

ORDINANCE NO. –N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 21.28, CONDOMINIUMS, COMMUNITY APARTMENTS, STOCK COOPERATIVES AND TENANCIES IN COMMON PROJECTS

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

Section 1. That Berkeley Municipal Code Chapter 21.28 is hereby amended to read as follows:

Chapter 21.28

CONDOMINIUMS, COMMUNITY APARTMENTS, STOCK COOPERATIVES AND TENANCY IN COMMON PROJECTS*

Sections:

- 21.28.010 Requirements of chapter, additional to other legal requirements.
- 21.28.020 Purpose and findings.
- 21.28.030 Definitions.
- 21.28.040 Conversion of rental units to condominiums and related forms of owner occupancy prohibited--Exceptions.
- 21.28.050 Eligibility for one hundred rental units per year to be converted.
- 21.28.060 Affordable housing fee requirements..
- 21.28.065 Affordable Housing Fee Exemptions- Further Reduction In Fee
- 21.28.070 Procedure for allocation of conversion of one hundred units in rental properties.
- 21.28.080 Standards for determining priorities in selection of one hundred units in rental properties.
- 21.28.090 Procedure for determining the one hundred units selected in rental properties.
- 21.28.100 Procedure for obtaining preapplication notice of compliance with local laws.
- 21.28.110 Application for subdivision.
- 21.28.120 Approval of subdivisions--Conditions to be imposed.
- 21.28.130 Fraud prohibited.
- 21.28.140 Remedies.
- 21.28.300 New residential condominiums.
- 21.28.500 New commercial condominiums.
- 21.28.700 Commercial condominium conversions.
- 21.28.710 Application, reports and other required information.
- 21.28.720 Notice to tenants.
- 21.28.800 Notice of requirements for public hearings.

* **Prior Ordinance History:** Ordinance No. 5793-NS.

If any provision of the ordinance codified in this chapter or application thereto to any person or circumstance is declared or found invalid by a court of competent jurisdiction, the invalidity of

any such provision of said ordinance shall result in a 365-day moratorium on acceptance and approval of new conversion applications under this chapter in order that the City may determine how best to continue to protect its low income housing stock.

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 ~~existing~~ 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 is also considered a tentative and/or final map.

21.28.020 Purpose and findings.

A. In order to provide for the housing needs of all economic segments of the City, the City Council declares that the purposes of this chapter are as follows:

1. To insure a reasonable balance in the availability of rental and ownership housing in the City and to maintain opportunities for individual choice in the tenure, type, cost and location of housing;
2. To maintain an adequate supply of housing affordable to low income residents;
3. To avoid displacement of and undue hardship to residents of the City who may be required to move from the community due to a shortage of low income housing.

B. The City Council finds and declares that 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 master plan.

C. The City Council finds that there is a reasonable relationship between the conversions permitted by this chapter and the diminution in the supply of housing affordable to low income families in that the conversion of existing residential rental units into condominiums, community apartment projects, and stock cooperatives (as defined in Section 1350 of the Civil Code and Sections 11004 and 11003.2 of the Business and Professions Code, respectively), by eliminating units formerly affordable to low income families and adding to the stock of housing affordable to moderate and upper income families, will create undue hardships for low income residents displaced by the conversion and will otherwise adversely affect the availability and cost of housing affordable to low income families throughout the City.

D. The City Council finds an affordable housing fee imposed on the conversion of existing residential rental units into condominiums, community apartment projects, and stock cooperatives (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 compensate for the diminution of the supply of rental housing by funding the preservation and development of permanently affordable housing for low income persons in Berkeley and that there is a reasonable relationship between these uses and the loss of affordability caused by the conversions referenced above.

E. The City Council further finds that the cost estimates regarding the amount of loss of afford-ability 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, 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.

F. The City Council finds and declares that it would not adopt this chapter permitting

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.

21.28.030 Definitions.

As used in this chapter:

A. "Cohousing communities." A type of development ~~which that~~ fosters community by at least the following means:

1. The layout around common open space encourages resident interaction.
2. There are extensive commonly owned living facilities, which amount to a minimum of ten percent of the total building square footage and which include a common kitchen and dining area suitable for seating all of the residents at one time and may include other common facilities such as children's play rooms, workshop(s), living room, guest room(s) and laundry facilities.
3. A group of households who wish to become resident owners, numbering at least half of the number of units that will be on the property, participate fully in planning the community including decision-making with regard to the design of a new development or any design changes in the renovation of existing housing, and with regard to the content of any deed restrictions and the management documents of the association.

4. Residents will engage in joint ~~decisionmaking~~ decision making on the improvement, use and management of common property and, by written agreement, commit to participate in other community activities such as preparing community dinners at least weekly, supporting residents with special needs such as childcare, and maintaining community gardens, shared open space and common facilities.

B. "Elderly tenant" means a tenant who is sixty years of age or older.

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

D. "Low and moderate income tenant." A low-income tenant is one whose annual family income is ~~less no more~~ than eighty percent of the median annual income adjusted for household size for the SMSA calculated by the Department of Housing and Urban Development. A moderate-income tenant is one whose annual family income is ~~less no more~~ than one hundred twenty percent of the median annual income for the SMSA adjusted for household size as calculated by the Department of Housing and Urban Development. Provided, however, that no person may be designated a low or moderate income tenant if that person has been declared a dependent of another for tax purposes, and the person who declared the tenant a dependent does not meet the definition herein.

E. "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.

F. "Unit" means any residential dwelling unit or apartment 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 joint living and work quarters~~ 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 prohibited--Exceptions.

A. No units that have been previously occupied as rental units may be converted to, condominium projects, community apartment projects or stock cooperatives, except as provided in this chapter.herein

B. Up to ~~one hundred~~100 rental units per year may ~~apply for~~ receive approval of a tentative map or parcel map to create a condominium project, community apartment project or stock cooperative, if such units meet the eligibility requirements set forth in Section 21.28.050, follow the procedure set forth in Section 21.28.070, and are selected for conversion under the procedure set forth in Section 21.28.090.

1. In any conversion of properties that have existing inclusionary units, as required under the City’s inclusionary zoning ordinance, the existing inclusionary units shall not be counted against the quota of 100 units and may be approved provided that they comply with tenants protections in section 21.28.050.A.

2. Two, three and four unit properties with owner-occupied units eligible for reduced mitigation fees of 5% or less shall not be counted against the quota of 100 units and may be approved

3. Units which are exempt under 21.28.065 (A) (2) shall not be counted against the quota of 100 units and may be approved

C. This section shall not apply to applications involving proposed or newly constructed buildings that contain units not previously rented or leased, ~~nor~~ to buildings lawfully designed and used for other than residential purposes. Where a new unit or units are added to an existing residential unit or units, this section does not apply to a proposed subdivision of the new unit(s) from the existing unit or units. The new unit(s) may apply for a tentative map or parcel map under this title.

D. This section shall not apply to conversions to limited equity housing cooperatives.

E. Properties may be converted to condominiums, community apartments or stock cooperatives under this chapter in order to form cohousing communities, so long as they meet the definition of cohousing community contained in Section 21.28.030.A, and contain no fewer than eight units of which at least seventy percent are single-family attached or detached structures. The physical layout of the structures on the property must be clearly suited to formation of a cohousing community. The property must not have had any tenant residents as of August 20, 1992, the effective date of the section. The property must need rehabilitation in order to be made habitable, costing, on an average, no less than thirty thousand dollars per unit. Seventy-five percent of the units must be sold at prices affordable to low or moderate income people. The total number of units in cohousing communities which may convert is limited under this chapter.

F. This section shall not apply to 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 Eligibility for one hundred rental units per year to be converted.

In order to be considered among the one hundred units permitted to convert each year, the building or buildings proposed for conversion must meet the following conditions:

A. At no time within ~~ten~~twenty years of the time the application to convert is filed shall an

owner of the property have filed with the City of Berkeley a statement of intent to go out of the rental business. At the time of application and continuously for ~~five~~ ten years prior thereto, no eviction may have occurred pursuant to Section 13.76.130.A.9. of the Berkeley Municipal Code (relating to eviction for purposes of owner-occupancy or occupancy by relatives of the owner).

~~— B. At the time of application, no more than twenty five percent of the units may be vacant.~~

~~— C. At least thirty days prior to the filing of the application, the owner must distribute to each tenant occupied unit in the building or buildings, a statement of tenant intent to purchase in the form required by the City which notifies each tenant of his or her right to purchase the unit at a designated price and terms and allows the tenant to sign and file such a notice with the owner.~~

B. The owner must agree that, at the time of sale of each unit, an affordable housing fee, as described in Section 21.28.060, shall be paid to the City.

C. The owner must comply with all applicable laws of the City.

21.28.060 Affordable housing fee requirements.

A. ~~Except as provided in 21.28.065, A~~any conversion of rental housing pursuant to this chapter shall be subject to the payment of an affordable housing fee. The fee shall be the capitalized value of the increase in the monthly cost of the condominium unit compared to the monthly cost of the rental unit for a tenant ~~with the median income for the City~~. Monthly homeownership costs will be determined by adding mortgage payments, taxes, ~~insurance,~~ and homeowners association fees, ~~less the value of homeowner tax deductions. Tax deductions will be the net benefit of homeowner deductions over what the buyer would receive if using the standard deduction. Deductions will be determined for a tenant household with the median tenant income as determined from the most recent census and adjusted to present dollars by the Bay Area consumer price index for all urban consumers and assuming other deductible expenditures equal to two percent of income.~~ Mortgage payments will be the current average fixed rate thirty-year mortgage as reported by the San Francisco Federal Home Loan Bank applied to ninety-five percent of the purchase price. The rent shall be the current market rent at the time of filing the application. The capitalized value shall be determined by dividing the increase in monthly housing payments by the mortgage interest rate. ~~In no case, however, shall the affordable housing fee exceed 12.5% of the sales price of each unit. This cap on the affordable housing mitigation fee shall expire on January 31, 2006.~~

B. The affordable housing fee for conversion of a rental unit shall be based on the actual a sales price, provided that the sales price ~~that~~ is no lower than ninety percent of the appraised value of the unit as a condominium at the time of ~~conversion sale~~. If units are sold at prices below this level, the affordable housing fee must be paid in the same amount as if the unit were sold at ninety percent of ~~current~~ appraised value. Owners shall have the option of paying the fee at any time prior to sale of any unit, based on the full appraised value of each unit. Where a unit is occupied by an owner prior to conversion to condominiums, the fee may be based either on the appraised value of the unit as a condominium at the time of conversion or on the actual price at the time of sale at the discretion of the owner.

C. All of the sums collected pursuant to this section shall be placed in the housing trust fund of the City and shall be used solely to finance needed permanently affordable low and moderate income housing to help meet the City's housing element goals and policies.

D. An appropriate document or documents, in a form required by the City, indicating the amount of the portion of the affordable housing fee attributable to each unit, and which is owed to the City, shall be executed and recorded with the County Recorder. Such documents shall

indicate a lien in favor of the City in an amount equal to the affordable housing fee for that unit. Upon payment to the City of the fee amount, a release of the lien shall be filed by the City with respect to each unit for which the fee has been paid.

E. Any conversion of rental property for development of a cohousing community pursuant to Section 21.28.040H of this chapter shall, in place of the mitigation fee, be subject to inclusionary zoning requirements that are either equal to that of new condominium construction as stated in Chapter 23C.12 of the Berkeley Municipal Code, or the number of inclusionary units shall be at least fifty percent of the total number of units and they shall be affordable to households at one hundred percent of the median income, with affordability defined as a price no higher than three times income or, the Planning Commission and the City Council may approve an inclusionary proposal that the City Manager determines is of equivalent value to these two alternatives.

~~F. Residents who are owners as tenants in common of buildings containing five or fewer dwelling units as of May 10, 2005, shall be exempt from the affordable housing mitigation fee required by this section, as well as the quota set forth in Section 21.28.090, provided that such resident owners have used the unit as their principle place of residence since January 1, 1995, provided that no more than 15 dwelling units may be subject to this exemption on a first come, first served basis.~~

21.28.065 Affordable Housing Fee Exemptions - Further Reduction In Fee

A. Exemptions. The following shall be exempt from the payment of any affordable housing fee:

1. Any already existing inclusionary unit which was required to be created under the City's inclusionary zoning ordinance.

2. In properties where the initial request for selection was made prior to June 16, 2005 and the property would have been exempt from the affordable housing mitigation fee under the ordinance then in effect, the property shall continue to be exempt from this fee as long as the subdivision application is complete by July 1, 2007.

3. Residents who are owners as tenants in common of buildings containing five or fewer dwelling units as of May 10, 2005, shall be exempt from the affordable housing mitigation fee required by this section, as well as the quota set forth in Section 21.28.090, provided that such resident owners have used the unit as their principle place of residence since January 1, 1995, provided that no more than 15 dwelling units may be subject to this exemption on a first come, first-served basis. This provision shall sunset on July 1, 2007 or once 15 units have received a fee waiver, whichever comes first.

~~4. (DUPLEX ALTERNATIVE #1): Owner occupied units in two unit properties where the owner has lived in the unit as their principal place of residence or previously rented another unit in Berkeley as their principal place of residence for a total of at least seven consecutive years.~~

B. Further Reductions in Affordable Housing Fee

There will be further reductions in the affordable housing fee as follows:

1. If the owner converting the property agrees to limit future rent increases for current tenants to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers after conversion, then the affordable housing fee shall not exceed 12.5% of the sales price of the unit. This cap on the affordable housing mitigation fee shall expire on January 31,

2006.

~~2. (DUPLEX ALTERNATIVE #2)–In two unit properties where an owner has lived in the unit or previously rented another unit in Berkeley as their principal place of residence for a total of at least seven consecutive years the affordable housing fee for that unit shall be no greater than five percent of sales price.~~

~~3. In any conversion of owner-occupied properties consisting of three or four residential units the maximum affordable housing fee for units occupied by an owner who has lived in the unit as their principal place of residence for at least seven consecutive years shall be five percent.~~

~~3. 4. In two unit owner-occupied properties with a rental unit that is exempt from both rent stabilization and good cause for eviction the maximum fee shall be five percent.~~

21.28.070 Procedure for allocation of conversion of one hundred units in rental properties.

A request for allocation of part of the one hundred units of rental property allowed to convert under this chapter shall be filed on a form provided by the City. The request shall be accompanied by supporting documents providing the information necessary to determine that the property is eligible to convert, as described in Section 21.28.050 (Eligibility for one hundred units per year to be converted) and to determine the priority in allocation as described in Section 21.28.080 (Standards for determining priorities in selection of one hundred units). The request shall be filed with the zoning office. Notification of the filing of the request shall be made on all the tenants of the building in the manner and on a form required by the City. A fee to cover the costs of the allocation procedure must be set by the City Council by resolution and may be amended from time to time. No request for allocation may be accepted before this fee goes into effect.

21.28.080 Standards for determining priorities in selection of one hundred units in rental properties.

Priorities for selection of the one hundred units shall be as follows:

A. Priority will be given to proposals with the highest percentage of proposed tenant-purchasers, ~~however, where proposals contain percentages of tenant purchasers within ten percent of each other, the one with the higher average length of tenancy of the proposed tenant-purchasers shall be selected and tenant purchasers who have lived in their unit for five years or more shall count as two tenant-purchasers for purposes of determining the percentage. Owner-occupants shall also count as proposed tenant purchasers for purposes of determining the percentage. The City Manager shall establish by administrative regulations the procedures for a tenant to qualify as a proposed tenant-purchaser.~~

B. All other factors being equal, applications filed first in time will be preferred.

21.28.090 Procedure for determining the one hundred units selected in rental properties.

A. Requests for allocation will be evaluated twice ~~per calendar yearly beginning in 1993.~~ Fifty units will be selected ~~in each at the end of the first~~ six-month period, if such units comply with the eligibility requirements of this chapter and in accordance with the priorities set under Section 21.28.080. The remaining requests, if any, will be considered again at the end of the ~~next second~~ six-month period. ~~If after the final selections for the calendar year there are any remaining requests for allocation, they may be considered in the next calendar year.~~ The City Manager or his designee shall determine the times at which each set of requests will be evaluated and proposals selected.

B. The properties with up to one hundred units whose priority is highest will receive a Notice of Selection from the City and may apply to convert to condominiums or cooperatives.

C. In each calendar year, ~~starting in 1994, prior to approval of the applications for the second six month period,~~ the City Manager or his or her designee shall report to the Housing Advisory Commission and the Planning Commission on the number of conversions during the previous year, including their ~~geographical distribution~~location, prices, rate of tenant purchase and such other information as may be necessary for the Planning Commissions to review the conversion program and to make such recommendations to the City Council as may be necessary to protect the public welfare.

21.28.100 Procedure for obtaining preapplication notice of compliance with local laws.

Persons who wish to obtain a determination that their building complies with applicable local laws, for purposes of obtaining approval for a conversion, may file an application with the zoning office accompanied by a fee ~~therefor~~therefore, set by the City Council by resolution. The zoning office will perform a compliance review and provide a notice of local law compliance. The notice of local law compliance will state whether the property complies with the requirements of this ordinance and whether all units and any building additions or modifications were legally constructed with the permits required at the time of construction ~~all applicable local laws~~ and will state what, if anything, must be corrected in order to bring the property into compliance. The notice of local law compliance will guide the conditions placed on approval of any conversion for which it is required, but does not preclude additional requirements if additional noncomplying conditions are discovered. A fee to cover the costs of the notice procedure may be set by the City Council by resolution and amended from time to time.

21.28.110 Application for subdivision.

Application to be considered within the one hundred units permitted. Where a tentative map or parcel map application pursuant to Chapter 21.16 or 21.24 of this code is filed by one seeking to convert existing rental housing to condominiums, community apartments, or stock cooperatives, no application for a tentative subdivision map shall be considered complete or approved unless it is accompanied by notices from the City indicating: (1) selection of the applicant as among the one hundred units for conversion, as specified in Section 21.28.090, ~~(B)~~, and (2) that the proposed conversion complies with the City's laws or can be brought into compliance as part of the conversion and unless the application is accompanied by all documentation necessary to demonstrate compliance with the conditions of approval stated in Section 21.28.120 (Approval of subdivisions--Conditions to be imposed), updated information on whether the property complies with the eligibility requirements of this chapter, and all documents required in the subdivision process including but not limited to the map, CC&Rs, title report, and such soils and geological studies as may be necessary. A fee to cover the costs of the application procedure may be set by the City Council by resolution and amended from time to time.

21.28.120 Approval of subdivisions--Conditions to be imposed.

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

B. The Planning Commission or City Manager or his/her designee shall impose the

following conditions on any conversion of rental units:

1. The owner shall offer and continue to offer the exclusive right to purchase each rental unit in the building to the tenant thereof upon the terms set forth in the application, without change, for a period of not less than ~~two~~ one years from the date of final approval by the California Department of Real Estate, or the date the first unit in the building is offered for sale, if no approval by the California Department of Real Estate is required. ~~At the beginning of the second year, the tenant's sale price may be adjusted according to any change reflected in the price index occurring during the preceding year.~~

2. The owner shall satisfy the affordable housing fee requirements ~~of this section~~ 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 sale or refinancing, as described in Section 21.28.060E.

~~3. (TENANT PROTECTION ALTERNATIVE #1.) No low or moderate income tenant, and no elderly tenant, shall at any time after the submission of the conversion application be evicted for the purpose of occupancy by the owner, or by 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 section.~~

3. ~~(TENANT PROTECTION ALTERNATIVE #2.)~~ No low or moderate income tenant, and no elderly tenant, shall at any time after the submission of the conversion application be evicted for the purpose of occupancy by the owner, or by 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 section.

4. 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.

5. Where the owner proposes or intends to make improvements other than pursuant to Section 21.28.120 ~~(B)(4)~~, 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.

6. The owner shall provide all prospective buyers with a report on the seismic safety of the property.

~~7. The owner of a rental conversion property shall bring the property up to the current building code requirement for noise separation between condominiums or to the maximum separation economically feasible if the current code requirement is not economically feasible.~~

C. 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 by a collaborative cohousing community unless it finds that the project fully satisfies the definition and

requirements for a ~~collaborative cohousing~~ community.

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.

21.28.130 Fraud prohibited.

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, stock cooperative or TIC if the creation of such condominiums or other related 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.

21.28.140 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. In addition, in any such action a civil penalty in the amount of 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.

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

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.

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

21.28.300 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.

21.28.500 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.

21.28.700 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.

21.28.710 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.

21.28.720 Notice to tenants.

The subdivider shall submit signed copies from each tenant of 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.

21.28.800 Notice of requirements for public hearings.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.

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* **Prior Ordinance History:** Ordinance No. 5793-NS.

If any provision of the ordinance codified in this chapter or application thereto to any person or circumstance is declared or found invalid by a court of competent jurisdiction, the invalidity of

any such provision of said ordinance shall result in a 365-day moratorium on acceptance and approval of new conversion applications under this chapter in order that the City may determine how best to continue to protect its low income housing stock.

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 is also considered a tentative and/or final map.

21.28.020 Purpose and findings.

A. In order to provide for the housing needs of all economic segments of the City, the City Council declares that the purposes of this chapter are as follows:

1. To insure a reasonable balance in the availability of rental and ownership housing in the City and to maintain opportunities for individual choice in the tenure, type, cost and location of housing;
2. To maintain an adequate supply of housing affordable to low income residents;
3. To avoid displacement of and undue hardship to residents of the City who may be required to move from the community due to a shortage of low income housing.

B. The City Council finds and declares that 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 master plan.

C. The City Council finds that there is a reasonable relationship between the conversions permitted by this chapter and the diminution in the supply of housing affordable to low income families in that the conversion of existing residential rental units into condominiums, community apartment projects, and stock cooperatives (as defined in Section 1350 of the Civil Code and Sections 11004 and 11003.2 of the Business and Professions Code, respectively), by eliminating units formerly affordable to low income families and adding to the stock of housing affordable to moderate and upper income families, will create undue hardships for low income residents displaced by the conversion and will otherwise adversely affect the availability and cost of housing affordable to low income families throughout the City.

D. The City Council finds an affordable housing fee imposed on the conversion of existing residential rental units into condominiums, community apartment projects, and stock cooperatives (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 compensate for the diminution of the supply of rental housing by funding the preservation and development of permanently affordable housing for low income persons in Berkeley and that there is a reasonable relationship between these uses and the loss of affordability caused by the conversions referenced above.

E. The City Council further finds that the cost estimates regarding the amount of loss of afford-ability 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, 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.

F. The City Council finds and declares that it would not adopt this chapter permitting

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.

21.28.030 Definitions.

As used in this chapter:

A. "Cohousing communities." A type of development that fosters community by at least the following means:

1. The layout around common open space encourages resident interaction.
2. There are extensive commonly owned living facilities, which amount to a minimum of ten percent of the total building square footage and which include a common kitchen and dining area suitable for seating all of the residents at one time and may include other common facilities such as children's play rooms, workshop(s), living room, guest room(s) and laundry facilities.
3. A group of households who wish to become resident owners, numbering at least half of the number of units that will be on the property, participate fully in planning the community including decision-making with regard to the design of a new development or any design changes in the renovation of existing housing, and with regard to the content of any deed restrictions and the management documents of the association.
4. Residents will engage in joint decision making on the improvement, use and management of common property and, by written agreement, commit to participate in other community activities such as preparing community dinners at least weekly, supporting residents with special needs such as childcare, and maintaining community gardens, shared open space and common facilities.

B. "Elderly tenant" means a tenant who is sixty years of age or older.

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

D. "Low and moderate income tenant." A low-income tenant is one whose annual family income is no more than eighty percent of the median annual income adjusted for household size for the SMSA calculated by the Department of Housing and Urban Development. A moderate-income tenant is one whose annual family income is no more than one hundred twenty percent of the median annual income for the SMSA adjusted for household size as calculated by the Department of Housing and Urban Development. Provided, however, that no person may be designated a low or moderate income tenant if that person has been declared a dependent of another for tax purposes, and the person who declared the tenant a dependent does not meet the definition herein.

E. "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.

F. "Unit" means any residential dwelling unit or apartment 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, 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 prohibited--Exceptions.

A. No units that have been previously occupied as rental units may be converted to, condominium projects, community apartment projects or stock cooperatives, except as provided in this chapter.

B. Up to 100 rental units per year may receive approval of a tentative map or parcel map to create a condominium project, community apartment project or stock cooperative, if such units meet the eligibility requirements set forth in Section 21.28.050, follow the procedure set forth in Section 21.28.070, and are selected for conversion under the procedure set forth in Section 21.28.090.

1. In any conversion of properties that have existing inclusionary units, as required under the City’s inclusionary zoning ordinance, the existing inclusionary units shall not be counted against the quota of 100 units and may be approved.

2. Two, three and four unit properties with owner-occupied units eligible for reduced mitigation fees of 5% or less shall not be counted against the quota of 100 units and may be approved provided that they comply with tenants protections in section 21.28.050.A.

3. Units which are exempt under 21.28.065 (A) (2) shall not be counted against the quota of 100 units and may be approved

C. This section shall not apply to applications involving proposed or newly constructed buildings that contain units not previously rented or leased, or to buildings lawfully designed and used for other than residential purposes. Where a new unit or units are added to an existing residential unit or units, this section does not apply to a proposed subdivision of the new unit(s) from the existing unit or units. The new unit(s) may apply for a tentative map or parcel map under this title.

D. This section shall not apply to conversions to limited equity housing cooperatives.

E. Properties may be converted to condominiums, community apartments or stock cooperatives under this chapter in order to form cohousing communities, so long as they meet the definition of cohousing community contained in Section 21.28.030.A, and contain no fewer than eight units of which at least seventy percent are single-family attached or detached structures. The physical layout of the structures on the property must be clearly suited to formation of a cohousing community. The property must not have had any tenant residents as of August 20, 1992, the effective date of the section. The property must need rehabilitation in order to be made habitable, costing, on an average, no less than thirty thousand dollars per unit. Seventy-five percent of the units must be sold at prices affordable to low or moderate income people. The total number of units in cohousing communities which may convert is limited under this chapter.

F. This section shall not apply to 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 Eligibility for one hundred rental units per year to be converted.

In order to be considered among the one hundred units permitted to convert each year, the building or buildings proposed for conversion must meet the following conditions:

A. At no time within twenty years of the time the application to convert is filed shall an owner of the property have filed with the City of Berkeley a statement of intent to go out of the

rental business. At the time of application and continuously for ten years prior thereto, no eviction may have occurred pursuant to Section 13.76.130.A.9 of the Berkeley Municipal Code (relating to eviction for purposes of owner-occupancy or occupancy by relatives of the owner).

B. The owner must agree that, at the time of sale of each unit, an affordable housing fee, as described in Section 21.28.060, shall be paid to the City.

C. The owner must comply with all applicable laws of the City.

21.28.060 Affordable housing fee requirements.

A. Except as provided in 21.28.065, any conversion of rental housing pursuant to this chapter shall be subject to the payment of an affordable housing fee. The fee shall be the capitalized value of the increase in the monthly cost of the condominium unit compared to the monthly cost of the rental unit for a tenant. Monthly homeownership costs will be determined by adding mortgage payments, taxes, and homeowners association fees. Mortgage payments will be the current average fixed rate thirty-year mortgage as reported by the San Francisco Federal Home Loan Bank applied to ninety-five percent of the purchase price. The rent shall be the current market rent at the time of filing the application. The capitalized value shall be determined by dividing the increase in monthly housing payments by the mortgage interest rate.

B. The affordable housing fee for conversion of a rental unit shall be based on the actual sales price, provided that the sales price is no lower than ninety percent of the appraised value of the unit as a condominium at the time of sale. If units are sold at prices below this level, the affordable housing fee must be paid in the same amount as if the unit were sold at ninety percent of appraised value. Owners shall have the option of paying the fee at any time prior to sale of any unit, based on the full appraised value of each unit. Where a unit is occupied by an owner prior to conversion to condominiums, the fee may be based either on the appraised value of the unit as a condominium at the time of conversion or on the actual price at the time of sale at the discretion of the owner.

C. All of the sums collected pursuant to this section shall be placed in the housing trust fund of the City and shall be used solely to finance needed permanently affordable low and moderate income housing to help meet the City's housing element goals and policies.

D. An appropriate document or documents, in a form required by the City, indicating the amount of the portion of the affordable housing fee attributable to each unit, and which is owed to the City, shall be executed and recorded with the County Recorder. Such documents shall indicate a lien in favor of the City in an amount equal to the affordable housing fee for that unit. Upon payment to the City of the fee amount, a release of the lien shall be filed by the City with respect to each unit for which the fee has been paid.

E. Any conversion of rental property for development of a cohousing community pursuant to Section 21.28.040 of this chapter shall, in place of the mitigation fee, be subject to inclusionary zoning requirements that are either equal to that of new condominium construction as stated in Chapter 23C.12 of the Berkeley Municipal Code, or the number of inclusionary units shall be at least fifty percent of the total number of units and they shall be affordable to households at one hundred percent of the median income, with affordability defined as a price no higher than three times income or, the Planning Commission and the City Council may approve an inclusionary proposal that the City Manager determines is of equivalent value to these two alternatives.

21.28.065 Affordable Housing Fee Exemptions - Further Reduction In Fee

A. Exemptions. The following shall be exempt from the payment of any affordable housing fee:

1. Any already existing inclusionary unit which was required to be created under the City's inclusionary zoning ordinance.

2. In properties where the initial request for selection was made prior to June 16, 2005 and the property would have been exempt from the affordable housing mitigation fee under the ordinance then in effect, the property shall continue to be exempt from this fee as long as the subdivision application is complete by July 1, 2007.

3. Residents who are owners as tenants in common of buildings containing five or fewer dwelling units as of May 10, 2005, shall be exempt from the affordable housing mitigation fee required by this section, as well as the quota set forth in Section 21.28.090, provided that such resident owners have used the unit as their principle place of residence since January 1, 1995, provided that no more than 15 dwelling units may be subject to this exemption on a first come, first-served basis. This provision shall sunset on July 1, 2007 or once 15 units have received a fee waiver, whichever comes first.

B. Further Reductions in Affordable Housing Fee

There will be further reductions in the affordable housing fee as follows:

1. If the owner converting the property agrees to limit future rent increases for current tenants to no more than 65% of the increase in the Consumer Price Index for all Bay Area Consumers after conversion, then the affordable housing fee shall not exceed 12.5% of the sales price of the unit. This cap on the affordable housing mitigation fee shall expire on January 31, 2006.

2. In two unit properties where an owner has lived in the unit or previously rented another unit in Berkeley as their principal place of residence for a total of at least seven consecutive years the affordable housing fee for that unit shall be no greater than five percent of sales price.

3. In any conversion of owner-occupied properties consisting of three or four residential units the maximum affordable housing fee for units occupied by an owner who has lived in the unit as their principal place of residence for at least seven consecutive years shall be five percent.

4. In two unit owner-occupied properties with a rental unit that is exempt from both rent stabilization and good cause for eviction the maximum fee shall be five percent.

21.28.070 Procedure for allocation of conversion of one hundred units in rental properties.

A request for allocation of part of the one hundred units of rental property allowed to convert under this chapter shall be filed on a form provided by the City. The request shall be accompanied by supporting documents providing the information necessary to determine that the property is eligible to convert, as described in Section 21.28.050 (Eligibility for one hundred units per year to be converted) and to determine the priority in allocation as described in Section 21.28.080 (Standards for determining priorities in selection of one hundred units). The request shall be filed with the zoning office. Notification of the filing of the request shall be made on all the tenants of the building in the manner and on a form required by the City. A fee to cover the costs of the allocation procedure must be set by the City Council by resolution and may be amended from time to time. No request for allocation may be accepted before this fee goes into effect.

21.28.080 Standards for determining priorities in selection of one hundred units in rental properties.

Priorities for selection of the one hundred units shall be as follows:

A. Priority will be given to proposals with the highest percentage of proposed tenant-purchasers, and tenant purchasers who have lived in their unit for five years or more shall count as two tenant-purchasers for purposes of determining the percentage. Owner-occupants shall also count as proposed tenant purchasers for purposes of determining the percentage. The City Manager shall establish by administrative regulations the procedures for a tenant to qualify as a proposed tenant-purchaser.

B. All other factors being equal, applications filed first in time will be preferred.

21.28.090 Procedure for determining the one hundred units selected in rental properties.

A. Requests for allocation will be evaluated twice yearly. Fifty units will be selected in each six-month period, if such units comply with the eligibility requirements of this chapter and in accordance with the priorities set under Section 21.28.080. The remaining requests, if any, will be considered again at the end of the next six-month period. The City Manager or his designee shall determine the times at which each set of requests will be evaluated and proposals selected.

B. The properties with up to one hundred units whose priority is highest will receive a Notice of Selection from the City and may apply to convert to condominiums or cooperatives.

C. In each calendar year, the City Manager or his or her designee shall report to the Housing Advisory Commission and the Planning Commission on the number of conversions during the previous year, including their location, prices, rate of tenant purchase and such other information as may be necessary for the Commissions to review the conversion program and to make such recommendations to the City Council as may be necessary to protect the public welfare.

21.28.100 Procedure for obtaining preapplication notice of compliance with local laws.

Persons who wish to obtain a determination that their building complies with applicable local laws, for purposes of obtaining approval for a conversion, may file an application with the zoning office accompanied by a fee therefore, set by the City Council by resolution. The zoning office will perform a compliance review and provide a notice of local law compliance. The notice of local law compliance will state whether the property complies with the requirements of this ordinance and whether all units and any building additions or modifications were legally constructed with the permits required at the time of construction and will state what, if anything, must be corrected in order to bring the property into compliance. The notice of local law compliance will guide the conditions placed on approval of any conversion for which it is required, but does not preclude additional requirements if additional noncomplying conditions are discovered. A fee to cover the costs of the notice procedure may be set by the City Council by resolution and amended from time to time.

21.28.110 Application for subdivision.

Application to be considered within the one hundred units permitted. Where a tentative map or parcel map application pursuant to Chapter 21.16 or 21.24 of this code is filed by one seeking to convert existing rental housing to condominiums, community apartments, or stock cooperatives, no application for a tentative subdivision map shall be considered complete or approved unless it is accompanied by notices from the City indicating: (1) selection of the applicant as among the one hundred units for conversion, as specified in Section 21.28.090.B, and (2) that the proposed conversion complies with the City's laws or can be brought into compliance as part of the conversion and unless the application is accompanied by all

documentation necessary to demonstrate compliance with the conditions of approval stated in Section 21.28.120 (Approval of subdivisions--Conditions to be imposed), updated information on whether the property complies with the eligibility requirements of this chapter, and all documents required in the subdivision process including but not limited to the map, CC&Rs, title report, and such soils and geological studies as may be necessary. A fee to cover the costs of the application procedure may be set by the City Council by resolution and amended from time to time.

21.28.120 Approval of subdivisions --Conditions to be imposed.

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

B. The Planning Commission or City Manager or his/her designee shall impose the following conditions on any conversion of rental units:

1. The owner shall offer and continue to offer the exclusive right to purchase each rental unit in the building to the tenant thereof upon the terms set forth in the application, without change, for a period of not less than one year from the date of final approval by the California Department of Real Estate, or the date the first unit in the building is offered for sale, if no approval by the California Department of Real Estate is required.

2. 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 sale or refinancing, as described in Section 21.28.060

3. No tenant, shall at any time after the submission of the conversion application be evicted for the purpose of occupancy by the owner, or by 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 section.

4. 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.

5. Where the owner proposes or intends to make improvements other than pursuant to Section 21.28.120.B.4, 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.

6. The owner shall provide all prospective buyers with a report on the seismic safety of the property.

C. 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 by a cohousing community unless it finds that the project fully satisfies the definition and requirements for a cohousing community.

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.

21.28.130 Fraud prohibited.

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, stock cooperative or TIC if the creation of such condominiums or other related 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.

21.28.140 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. In addition, in any such action a civil penalty in the amount of 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.

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

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.

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

21.28.300 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.

21.28.500 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.

21.28.700 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.

21.28.710 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.

21.28.720 Notice to tenants.

The subdivider shall submit signed copies from each tenant of 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.

21.28.800 Notice of requirements for public hearings.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.