 180 days from the date this notice was served upon you. This present notice is not a notice to terminate your tenancy; it is not a notice that you must now vacate the premises. If your unit is covered by the Just Cause for Eviction Ordinance, you may not have to move at all except for specific reasons such as if you did not pay your rent, violated the terms of your rental agreement, or if the owner is performing repairs or moving into the unit.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(date)

Tenants shall also receive all accompanying documents described in O.M.C. section 16.36.020 and all documents set forth in O.M.C. sections 16.36.040 and 16.36.050.

Notice shall be given by posting in a conspicuous place on the premises of the subject property involved in the application. Notice shall also be given by mail, and shall be deemed satisfied if it complies with the legal requirements for service by mail pursuant to Government Code Section 66452.18 and California Code of Civil Procedure Section 1013.

**16.36.032 - Notice to existing tenants of right to contract for purchase.**

- A. For conversions involving five (5) or more units, the subdivider shall give written notice within five (5) days after receipt of the subdivision public report to each tenant of his or her exclusive right for at least ninety (90) days after issuance of the subdivision public report to contract for the purchase of his or her respective unit or, alternatively, a non-exclusive right to contract for purchase of any other available unit in the building. The notice must be in the form outlined below.

To the occupant(s) of

\_\_\_\_\_  
(Address)

The owner(s) of this building, at (address), has (have) received the final subdivision report on the proposed conversion of this building to a (condominium, community apartment or stock cooperative project). Commencing on the date of issuance of the subdivision public report, you have the exclusive right for at least 90 days to contract for the purchase of your rental unit upon the same or more favorable terms that such units are initially offered to the general public, less a discount of at least ten percent (10%). You also have a non-exclusive right to contract for purchase of any other available unit in the building on the same or more favorable terms that such unit is initially offered to the general public, less a discount of at least ten percent (10%). If more than one tenant with a non-exclusive right to purchase wishes to purchase the same unit, the owner(s) may choose which tenant may exercise the right to purchase.

If you choose not to exercise your exclusive right to purchase your unit during the 90-day period, you also have the exclusive right to match any offer the owner accepts for your rental unit after the sale has opened to the public, less a discount of at least ten percent (10%). You also have a non-exclusive right to match an offer for any other available unit in the building on the same terms, less a discount of at least ten percent (10%). If more than one tenant with a non-exclusive right to purchase wishes to purchase the same unit, the owner(s) may choose which tenant may exercise the right to purchase.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(date)

- B. If the conversion involves four units or less, in which case no public report is issued, the subdivider shall give, 17 days before the start of the subdivider's sales program, a written notice to each tenant of the tenant's exclusive right for at least ninety (90) days after the start of the sales program to contract for the purchase of his or her respective unit, or any other available unit in the building, in the form outlined below.

To the occupant(s) of

\_\_\_\_\_  
(Address)

A tentative parcel map to convert the building to a (condominium, community apartment or stock cooperative project) was approved by the City on \_\_\_\_\_ Commencing on \_\_\_\_\_, the date the sales program begins, you have the exclusive right for at least 90 days to contract for the purchase of your rental unit upon the same or more favorable terms that such units are initially offered to the general public, less a discount of at least ten percent (10%). You also have a non-exclusive right to contract for purchase of any other available unit in the

building on the same or more favorable terms that such units are initially offered to the general public, less a discount of at least ten percent (10%). If more than one tenant with non-exclusive right to purchase wish to purchase the same unit, the owner(s) may choose which tenant may exercise the right to purchase.

If you choose not to exercise your exclusive right to purchase during the 90-day period, you also have the exclusive right to match any offer the owner accepts for your rental unit after the sale has opened to the public, less a discount of at least ten percent (10%). You also have a non-exclusive right to match an offer for any other available unit in the building on the same terms, less a discount of at least ten percent (10%). If more than one tenant with non-exclusive right to purchase wishes to purchase the same unit, the owner(s) may choose which tenant may exercise the right to purchase.

(signature of owner or owner's agent)

(date)

- C. Notice shall be given by posting in a conspicuous place on the premises of the subject property involved in the application. Notice shall also be given by mail, and shall be deemed satisfied if it complies with the legal requirements for service by mail pursuant to Government Code Section 66452.20 and California Code of Civil Procedure 1013.

**16.36.040 - Additional tenant notifications.**

Each tenant shall be given notices 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~~ seventeen (17) 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 the tentative map or tentative parcel map will be available on the City of Oakland website at least three ~~five~~ (5) days prior to any meeting for which the map appears on the agenda.
3. Each tenant will be given at least ~~three~~ seventeen (17) 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~~ Planning and Building Director. Subdivider shall also provide the City with tenant names and addresses, including unit numbers, of all units, including those that are currently occupied, those where the tenant or subdivider has issued a notice of termination of tenancy, those that have been rented but are not yet occupied, and those that are currently vacant.

B. In addition to the preliminary notice to existing tenants prior to filing an application for a tentative map or tentative parcel map as set forth in O.M.C. section 16.36.020, the notice to existing tenants of intention to convert as set forth in O.M.C. section 16.36.020, and the notice to prospective tenants as set forth in O.M.C. 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~~ five (5) 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 (5) 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 and that the period for each tenant's right to purchase begins with the issuance of the final subdivision public report.
5. Each tenant in buildings with five or more units will be given written notification within five (5) days of subdivider's receipt of the final subdivision public report in accordance with O.M.C. section 16.36.110. If the conversion involves four or less units, in which case no public report is issued, each tenant will be given ~~ten~~ seventeen (17) days' prior written notice of the start of subdivider's sales program.

C. The subdivider's recordation of the final map shall not constitute City approval of any work that was done without a permit or any other violation of any applicable code or ordinance, or preclude the City from requiring correction of violations identified

subsequent to recordation of a final map, and shall not preclude the City from requiring additional corrective action if additional noncomplying conditions are discovered subsequent to the recordation of final map.

The ~~Director of City Planning~~ City Planning Director 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.

#### **16.36.045 – General Requirements for Notices**

- A. All notices required in this Chapter O.M.C. shall be in at least 12 point type, and must include in bold face, the following language: For information about this notice please contact the Planning and Building Department at (provide current phone number and email address and physical location contact information for Planning and Building Department).
- B. If a rental agreement was or is being negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, all required written notices regarding conversion shall be issued in that language and in English.
- C. The Planning and Building Director shall be given a copy of all notices to tenants at the same time as the tenants receive them with accompanying proof of service complying with the legal requirements for service by mail pursuant to California Code of Civil Procedure Section 1013.

#### **16.36.050 - Tenant rights and the Preliminary Tenant Assistance Program.**

- A. With regard to any conversion as defined in O.M.C. section 16.36.010, each tenant shall have the following minimum rights which shall be set forth in the Notice of Tenant Rights in a form prescribed by the City. Absence of such a form does not release landlords of noticing requirements.
  - 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 or approval of the tentative map or tentative parcel map by the City, whichever occurs later. At the end of such period, and until one hundred eighty (180) days after the issuance of the final subdivision public report or start of the sales program, the subdivider may increase tenants' rent no more than once each year and in an amount that does not exceed the increase in the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland Metropolitan Area: All

Items (Bay Area CPI), unless the unit is covered by other rent increase restrictions such as the restriction in O.M.C. section 16.36.050(A)(6) or the Rent Adjustment Ordinance.

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, a non-exclusive right to purchase any other available unit in the building upon the same or more favorable terms and conditions that such units are initially offered to the general public, less a discount of at least ten percent (10%), with 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. If a tenant chooses not to exercise his or her exclusive right to purchase during the initial 90-day period, he or she shall also have the exclusive right to match any offer the owner accepts for his or her rental unit after the sale has opened to the public, less a discount of at least ten percent (10%). The tenant shall also have a non-exclusive right to match an offer for any other available unit in the building on the same terms, less a discount of at least ten percent (10%). If more than one tenant with a non-exclusive right to purchase wishes to purchase the same unit, the owner(s) may choose which tenant may exercise the right to purchase.
5. Each tenant shall have a right of occupancy of at least one hundred eighty (180) days from the date the notice to existing tenants of intention to convert, as set forth in O.M.C. section 16.36.020, is served on the tenant; 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 sale program; or until the expiration of Tenant's lease, whichever is longer, prior to termination of tenancy due to conversion.
6. Tenants in units containing a tenant who (1) is sixty-two (62) years or older prior to approval of the tentative map or tentative parcel map or (2) is disabled or becomes disabled at any time before final approval of the tentative map or tentative parcel map, shall be provided a lifetime lease on their unit or, at tenant's option, on any other available unit in the building.
  - a. The subdivider must provide a written offer for a lifetime lease to the eligible tenants in the building and record such offer against the building's title.

- b. At the time the Tenant(s) accepts the lifetime lease offer, and even if such acceptance occurs after map approval, a binding agreement between the Tenant(s) and the subdivider or owner shall be executed and recorded against the building's title.
- c. In addition, the subdivider must agree to maintain the unit as a rental unit on the same rental terms for at least 20 years from the time the lifetime lease is executed even if the tenant with the lifetime lease vacates the property or passes away.
- d. A binding agreement between the City and the subdivider concerning the requirements of this subsection shall be recorded against the building's title. In recognition of the lifetime lease and 20 year rental requirement, the subdivider shall receive a one-for-one reduction in conversion rights as part of the binding agreement.
- e. Such leases, to commence no later than the date of issuance of the final subdivision public report or, if one is not issued, from the start of subdivider's sale program, shall be subject to the following conditions:
- i. Tenants shall have the option of cancelling the lease at any time upon thirty (30) days' written notice to the owner.
  - ii. Tenants cannot be evicted except for tenant fault (e.g. non-payment of rent, breach of the rental agreement).
  - iii. The term of the lease shall expire only upon the death or demise of the last such Tenant residing in the unit or at such time as the Tenant(s) in the unit voluntarily vacates the unit after giving notice of such intent to cancel the lease. Right of occupancy shall be nontransferable, except that Tenants shall have the right to a live-in aide. The live-in aide is not eligible to remain in the unit once the Tenant is no longer living in the unit.
  - iv. 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 application for a 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: All Items (Bay Area 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.
  - v. 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 CPI for the most recent twelve (12) month period.

vi. There shall be no decrease in dwelling unit maintenance or other services historically provided to such units and such Tenants.

vii. The lease shall include the following language:

Tenant agrees that this Lease shall be subject and subordinate at all times to (i) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Real Property or any portion thereof; (ii) the lien of any mortgage, deed of trust, assignment of rents and leases or other security instrument (and any advances thereunder) that may now exist or hereafter be executed in any amount for which the Real Property or any portion thereof, any ground leases or underlying leases or Landlord's interest or estate therein, is specified as security; and (iii) all modifications, renewals, supplements, consolidations and replacements thereof, provided in all cases the mortgagees or beneficiaries named in mortgages or deeds of trust hereafter executed or the assignee of any assignment of rents and leases hereafter executed shall recognize the interest and not disturb the possession, use and enjoyment of Tenant under this Lease, and, in the event of foreclosure or default, the lease will continue in full force and effect by the conditions imposed on each final parcel map or final map pursuant to O.M.C. Section 8.22.050, as long as Tenant is not in default under the terms and conditions of this Lease. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional reasonable documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, mortgages, deeds of trust, assignment of rents and leases or other security instruments. Subject to the foregoing, Tenant agrees that Tenant shall be bound by, and required to comply with, the provisions of any assignment of rents and leases with respect to the building.

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

viii. 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.

7. Nothing in the Notice of Tenant Rights shall be construed as waiving, reducing or modifying any greater rights a tenant may have under the Oakland Just Cause for Eviction Ordinance (O.M.C. section 8.22.300 et seq.) and corresponding regulations, the Oakland Rent Adjustment Ordinance (O.M.C. section 8.22.010 et seq.) and corresponding regulations, and the Oakland Tenant Protection Ordinance (O.M.C. section 8.22.600 et seq.) and corresponding regulations.

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.
    - a. Tenants who resided in the unit prior to the filing of the tentative map or tentative parcel map and who vacate for Code Compliance repairs shall be paid relocation payments at no less than the amounts pursuant to O.M.C. chapter 15.60. Tenants who resided in the unit prior to the filing of the tentative map or tentative parcel map application and who vacate due to owner or relative move-in or an Ellis Act eviction shall be paid relocation payments pursuant to O.M.C. section 8.22.850 or O.M.C. section 8.22.450.
    - b. Tenants who resided in the unit prior to the filing of the tentative map or tentative parcel map and vacate for any other reason, unless evicted for Tenant fault, shall be paid relocation payments at not less than the amounts pursuant to O.M.C. Section 8.22.820.
      - i. If the tenant voluntarily vacates the premises, the Owner shall make the payment directly to an eligible Tenant Household no later than thirty (30) days before the expected vacation date. If less than thirty (30) days' advance notice of vacation is given, then the payment by the Owner to the Tenant Household is due no later than the actual time of vacation.
      - ii. If the owner is requiring the tenant to vacate, the owner must pay the Tenant Household half of the relocation payment when the termination notice is given to the household and the remaining half when the tenant vacates the unit provided that the tenant agrees, in writing, not to contest an unlawful detainer based on the notice to terminate tenancy for the owner or relative moving in to the tenant's rental unit. If the tenant does not so agree, then the entirety of 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.

- c. For the purpose of this paragraph, the Tenant is not evicted for Tenant fault if (1) the Tenant vacates within one hundred twenty (120) days after the effective date of a rent increase notice of more than ten (10) percent; and (2) the rent increase notice is issued within one (1) year after the issuance of the final subdivision public report on the conversion of a building with five (5) or more units or the start of the sales program in a building of four (4) units or less.
- d. ~~A Tenant who is also eligible for relocation assistance under Section 16.36.030 must elect for either relocation payments under this Section or Section 16.36.030, and may not receive relocation payments under both.~~

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.

#### **16.36.060 Tentative map and tentative parcel map requirements for conversions.**

In addition to other matters required in this title Chapter, the subdivider shall submit to the Advisory Agency, along with the tentative map or tentative parcel map of a conversion, the Preliminary Tenant Assistance Program and 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, and 16.36.031-040; and that all prospective new tenants have received and will receive said documents, along with the notice set forth in O.M.C. section 16.36.030;
- B. That all tenants and ~~Director of City Planning~~Planning and Building Director will receive all notices as set forth in Subsection B of O.M.C. section 16.36.040 and that they will receive all information as required in O.M.C. section 16.36.080.
- C. That all Tenants who qualify for a lifetime lease pursuant to O.M.C. section 16.36.050.A.6 have been given a written offer to enter into a lifetime lease. Such written offer for a lifetime lease shall be executed by the subdivider and recorded prior to the time of final map or final parcel map approval.
- D. That a binding agreement between the City and the subdivider concerning the lifetime lease and twenty year rental requirements have been recorded against the property's title.
- E. That no unit in a building approved for conversion shall be offered for sale unless the property to be subdivided is in compliance with all current state and local laws and that any violations have been or will be corrected prior to recordation of the final map

or parcel map. The state and local laws include, but are not limited to, the City's Zoning Ordinance, and all laws that govern the structural and fire safety of buildings and the structure and safety of their major systems, such as a building's plumbing, electrical and mechanical systems as set forth in California Health and Safety Code Section 17920.3.

- F. That a report to the City will be provided on the building's major systems, for review and approval by the Planning and Building Director, prior to recordation of the final map or parcel map.

The ~~Director of City Planning~~Planning and Building Director may require other information to be filed with the tentative map or tentative parcel map which, in the Planning and Building Director's opinion, will assist in determining whether the project is consistent with the purposes set forth in O.M.C. section 16.04.010 or will assist in making any of the findings as set forth in O.M.C. section 16.36.030. Any such determination by the ~~Director of City Planning~~Planning and Building Director 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~~Planning and Building Director may waive the tenant notification requirements contained in O.M.C. sections 16.36.020, 16.36.031, 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 the building is not tenant-occupied and no unit within the building will be rented prior to final or parcel map approval, the ~~Director of City Planning~~Planning and Building Director may waive the tenant assistance requirements set forth in O.M.C. sections 16.36.050 and 16.36.080.

**16.36.070 - Action on the tentative map or tentative parcel map – conversion rights.**

Action by the Advisory Agency shall be governed, in addition to that set forth in O.M.C. section 16.08.030, by the following:

A. Requirements for map approvals.

1. ~~The Advisory Agency shall deny approval~~ may only approve a tentative map for ~~the conversion of five or more housing units or a tentative parcel map if 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~~ only be approved, subject to meeting all other requirements prescribed by State and City, if the subdivider agrees that, prior to final map approval or final parcel 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 by a recorded document to be approved by the Advisory Agency. No conversion rights shall be generated by project(s) or specific parts of project(s) which: (a) are intended to become the property of the Oakland Housing Authority, (b) receive financial assistance from the City or the Oakland Redevelopment Successor Agency, (c) are located on property that was purchased or leased from a public or quasi-public agency, or (d) are developed as condominium units or otherwise may be sold as individual units. 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. Any newly approved market rate unit that otherwise qualifies may be used to generate conversion rights.

2. The Advisory Agency shall deny approval of a tentative map or tentative parcel map for a conversion if any tenant was evicted pursuant to O.M.C. 8.22.360.A.8-11 in the last five years prior to the date of the application, including if tenant was given written or oral notice that the owner intended to evict the tenant under any of these O.M.C. sections and the tenant left voluntarily or after an agreement with the owner, or if the subdivider or predecessor causes or attempts to cause a tenant to vacate by violating the Tenant Protection Ordinance (O.M.C. 8.22.600, et. seq.). The Advisory Agency may adopt regulations to implement this provision.

3. The Advisory Agency shall deny approval of a tentative map or tentative parcel map for a conversion if the conversion is from a building in which the owners have a fully executed written agreement within five (5) years of the application date in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units (Tenancy-in-Common).

B. Project(s) generating conversion rights may involve new rental construction (including accessory dwelling units), increasing the number of units in an existing residential rental building, or converting a nonresidential building to residential rental units; however, to generate conversion rights, each added unit must be reasonably comparable in number of bedrooms and amenities to each unit being converted and must not already be deed restricted from converting to a condominium.

C. Conversion rights may also be generated by bringing back into the supply, through major rehabilitation, a residential rental building that has been continuously vacant and declared substandard or a public nuisance pursuant to O.M.C. section 15.080.350 et seq. for at least one three (3) years 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 Planning and Building Director that the building was indeed vacant and declared substandard or a public nuisance for at least one-three (3) years, 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 the cost of construction equals or exceeds fifty percent (50%) twenty (20) percent of the total value of the building after rehabilitation of the average basic cost for new construction using tables issued by the Chief Building Inspector applicable to the time period when the substantial rehabilitation was completed.

Anyone who, through major rehabilitation, converts a residential rental building that has been continuously vacant and declared substandard or a public nuisance for at least three (3) years, shall not be required to provide conversion rights for the conversion of that building.

- 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.~~
- D. Conversion rights may only be generated where building permit(s) for the newly added Rental Units are issued after the date on which the application for a tentative map or tentative parcel map is submitted. The Bureau of Planning shall clearly set forth this requirement in the Condominium Conversion application, including providing the option for subdivider to enter into a contingency or similar agreement with a developer of Rental Units to satisfy this requirement. The Bureau of Planning shall require through Conditions of Approval that: (1) a final agreement that secures conversion rights is executed prior to final map approval, and (2) the subdivider secures an alternate source of conversion rights before selling a newly created unit if the previous source fails to deliver conversion rights. Such requirement regarding securing an alternate source of conversion rights if the previous source fails to deliver shall be placed on the face of the parcel map or final map creating the units. If the approval involves a project with five or more units having a recorded condominium map, but without evidence of a valid public report from the Department of Real Estate (DRE), then the subdivider shall enter into an agreement securing the conversion rights prior to obtaining a valid DRE sales report.
- 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 Planning and Building Director, which approval shall not be given until all necessary certificates of occupancy have been issued.

- F. 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, 4035.01, 4035.02, 4036, 4037.01, 4037.02, 4039, 4040, and 4041.01, and 4041.02; and the secondary section consisting of Census Tracts 4038, 4042, 4043, 4052, and 4053 4053.01 and 4053.02.
- G. 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.
- H. I. Notwithstanding other provisions of this section, the Advisory Agency shall deny approval of a tentative or final map or a tentative or final 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 required by O.M.C. section 16.36.050 or 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 O.M.C. section 16.36.050, or any submission required by O.M.C. sections 16.36.020, 16.36.031, 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. It shall also deny approval if it finds that the subdivider has falsely claimed that the building proposed for conversion is vacant.
- I. A property owner of a two (2) to four (4) unit property is eligible for a one-time exemption from the conversion rights requirements of this Section for one of the units if the property owner: (1) has lived in the building for at least ten (10) years, (2) can demonstrate their uninterrupted residency, (3) has an annual income of 80 percent or less of Area Median Income ("AMI"), and (4) has never previously converted their property to a condominium.
- J. A subdivider is eligible for a one-for-one reduction from the conversion rights requirements of this Section for each unit.

1. That is occupied and purchased by a current tenant who has continuously occupied a rental unit in the building for at least three (3) years preceding the date of the notice of intention to convert;
2. That upon conversion will be restricted to occupancy by and affordable to lower income households, as defined in Health and Safety Code Section 50079.5, at an affordable housing cost, as defined in Health and Safety Code Section 50052.5, in perpetuity. Such restrictions shall be evidenced by recorded covenants or restrictions running with the land; or
3. In which a non-purchasing tenant resides at the time specified in O.M.C. section 16.36.160.A.6 receives the benefit of a lifetime lease and the unit is subject a deed restriction consistent with O.M.C. Section 16.36.050(A)(6)(c) and the tenant is unrelated by blood, adoption, marriage, or domestic partnership to any owner of the building.

**16.36.080 - Final tenant assistance program.**

If the tentative map or tentative parcel map is approved, the subdivider shall prepare a Final Tenant Assistance Program (FTAP) in conformity with the Preliminary Tenant Assistance Program (PTAP), and any conditions of approval relating to the tenant assistance program. At a minimum, the FTAP shall provide tenants with all of the rights set forth in O.M.C. section 16.36.050. The FTAP shall be reviewed and, if it conforms to the PTAP and the requirements of this Chapter, may be approved by the Planning and Building Director. 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 and Building Director. 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) ten (10) days of the date of the decision. Any party seeking to appeal a decision to the City Council or City Planning Commission shall pay the appeal fee as specified in the City's Master Fee Schedule.

**16.36.090 – Information to be filed with final maps and parcel maps.**

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

- A. A copy of the Final Tenant Assistance Program (FTAP) as described in O.M.C. 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 O.M.C. section 16.36.110;
- C. One copy each of the following documents more fully described in Subsections A, B and C of O.M.C. 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;

- D. For tentative map or tentative parcel map approvals involving conversion rights, evidence, in the manner specified by the Advisory Agency as set forth in O.M.C. section 16.36.070, that the subdivider owns conversion rights equal in number to the units to be converted.

No final map or parcel map shall be approved until the above requirements have been met.

**16.36.100 - Information on final maps and parcel maps.**

In addition to other matters required in this title, the information on the final map 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 O.M.C. 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 O.M.C. 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~~Planning and Building~~ Director and each tenant in the building to be converted has received or will receive a notice of final map 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) and (B)(5) of O.M.C. section 16.36.040;
- D. A statement certifying that the Director of City Planning~~Planning and Building~~ Director 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 O.M.C. section 16.36.110;
- E. For tentative map or tentative parcel map approvals involving conversion rights, a statement certifying, in conformity with O.M.C. section 16.36.070, that no unit in the conversion will be offered for sale until a certificate of occupancy ~~will have been~~ is issued on those project(s) generating conversion rights;
- F. For tentative map approvals involving conversion rights, a statement certifying, in conformity with O.M.C. 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~~Planning and Building Director~~ prior to the issuance of said report;

G. For five or more unit buildings, 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;

G. H. A statement certifying that informational reports will be submitted to the Director of City Planning~~Planning and Building Director~~ as required by and set forth in O.M.C. section 16.36.140.

No final map 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~~Planning and Building Director~~ 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~~Planning and Building Director~~ and all tenants in the building to be converted ~~ten-seventeen (17)~~ seventeen (17) 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 O.M.C. 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, less a discount of at least ten percent (10%), or upon terms more favorable to the tenant ~~as indicated~~ if so provided for 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 date the notice to existing tenants of intention to convert, as set forth in O.M.C. section 16.36.031, is served on the tenant; one hundred eighty (180) days from the issuance of ~~said report~~ the final subdivision public report or, if one is not issued, or from the start of subdivider's sale 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, and that upon termination of tenancy, each tenant shall be provided with relocation assistance as set forth in O.M.C. section 16.36.050. 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 for each tenant not wishing~~ desiring to purchase a unit ~~or, for tenants eligible for a lifetime lease, not desiring to accept a lifetime lease,~~ the subdivider will provide such tenant 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 pursuant to California Code of Civil Procedure Section 1013.

**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; location of water and gas shutoff valves; availability of protected storage space in addition to closet space ordinarily contained within a unit; parking spaces; and laundry facilities, if any;
- D. For five or more unit buildings, the applicant shall provide 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.

- E. A copy of the notice of rights provided to tenants occupying the unit to be purchased, as provided for in O.M.C. section 16.36.110, and copies of any agreements for continuing occupancy entered into pursuant to O.M.C. section 16.36.050.A.5.
- F. Information regarding the number of units in the property for which tenants have been provided the right to a lifetime lease pursuant to O.M.C. section 16.36.160.A.6.

**16.36.130 - Noise insulation standards.**

For five or more unit buildings, the applicant shall confirm that nNo 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

**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 Planning and Building Director 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 Bureau of Planning 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 - Technical Bulletins and Administrative Regulations.**

The City Administrator or designee is responsible for the administration of this Chapter, and is authorized to develop and require compliance with one or more technical bulletins and/or administrative regulations containing interpretations, clarifications, forms, and commentary to facilitate implementation of the engineering criteria and other requirements set forth in this Chapter.

**SECTION 3. Tenancy-in-Common, Tenant Purchase, and Alternative or Supplemental Method to Conversion Rights System that Ensures One-For-One Replacement of Rental Units.** The City Council directs City Administrator or designee to (a) study, to the extent feasible, the number of rental units converted to tenancies-in-common in the city, (b) track the number of units purchased by existing tenants pursuant to the provisions of this ordinance, and (c) study alternative methods of ensuring the replacement, on a one-for-one basis, of rental units in the City lost as a result of condominium conversions. The City Administrator may also study options to increase affordable home ownership and reduce displacement of renters subject to conversion. The City Council further directs City Staff to report back on its findings regarding this section.

**SECTION 4. California Environmental Quality Act.** The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (no significant effect on the environment), 15183 (projects consistent with a community plan, general plan, or zoning), and 15301 (existing facilities), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

**SECTION 5. Authority.** This Ordinance is enacted to serve the public interest and is necessary to protect the health, safety, and/or welfare of the citizens of Oakland, and is enacted pursuant to Article XI, Sections 5 and 7 of the California Constitution, the Subdivision Map Act, Section 106 of the Oakland City Charter and the City's home rule powers, and the City's General Plan.

**SECTION 6. Severability.** The provisions of this Ordinance are severable, and if any article, section, subsection, sentence, clause, phrase, paragraph, provisions, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of remaining portions of the Ordinance which shall remain in full force and effect.

**SECTION 7. Ordinance Effective Date.** Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately on final adoption if it receives six (6) or more affirmative votes on final adoption. Otherwise, it shall become effective upon the seventh day after final adoption.

**Section 8. Applicability to Existing Projects.** This Ordinance shall apply to all existing projects that have not obtained a vested right, as defined by California law, as of the effective date of this Ordinance.

**SECTION 9. Conflict.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law

**SECTION 10. Notice of Exemption.** The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 16.36, CONDOMINIUM CONVERSIONS, TO: (1) EXTEND THE CONVERSION RIGHTS REQUIREMENT TO TWO- TO FOUR-UNIT RESIDENTIAL BUILDINGS; (2) LIMIT CONVERSION RIGHTS GENERATION TO RESIDENTIAL BUILDINGS WITH BUILDING PERMITS ISSUED AFTER CONVERSION APPLICATION; (3) ENHANCE TENANT RIGHTS AND NOTICE REQUIREMENTS TO TENANTS; AND (4) MAKE OTHER MODIFICATIONS; AND TO DIRECT CITY ADMINISTRATOR OR DESIGNEE TO STUDY: ALTERNATIVE METHODS OF (A) ENSURING ONE-FOR-ONE REPLACEMENT OF RENTAL UNITS IN THE CITY AS A RESULT OF CONDOMINIUM CONVERSIONS AND (B) INCREASING AFFORDABLE HOME OWNERSHIP AND REDUCING DISPLACEMENT OF RENTERS SUBJECT TO CONVERSION; AND ADOPT CEQA EXEMPTION FINDINGS T**

This ordinance amends the City of Oakland's existing condominium conversion regulations to require replacement rental housing for the conversion of two or more housing units; to remove the provision allowing the generation of conversion rights when the units are offered as rental units for seven or more years, to acknowledge the applicability of the Oakland Just Cause for Eviction Ordinance (O.M.C. section 8.22.300 et seq.), and corresponding regulations, and the Oakland Rent Adjustment Ordinance (O.M.C. section 8.22.010 et seq.) and corresponding regulations, and to afford greater rights and protections to existing tenants. This ordinance also directs the City Administrator or her designee to study alternative methods of ensuring one-for-one replacement of rental units in the City as a result of condominium conversions, including specifically an impact fee study.