

Office of the City Manager

CONSENT CALENDAR
November 19, 2013

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 and Amending BMC

Chapter 21.28

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) section 21.28.030.G to clarify the definition of a resident tenant.

FISCAL IMPACTS OF RECOMMENDATION None.

CURRENT SITUATION AND ITS EFFECTS

The Condominium Conversion Ordinance (CCO) requires an annual report to the City Council which includes an assessment of the program and any recommendations for changes to the ordinance. An issue has come up this year while administering the program. There was an unintended consequence when the 2009 amendment to the Ordinance defined the term "Resident tenant." The ordinance defines a "Resident tenant" as a person who resides in the unit on the date of final action by the City. This definition appears to allow owners to offer reduced rent lifetime leases to tenants at the date of conversion, thereby qualifying for significantly reduced fees, wait for those tenants to move, evict subsequent tenants under the Ellis Act, and then complete the conversion. The ordinance was designed to dissuade displacement of tenants by offering a reduced Affordable Housing Mitigation Fee (AHMF). If tenants are not protected, the proper mitigation is the full fee for replacement affordable housing. Neither Council nor staff anticipated that there may be projects that would have a significant delay between "final action" by the City and either recordation of their conversion documents or initial sale of the units.

The CCO revisions in 2008 and 2009 streamlined the conversion process and simplified the administration of the AHMF. Attachment 2 has a summary of submitted and approved applications since 2008 and a breakdown of the revenue the City has received to date. The 2009 ordinance revisions provided owners a 25 percent reduction if they pay the AHMF when the City approved their applications. To date, 18 units

selected this option. The City received a total of \$624,867 in mitigation fee payments from 30 units from 2008 to the present.

BACKGROUND

Condominium conversion is the process of subdividing a multi-unit property into separately owned housing units with individual 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, various tenant protections, etc.

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 and accrued to the City's Housing Trust Fund to help finance construction and rehabilitation of permanently affordable housing. This large fee had the deliberate effect of discouraging conversions.

In 2005, California's Court of Appeal 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 over TICs 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 preclude condominium conversions) made the CCO difficult for applicants to understand and challenging for City departments to administer. Council decided it was time to completely overhaul the ordinance. There were changes to the process in 2008 and changes to the Affordable Housing Mitigation Fee structure in 2009.

RATIONALE FOR RECOMMENDATION

See discussion under "Current Situation and Its Effects".

ALTERNATIVE ACTIONS CONSIDERED

None.

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

CONTACT PERSON

Be Tran, Associate Planner, HHCS, (510) 981-5422.

Attachments:

- 1: Ordinance
- 2: Summary Tables for the Condominium Conversion Program

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTION 21.28.030.G TO CLARIFY DEFINITION OF RESIDENT TENANT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

<u>Section 1.</u> That Berkeley Municipal Code Section 21.28.030.G is amended to read as follows:

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 <u>dD</u>ate of <u>eC</u>onversion or at the time of sale of the first unit on the property.

<u>Section 2.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Summary Tables for the Condominium Conversion Program

The tables below provide data on calendar years 2008-2013 (up to September 10, 2013). 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 2008-2013

Year	Number of	Number of	Number of	Number of	Number of
	Submitted	Units in	Approved	Units in	Approved Units
	Applications ²	Submitted	Applications ³	Approved	Required to Pay
		Applications		Applications	Mitigation Fee⁴
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	5	15	6	20	12
2013	3	7	3	6	6

Table 2: Applicable Ordinance in Approved Projects by Year

	Pre-2009	Ordinance	2009 Ordinance		
Year	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	
2013	0	0	3	6	

Table 3: Applications Currently in the Process

	Applications	Units
Pending Applications	18	95

Table 4: Revenue Received from Affordable Housing Mitigation Fee

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

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.

Year	Amount	Total	Number of Units	Number of	Number of
	Received	Number of	Paid at Time of	Units Paid at	Units Paid at
		Units	Application Approval	Refinance	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	\$269,145	13	9	1	3
2013	\$116,169.69	8	6	0	2
Total	\$624,867.02	30	18	2	10