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Councilmember, City of Berkeley District 7

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ACTION CALENDAR

July 18, 2006

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kriss Worthington and Max Anderson

Subject: Amendment to B.M.C. Section 21.28.050 to provide additional protections and advance notice to tenants regarding condominium conversion

RECOMMENDATION:

Adopt a first reading of an ordinance amending Berkeley Municipal Code (BMC) Section 21.28.050, prohibiting the conversion of rental units to condominiums for 5 years for specific terminations of tenancy and requiring notice to tenants regarding their rights before a request for allocation is filed with the City.

BACKGROUND:

The Tom v. San Francisco decision invalidated Berkeley's restrictions on tenancy in common (TIC) projects. Accordingly, in May 2005 the Berkeley City Council adopted amendments to the Condominium Conversion Ordinance, B.M.C. Section 21.28 to reduce the mitigation fee for the conversion of rental units to condominiums in order to provide an alternative to TIC conversion.

The Council considered amendments in September 2005, proposed by staff and the Housing Advisory Commission, but decided to continue discussion of changes to a future meeting. However, in order to ensure that the next round of units can convert, in October 2005, the Council adopted amendments to the ordinance which among other things prohibited evictions because a unit is converted and provided rents fixed at increases in the Consumer Price Index (CPI) if a tenant remains in a unit.

While the ordinance has worked reasonably well, there is a need for additional protections for tenants who are vulnerable to condominium conversion.

Most recently, Section 8 tenants have testified before the Rent Stabilization Board regarding the threat of landlords opting out of the program in order to convert rental units to condominiums. Additionally, there are a number of other situations where there is an incentive for owners to evict tenants in order to convert.

Because of the need to provide additional protections for tenants, the Rent Board approved a recommendation to the City Council on May 15, 2006, which encourages a prohibition on conversion for 5 years if a tenancy was terminated for a number of reasons, including an owner opting out of the Section 8 program.

There is also a need to ensure that tenants are notified of their rights before an owner goes through the conversion process. Currently, there are very few requirements for notification and providing advance notice to tenants about their rights will help prevent evictions for speculative purposes.

Accordingly, the proposed amendments to the Condominium Conversion Ordinance will help minimize the incentive for owners to evict tenants and ensure that our existing law provides a reasonable balance between protecting our most vulnerable tenants and providing affordable homeownership opportunities for Berkeley residents.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSON:

Councilmember Kriss Worthington	981-7170
Councilmember Max Anderson	981-7130

Attachments:

1. Ordinance

AMENDING BERKELEY MUNICIPAL CODE SECTION 21.28.050 TO PROHIBIT THE CONVERSION OF RENTAL UNITS TO CONDOMINIUMS FOR 5 YEARS DUE TO SPECIFIC TERMINATIONS OF TENANCY AND REQUIRING NOTICE TO TENANTS REGARDING THEIR RIGHTS BEFORE A REQUEST FOR ALLOCATION IS FILED WITH THE CITY.

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

Section 1. That Berkeley Municipal Code Section 21.28.050 is hereby amended to read as follows:

Section 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.

B. At the time of application and continuously for ten years prior thereto, no eviction may have occurred pursuant to 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).

C. For any units that are vacant at the time the application to convert is filed, the vacancy may not have been created by the termination of a tenancy within the prior five years where the termination occurred:

1. Within one year of the service by the owner of a termination of tenancy notice pursuant to Civil Code Section 1946; or
2. Within one year of 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
3. By the tenant household vacating the property when, prior to the termination, 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
4. 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.

D. 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.

E. A Notice of Tenants' Rights Regarding Condominium Conversion provided by the City must have been served on each tenant household at the property at least 60 days but not more than 120 days prior to the filing of the owner's request for allocation, as described in Section 21.28.050.

F. The owner must comply with all applicable laws of the City. (Ord. 6882-NS § 1 (part), 2005: Ord. 6852-NS § 5 (part), 2005: Ord. 6352-NS § 1 (part), 1996: Ord. 6158-NS § 3, 1992: Ord. 6144-NS § 2 (part), 1992)

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.

Berkeley Municipal Code

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