



Office of the City Manager

INFORMATION CALENDAR

November 27, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing & Community Services Department
Subject: Condominium Conversion Program – Annual Report

INTRODUCTION

The purpose of this report is to provide the City Council with an assessment of the condominium conversion program (per Berkeley Municipal Code [BMC] 21.28.020.D). This report will focus on calendar years 2008 through 2012 (up to the date this report was written on September 26, 2012).

CURRENT SITUATION AND ITS EFFECTS

The Condominium Conversion Ordinance (CCO) revisions in 2008 and 2009 (summarized in the “Background” section) streamlined the conversion process and simplified the administration of the Affordable Housing Mitigation Fee (AHMF). Table 1 of the attachment has a summary of submitted and approved applications since 2008. Before the 2008 ordinance revisions, projects took an average of 501 days to obtain a determination of Local Law Compliance (LLC). Since the adoption of those revisions, projects took an average of 365 days to obtain a determination of LLC. The 2009 ordinance revisions provided owners a 25 percent reduction if they paid the AHMF up front at the time the City approved their applications and ten units selected this option. Since 2008 the City has received a total of \$464,372.33 in mitigation fee payments from 19 units.

BACKGROUND

Condominium conversion is the process of subdividing a multi-unit property into separately owned housing units with individual titles and mortgages. Subdivisions are regulated under the California Subdivision Map Act and Subdivided Lands Act. State law also allows local governments to impose additional requirements. In Berkeley, these additional requirements are in the CCO (BMC Chapter 21.28 *et seq.*) and include an annual limit on the number of approved units, compliance with local laws, payment of an AHMF, and various tenant protections.

In 1992 the City imposed a housing mitigation fee for condominium conversions and banned the creation of Tenancy-in-Common (TIC) properties. Council found TIC ownership problematic and the conversion of rental units to condominiums and TICs

reduced the stock of affordable rental units in Berkeley. In a TIC situation, people share ownership and financing of multi-unit properties and agree among themselves on each part-owners' right to occupy one unit, often expressed as pro rata shares of property ownership. Some owners of these TIC properties developed legal and financial difficulties among their partners. They sought help from the City Council and Council banned the creation of TICs as a result of the problems. The 1992 mitigation fee for condominium conversions recaptured the entire difference in affordability that resulted from conversion. This large fee had the deliberate effect of discouraging conversions.

In 2005 California's Court of Appeals held that cities could not prohibit conversion of rental units to TICs¹. City Council felt that while condominium conversions were not ideal, it was preferred over the unregulated TIC conversions. The ordinance was changed to encourage condominiums but it was amended nine times between 2005 and 2007. The piecemeal nature of the adjustments (especially when grafted onto a process that was originally designed to discourage condominium conversions) made the CCO difficult for applicants to understand and challenging for City departments to administer. Staff proposed major changes to the CCO (summarized in the next sections). On March 25, 2008, Council adopted the following procedural changes to streamline the condominium conversion process:

- Fold the Request for Selection and Local Law Compliance steps into the Map Application step so that only one application is submitted;
- Process applications on a first-come, first-served basis instead of selecting up to 25 units on a quarterly basis;
- Limit corrections to more serious Zoning Ordinance violations and visible life and safety violations;
- Allow owners to postpone compliance with certain local laws by disclosing them on a recorded notice;
- Extend the fee exemption deadline for 1992 TICs so applications deemed complete by June 30, 2008 may still qualify;
- Require applicants to post notice signs on the property;
- Revise the 10-year prohibition for owner-occupancy evictions;
- Extend tenant protections to Section 8 tenants by requiring owners to agree not to opt out of Section 8 for at least two years after the conversion date;
- Limit rent increases for tenants in units exempt from rent control; and
- Allow the Health, Housing & Community Services Department to use 10% of the affordable housing mitigation fee revenue for program delivery and another 10% for Housing Trust Fund monitoring.

On February 10, 2009, Council adopted the following amendments to the CCO:

- Reduce the cap on the affordable housing mitigation fee from 12.5 percent to 8 percent (in order to benefit from the cap, owners must agree to limit annual rent increases to all resident tenants at the time of conversion to 65 percent of the Bay Area Consumer Price Index);

¹ *Tom v. City and County of San Francisco*, 2004, 120 Cal. App. 4th 674.

- Eliminate all sliding scale mitigation fee reductions for two- to four-unit properties;
- Create a 4 percent mitigation fee cap for all duplexes provided owners agree to limit annual rent increases to all resident tenants at the time of conversion to 65 percent of the Bay Area Consumer Price Index;
- Reduce the mitigation fee by 50 percent for owner-occupied units in properties containing three or more units if the owner has resided in the unit for at least five consecutive years and was in occupancy prior to June 30, 2010;
- Reduce the mitigation fee by 25 percent if the applicant pays the mitigation fee at the time of conversion rather than the time of sale;
- Allow applicants the option of selecting either the 2008 or 2009 ordinance if they had a pending application at the time of the February 2009 amendment;
- Allow the annual 100-unit quota to “roll-over” so that if 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 but shall not exceed 200 units in any calendar year;
- Require owners to provide City with proof that each tenant household received a Notice of Tenants’ Rights Regarding Condominium Conversion; and
- Require the Exclusive Right to Purchase period to start at the time of conversion and the tenant may only waive the Exclusive Right to Purchase after 30 days.

POSSIBLE FUTURE ACTION

None.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

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Attachments:

- 1: Summary Tables for the Condominium Conversion Program

Attachment 1
Summary Tables for the Condominium Conversion Program

The tables below provide data on calendar years 2008-2012 (up to the date Staff wrote this report on September 26, 2012). Data prior to 2008 are difficult to compile and analyze due to changes in the process and definitions.

Table 1: General Summary for Calendar Years 2008-2012

Year	Number of Submitted Applications ²	Number of Units in Submitted Applications	Number of Approved Applications ³	Number of Units in Approved Applications	Number of Approved Units Required to Pay Mitigation Fee ⁴
2008	10	35	8	26	5
2009	5	24	13	66	55
2010	7	20	4	19	19
2011	5	22	3	11	6
2012	3	11	4	16	12

Table 2: Applicable Ordinance in Approved Projects by Year

Year	Pre-2009 Ordinance		2009 Ordinance	
	Number of Approved Applications	Number of Units in Approved Applications	Number of Approved Applications	Number of Units in Approved Applications
2009	11	58	2	8
2010	0	0	4	19
2011	1	4	2	7
2012	1	4	3	12

Table 3: Applications Currently in the Process

	Applications	Units
Pending Applications	22	103

² An application is deemed submitted when the subdivision map (or step three in the older process) is submitted.

³ An application is deemed approved when the City takes the final action to approve a final subdivision map.

⁴ Ordinances before 2009 contained sliding scale fee reductions for some owner-occupants so it is unknown whether these owners will have to pay the mitigation fee. Most of these owners expressed their intentions to reside in their units long enough to reduce the fee to \$0 so they were not counted in this category.

Table 4: Revenue Received from Affordable Housing Mitigation Fee

Year	Amount Received	Total Number of Units	Number of Units Paid at Time of Application Approval	Number of Units Paid at Refinance	Number of Units Paid at Time of Sale
2008	\$47,072.33	3	0	0	3
2009	\$0	0	0	0	0
2010	\$116,200	2	0	1	1
2011	\$76,280	4	3	0	1
2012	\$224,820	10	7	1	2
Total	\$464,372.33	19	10	2	7

