



ACTION CALENDAR  
July 25, 2006

To: Honorable Mayor and  
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Sherry M. Kelly, Acting City Clerk

Subject: Initiative Petition: Ordinance amending Berkeley Municipal Code Chapter 21.28 to Encourage and Regulate Conversion of a Limited Number of Rental Units to Condominiums and to Assist Tenants in Purchasing Their Own Units

RECOMMENDATION

That Council take one of the following actions as provided by Sections 92 (3 and 4) of the Charter of the City of Berkeley:

1. Pass the Ordinance without alteration within 20 days after the attachment of the City Clerk's certificate of sufficiency to the petition (subject to a referendary vote, under the provision of Article XIV of the Charter); or
2. Adopt a Resolution submitting the Ordinance, without alteration, to a vote of the People at the November 7, 2006 General Municipal Election and provide comments on the City Attorney's analysis of the initiative and the ballot title.

FISCAL IMPACTS OF RECOMMENDATION

The cost of placing a measure on the ballot is estimated at \$10,000. Funding for placing measures on the ballot is available in the City Clerk Department FY 2006 and FY 2007 budget.

Staff has prepared a report on the effect of the proposed initiative under Election Code section 9212, including the financial implications of adopting this ordinance. This information is provided in a separate report.

CURRENT SITUATION AND ITS EFFECT

An initiative petition entitled "Initiative Ordinance Amending Condominium Conversion Ordinance" was filed with the City Clerk on June 13, 2006. This ordinance would amend Berkeley Municipal Code Chapter 21.28 and more specifically: 1) make approval of condominium conversion mandatory upon compliance with local laws and

payment of an affordable housing fee; 2) establish an \$8 per square foot affordable housing fee for conversion of rental units to condominiums, which can be increased annually by the consumer price index; 3) allow conversion of up to 500 rental units per year to condominiums, subject to reduction to as few as 100 per year during periods when the rental vacancy rate is less than 3%; 4) eliminate the right of sitting tenants, under current law, to remain in their units; 5) give pre-existing tenants a right of first refusal and a 5% discount to purchase their unit once it is converted, or a cash payment of 2% of the sales price if they do not purchase it, in lieu of relocation benefits under other City ordinances, subject to reduction in the case of multiple tenants; 6) give new tenants a cash payment of 2% of the sales price upon eviction, in lieu of relocation benefits currently required under other City ordinances; 7) permit landlords who are going out of the rental business pursuant to the provisions of the State's Ellis Act to engage in owner move-in evictions of tenants, including pre-existing tenants who do not purchase their units; 8) eliminate restrictions on owner move-in and Ellis Act evictions prior to condominium conversions; and 9) make a finding that the rental vacancy rate is currently over 5%, thus potentially enabling the Council, on the request of the Rent Stabilization Board, to exempt rental units from registration, as well as base rent, annual and individual adjustment limitations.

As provided under Article XIII, section 92 (3 and 4) of the Berkeley Charter, the Council may either adopt the ordinance within 20 days after the attachment of the City Clerk's Certificate of Sufficiency or must submit the ordinance, without alteration, to a vote of the People at the November 7, 2006 General Municipal Election.

#### BACKGROUND

Article XIII, section 92 (4) of the City Charter requires that the petition contain at a minimum 2,007 valid voter registration signatures (5% of the entire votes cast for all candidates for mayor at the last general municipal election at which a mayor was elected).

The submitted petition contained 2,763 unverified signatures. The City Clerk verified signatures against Alameda County Voter Registration Rolls as required under Election Code sections 9211 and 9115 and certified on July 20, 2006 that the petition qualifies and contains the signatures of electors in excess of 5% of the total votes cast for mayor (40,142) in the 2002 Berkeley General Municipal Election. The petition contained 2,514 verified signatures with only 2,007 signatures required.

Initiative Petition: Condo Conversion

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The City Council may either adopt the ordinance, without alteration, or must adopt a resolution submitting the initiative ordinance to the electorate on November 7, 2006. The deadline to submit said resolution to Alameda County is August 11, 2006.

However, the last scheduled meeting of the Council prior to the deadline is July 25, 2006. If the Council chooses to adopt the ordinance, Article VIII, section 44 (6) requires that the ordinance be posted for a minimum of two days after the first reading prior to voting on the second reading. The ordinance would then be effective 30 days after final adoption.

ADDITIONAL ACTIONS REQUIRED:

If the Council chooses to place the initiative on the ballot, the City Council should review the ballot title and City Attorney's analysis and provide any final comments at this time. The City Attorney has forwarded the ballot title and City Attorney's analysis to the proponents of the initiative for review and comment and has taken their response into consideration in preparing the ballot title (question) and the City Attorney's analysis.

CONTACT PERSON:

Sherry M. Kelly, Acting City Clerk 981-6900

Attachments:

1. Resolution with Exhibit A and B
2. Certificate of Sufficiency

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE  
ORDINANCE AMENDING THE CONDOMINIUM CONVERSION ORDINANCE

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 7, 2006 General Municipal Election, an initiative ordinance, which would amend the City's Condominium Conversion Ordinance, Berkeley Municipal Code (BMC) Chapter 21.28 to encourage and regulate conversion of a limited number of rental units to condominiums and to assist tenants in purchasing their own units; and

WHEREAS, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Statewide General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED, that the Registrar of Voters of Alameda County is required to perform necessary services in connection with said election.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED, that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

BE IT FURTHER RESOLVED, that said proposed initiative ordinance shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY INITIATIVE ORDINANCE</b>	
Shall an ordinance be adopted to: 1) increase annual condominium conversions from 100 to 500 units; 2) significantly reduce per unit the affordable housing fee; 3) entitle tenants to purchase their unit at a 5% discount; 4) reduce eviction protections for existing tenants of converted units; and 5) eliminate certain existing restrictions on conversion?  <u>Financial Implications:</u> Substantially reduced per unit affordable housing mitigation fee; substantially increased tax revenues; increased administrative costs possibly offset by fees.	YES
	NO

BE IT FURTHER RESOLVED, that the text of the initiative ordinance be shown as Exhibit A and the City Attorney's Analysis be as shown on Exhibit B, attached hereto and made a part hereof.

**TEXT OF INITIATIVE ORDINANCE**

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE  
AMENDING THE CONDOMINIUM CONVERSION ORDINANCE

**Section 21.28.010. Requirements of chapter, additional to other legal requirements.**

In addition to any other applicable requirements of state or federal law, and of local law not inconsistent herewith, 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.

**Section 21.28.020. Findings and purposes.**

- A. The People of the City of Berkeley find that:
1. There are not enough opportunities for lower and middle income people to purchase their own homes in Berkeley.
  2. People who work in Berkeley—including teachers, firefighters, police officers, and other valuable public servants—should be able to own a home in Berkeley.
  3. There is presently an ample supply of rental housing in Berkeley, with between 5% and 10% of the total rental stock (approximately 26,000 units) currently vacant.
  4. The conversion of some existing rental units to condominiums, with incentives for tenants to buy their own units at a reduced price, would create new home ownership opportunities for low and middle income Berkeley residents.
  5. Current law prevents condominium conversions by imposing extreme fees; at the same time, recent court decisions mean that rental units can be converted into "tenancies-in-common" without any limitation at all.
  6. Condominiums are better than "tenancies-in-common" because condominium conversion causes fewer evictions, offers greater protections to new owners, and permits the City to regulate the conversion process in a way that protects current tenants and prospective buyers alike.
  7. By regulating the condominium conversion process, the City can generate funding to create new affordable rental housing for low income, senior, and disabled tenants.
- B. In order to create home-ownership opportunities for all economic segments of the City, the People of the City of Berkeley declare that the purposes of this chapter are:
1. To ensure a healthy balance between rental and ownership housing in the City;
  2. To increase opportunities for individual choice in the tenure, type, cost and location of housing;
  3. To create opportunities for low and middle income residents to own their own homes.
  4. To affirm and expand protections for tenants who reside in housing that is converted to condominium status.

5. To ensure the continued availability of affordable rental housing stock in the City of Berkeley.
6. To encourage condominium forms of ownership rather than tenants-in-common forms of ownership.

**Section 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. 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. Resident owners participate fully in planning the community including decision-making with regard to (a) the design of a new development or any design changes in the renovation of existing housing, (b) the improvement, use and management of common property and (c) the content of any deed restrictions and the management documents of the association.
  4. Residents will engage in joint decision making on 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. An "elderly tenant" is 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. "New tenant" means a person, who is a party to a rental agreement with the owner, and who began to occupy a unit as a principal residence with actual knowledge of a pending or approved conversion application, as described below. For purposes of these sections 21.28.010 through 21.28.110, a "new tenant" shall not include a subtenant.
- E. A "notice" where required herein shall be in writing, and sent by first class mail, with a proof of mailing issued by the United States Post Office, or may be sent by an overnight delivery service providing proof of delivery.
- F. "Owner" means the holder of a record or beneficial interest in a unit sought to be converted hereunder, as reflected in the public record.
- G. "Pre-existing tenant" means a person who became a party to a written rental agreement with the owner and who began to occupy a unit as a primary residence without actual knowledge of the filing or approval of a conversion application, as described below. For purposes of these sections 21.28.010 through 21.28.110, a "pre-existing tenant" shall not include a subtenant.
- H. "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.

- I. "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. For purposes of this chapter dormitories, fraternity and sorority houses, boarding houses, and residential hotels, shall not be considered units and shall not be subject to this chapter.

**Section 21.28.040. Conversion of residential property to condominiums and related forms of ownership occupancy.**

The record owner or owners of one or more units may apply for approval of a tentative map or parcel map to create a condominium project, community apartment project or stock cooperative subject to the conditions set forth hereafter, and subject to the conditions generally applicable under state and local law for subdivisions. No fee shall be charged for the filing, processing or approval of such application except as specifically provided herein, or except as generally applicable to other applications for approval of a tentative map or parcel map which do not involve the conversion of rented units to condominiums. In no event shall a conversion fee exceed the reasonable cost incurred by the City in processing the subject application.

The City of Berkeley shall approve a tentative map or parcel map to create a condominium project, community apartment project or stock cooperative where the record owner or owners pay an affordable housing fee into a Housing Trust Fund to be administered by the City of Berkeley for affordable housing development, first-time and/or low-income homebuyer assistance, or such other housing assistance programs for low income persons as the City shall deem appropriate. Accordingly, a conversion shall be approved, subject to applicant's agreement to the other provisions hereof, and of state law, and to pay, upon approval, an affordable housing fee not exceeding \$8 for each square foot of living space sought to be subdivided (measured between inside walls and excluding common areas, unroofed appurtenant spaces, uninhabited attic space, storage areas not accessible from within the unit, and parking garages). The above described fee may be increased annually at a rate not to exceed the annual increase in the Consumer Price Index, as published for all consumers in the San Francisco Bay Area by the Bureau of Labor Statistics.

The approval of a conversion application shall also be conditioned on the applicant's agreement that it shall not exercise its right, if any, to evict pre-existing tenants under California's Ellis Act from a converted unit until and unless there has been an opportunity to make an election to buy the unit in question pursuant to the procedure described in Section 21.28.070 below.

**Section 21.28.050. Limit on conversions; Moratorium on conversions in emergency situations.**

The City shall not in any calendar year approve more than five hundred conversion applications hereunder. Where an impartial survey by the City's Housing Department has determined that less than three percent of available rental housing stock in the City of Berkeley is vacant, the Council may limit new applications until such time as the vacancy rate equals or exceeds three percent, as found by an impartial survey. In no case may the City Council limit new applications to fewer than one hundred units per year. In the event that no subsequent vacancy survey is available, any limit on new applications shall expire automatically 12 months after it is imposed by the City Council. For purposes of this Section 21.28.050 the "impartial survey" shall mean conclusions

reached by a third party entity, identified by a vote of two thirds of the members of the City Council, which publishes information relating to the rental market in the San Francisco Bay Area as a regular part of its business.

**Section 21.28.060. Notice to pre-existing and new tenants of their rights.**

When an owner files an application to convert a unit that is occupied by one or more pre-existing tenants or new tenants, such pre-existing tenants or new tenants shall be provided with written notice of such application, as provided by California Government Code Section 66427.1, and shall further state that in the event the application is granted, and the owner seeks to terminate the tenancy, the pre-existing or new tenants may have certain rights under local and state law, including without limitation:

- A. The right to remain in possession for the remaining term of the lease or rental agreement,
- B. The right under the laws of the City of Berkeley not to be evicted except for just cause, as defined by the City of Berkeley and the State of California.
- C. The right to continued protection under Berkeley's Rent Stabilization Ordinance (Berkeley Municipal Code Section 13.76).
- D. The right to advance notice and certain payments in the event the owner elects to move into the unit as his or her own residence, and to added rights in the event the tenant is disabled or an elderly tenant, as defined by local law,
- E. The right to advance notice and certain payments in the event the owner elects to terminate the tenant's occupancy pursuant to the state's Ellis Act (citation), or wishes to move into the unit as the owner's own residence.
- F. A right of first refusal for a pre existing tenant to buy his or her own unit if the owner elects to sell the unit separately from other units in the same property to a third party at a time when the tenant still occupies it, and to a payment which may be taken in cash or applied as a credit toward the purchase price of the unit, as set forth below, and
- G. The right to a cash payment in the event the tenant does not qualify for, or does not elect to accept the right of first refusal, as set forth below.

The owner who has provided a pre-existing tenant with the notice specified above shall provide additional notice in writing of any material change in the conversion application, or of the withdrawal of such application, and of any final action by the City approving or disapproving of the same.

**Section 21.28.070. Right of first refusal with cash payments for pre-existing tenants.**

The notice requirement described in this Section 21.28.070 shall also apply where the owner of a converted unit desires to transfer separately such unit to a third party. It shall not apply where there is a transfer of a single property containing subdivided units to a third party, provided that such third party shall be subject to the provisions hereof when and if it desires to individually transfer converted units in which pre-existing tenants reside.

Where a separate sale is proposed, the owner shall provide notice to all pre-existing tenants who continue to reside in the unit. The notice shall state the terms on which it is proposed to make such transfer. The pre-existing tenants, or any of them ("electing tenants") shall have no less than thirty days from receipt of the notice to enter into a written agreement to buy such unit as their

own principle residence on the terms described by the owner's notice. The owner shall at the closing of the transaction pay the electing tenants a sum equal to five percent of the purchase price of the unit (including real estate commissions and the reasonable cash value of any non-monetary consideration, but not including transfer taxes or other government charges, title insurance, inspection fees or other closing costs). This payment may at the electing tenants' option be applied against the down payment required at the closing. In the event no pre-existing tenant elects in writing to exercise this right of first refusal, the owner may proceed to complete the third party transaction on the terms described in the original notice to the pre-existing tenants, but may not materially alter such terms and conditions without providing further notice to the pre-existing tenants, and providing them with an additional right of first refusal as to the modified transaction.

Where there are more than two pre-existing tenants in the unit, the right of first refusal described herein may be exercised by any one or more of them as they shall agree among themselves. Where the right is exercised by fewer than all of the pre-existing tenants, the non-electing tenant(s) may (in lieu of any other rights they may have under local or state law) elect to vacate the unit in consideration of a payment by the exercising tenant(s) of a sum equal to that which they would have received if all pre-existing tenants elected not to exercise their right of first refusal but had instead chosen the cash payment described in Section 21.28.080 below. Said payment shall then be deducted by the owner from the payment to the electing tenants.

**Section 21.28.080. Right of non-electing pre-existing tenant to cash payment.**

Where a pre-existing tenant declines to exercise the right of first refusal described in Section 21.28.070 above, said pre-existing tenant may elect to voluntarily surrender possession of the unit prior to the closing of the third party transaction and at that time receive a cash payment equal to 2% of the full purchase price of the unit (calculated as set forth above). Said payment shall be divided equally where there is more than one pre-existing tenant, and shall be made upon departure of all tenants from the unit and shall be in lieu of any payments or benefits that the pre-existing tenant might otherwise have under the provisions of Berkeley Municipal Code Sections 13.76.130A.9.f and 13.77.055, but shall be in addition to any other relief to which the pre-existing tenant may be entitled under the terms of the then current lease or rental agreement, including without limitation the return of the unused portion of any security deposit.

**Section 21.28.090. Right of new tenant to cash rebate.**

A new tenant, who occupies the unit having had written notice from the owner of a pending or approved conversion application, may elect to voluntarily vacate the affected unit, without liability under any existing lease, and receive as additional consideration a cash payment equal to three months' rent. Said payment shall be divided equally where there is more than one new tenant, and shall be made upon departure of all tenants from the unit and shall be in lieu of any payments or benefits that the pre-existing tenant might otherwise have under the provisions of Berkeley Municipal Code Sections 13.76.130A.9.f and 13.77.055, but shall be in addition to any other relief to which the new tenant may be entitled under the terms of the then current lease or rental agreement, including without limitation the return of the unused portion of any security deposit.

Where there are pre-existing and new tenants occupying the affected unit, the payment to an electing tenant under Section 21.28.070 above shall be reduced by any amount required to be paid to new tenants under this Section 21.28.090.

**Section 21.28.100. Exemptions.**

The provisions of Sections 21.28.010 through 21.28.090 shall not apply to co-housing communities, as defined, or to the categories of properties exempted under the former version of Section 21.28.040 (C),(D),(E) or (F).

**Section 21.28.110. 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. 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 prior to the City's approval of a final map. Such compliance measures will be pre-conditions to approval of any conversion application to the extent they materially and adversely affect the habitability of the property. A fee to cover the reasonable and necessary costs of the notice procedure may be set by the City Council by resolution and amended from time to time. If the zoning office fails to take final action on any application within 12 months of its having been submitted and any fees paid, then that application shall be deemed granted and a notice of local law compliance shall immediately be issued.

**CITY ATTORNEY ANALYSIS**

**SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE  
AMENDING THE CONDOMINIUM CONVERSION ORDINANCE**

The initiative would replace Berkeley's existing condominium conversion ordinance, which is designed to preserve rental housing or mitigate its loss from conversion, with a measure that would facilitate condominium conversions. The proposed measure would:

1. Increase the annual number of units that can be converted to condominiums from 100 to 500. (500 units represent about 2% of the City's rental housing stock.) The Council is permitted to reduce the number of allowable conversions to no less than 100 units if the Council commissions a survey that establishes the vacancy rate under 3%;
2. Eliminate the current rule that a property may not be converted to condominiums if: the owner has gone out of the rental business and evicted the tenants under the State Ellis Act within the preceding 20 years; tenants have been evicted for owner-occupancy within the previous 10 years; or the owner has opted out of the Section 8 rental assistance program within the previous 5 years;
3. Reduce by 90% the per unit affordable housing fee for most units, which is used to mitigate the effect on conversions, and make it payable on conversion rather than sale of the condominium;
4. Eliminate the current right of existing tenants to remain in their units after conversion if they do not or cannot purchase them, thereby permitting the owner of a converted building to evict the tenants under the State Ellis Act or purchasers of converted units to evict tenants in order to occupy the unit for themselves or designated relatives under Berkeley's "just cause ordinance";
5. Reduce the time for pre-existing tenants to exercise their right of first refusal to purchase their unit from one year to six weeks, but provide for a 5% discount in the purchase price;
6. Provide for tenants to accept a cash payment of 2% of the sales price instead of relocation benefits under other City ordinances, to be shared if there are multiple tenants. Currently, relocation payments are only due where the landlord goes out of the rental business. The cash payment under the proposed measure will generally exceed the amount currently payable under the City's Ellis Act implementation ordinance;

**Financial Implications:** The per unit affordable housing fee would decrease. The impact on the total amount of revenues from the affordable housing fee will depend on the number of units converted. Revenues from the real property transfer tax and property tax are likely to increase. Staffing costs will rise to process the additional conversions in an amount estimated by the City Manager to be approximately \$135,000 annually, which may be offset by the Council's imposition of processing fees.

## BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Sherry M. Kelly, Acting City Clerk, of the City of Berkeley, California, hereby certify that:

An Initiative Petition entitled: "**INITIATIVE ORDINANCE AMENDING CONDOMINIUM CONVERSION ORDINANCE**" was filed with the Berkeley City Clerk on June 13, 2006 and within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on June 13, 2006.

The petition contained **2,763** unverified signatures; and

Pursuant to California Elections Code section 9215, in order to be sufficient, the petition must have been signed by **2,007** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

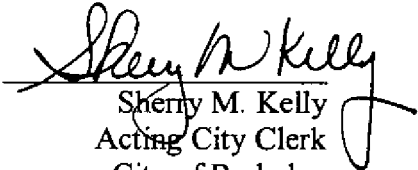
Have determined that the petition contained **2,514** valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State; and

That this number represents **125%** of the total number of signatures needed to qualify the initiative, therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under the Berkeley Charter.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal this 20<sup>th</sup> day of July, 2006.



  
Sherry M. Kelly  
Acting City Clerk  
City of Berkeley