



Office of the City Manager

CONSENT CALENDAR

July 10, 2007

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director of Planning and Development

Subject: Amendment of BMC - Condominium Conversion

RECOMMENDATION

That the Berkeley City Council adopt a first reading of an ordinance amending Berkeley Municipal Code (BMC) Section 21.28.065.B.1 to clarify that the affordable housing mitigation fee cap of 12.5% of unit sales prices applies to both vacant and tenant occupied units within a building, if the owner agrees to the specified long-term limit on rent increases for all current tenants within that building at the time of conversion.

FISCAL IMPACTS OF RECOMMENDATION

If this amendment is not adopted, the applicants of fifteen Condominium Conversion projects are expected to withdraw their applications, thereby precluding their payment of affordable housing fees equal to 12.5% of the selling price of 61 condominium units.

CURRENT SITUATION AND ITS EFFECTS

Fifteen pending condominium conversion applications include vacant units. Owners of these properties have long expected the 12.5% cap on the affordable housing mitigation fee (hereafter referred to as the fee)¹, as a provided in BMC Section 21.28.065.B, to apply to all of their units. However this section of the BMC as written does not provide for this application of the 12.5% cap. Therefore, unless the Council adopts a clarifying amendment to BMC Section 21.28.065.B, we expect most of these owners to withdraw their applications. As mentioned above, this action would have serious negative impacts on the City's Housing Trust Fund and would create an incentive for these owners to create Tenants in Common rather than convert to condominiums.

¹ BMC Section 21.28.060, defines a fee to be paid at the time of sale for each unit converted from Rental to Condominium status. BMC section 21.28.065 provides for reductions in this fee in certain cases.

BACKGROUND

Converting rental units into condominiums requires payment of a significant affordable housing fee to the City of Berkeley Housing Trust Fund; this fee recaptures for the City's affordable housing programs an amount that reflects the differential affordability between the rental unit being converted and the condominium. This amount is then used to provide affordable housing. Due to its significant size, the fee has discouraged conversions by removing most or all of the financial incentive. At the same time, since 1992, the City has prohibited the creation of tenancies in common (TICs). In 2005, after the courts held that cities could not prohibit the formation of TICs, the Council decided to revise the Condominium Conversion Ordinance to encourage conversions as a preferable alternative to TICs.

Since then, the City Council has adopted numerous amendments to the Condominium Conversion Ordinance (BMC 21.28) to adjust the affordable housing mitigation fee, under various conditions, to allow a moderate number of rental units to convert to condominiums. Since the last major change in this fee provision (in 2006), City Staff has been describing the reductions in this fee as follows: The affordable housing fee will be capped at 12.5% of the sales price of a unit *if* the owner commits (1) to limit future rent increases for all "current" tenants to no more than 65% of the increase in the Consume Price Index for all Bay Area Consumer, and (2) to guarantee each "current" tenant this reduced rent for as long as that tenant occupies his or her current unit. Apparently when this amendment was adopted the term "current tenant" was understood by some to include any tenant in occupancy as of the date the map is recorded, even if there were no current tenants at the time the owner's commitment were made. Thus, if the owner made these guarantees for both occupied and vacant units, then the affordable housing fees for all of the units within the building would be capped at this 12.5% limit.

As written, however, the plain language of the ordinance provides for this 12.5% cap on this fee only for units with current tenants at the time the owner committed to reduced future rent increases. The City currently has pending applications for 15 Condominium Conversion Projects with one or more vacant units, and until now the owners understood that both their vacant and tenant occupied units were eligible for this reduced fee. If the Ordinance stands as currently written, we expect that many of these applications will be withdrawn, due to the owners' unwillingness to pay the much higher fee. This assumption reflects Berkeley's many years of experience with the full affordable housing fee in place, which resulted in almost no conversions from rental to condominium units. Council had initially introduced this lower cap on this fee, along with some other provisions in the Ordinance, in order to allow a modest number of rental units to be converted to condominiums each year, while simultaneously building up the Housing Trust Fund. The Housing Trust Fund would then be used to provide additional rental housing units in Berkeley at below market rate rents.

The attached proposed Ordinance amends BMC Section 21.28.065.B.1 to reflect the original intent of this section, which is to provide a cap on the Affordable Housing fee of 12.5% of the sales value of the sales price of a unit, applying this cap to all units converting to condominiums, **as long as** the owner has agreed in advance to the guaranteed reduced rent as specified in the Ordinance. This 12.5% cap applies to both vacant and occupied rental units. After review staff is confident that these amendments accomplish this purpose. If adopted, the current applicants would be able to proceed through the condominium conversion program with their current understanding of this 12.5% cap on the fee.

RATIONALE FOR RECOMMENDATION

Should City staff implement BMC Section 21.28.065B as currently written, then numerous applicants would likely withdraw their applications, resulting in very little condominium conversion and encouraging the creation of Tenants In Common, which staff believes is a much less stable form of property ownership and potentially detrimental to sitting tenants.

ALTERNATIVE ACTIONS CONSIDERED

In the Fall 2007, Staff intends to conduct the Condo Conversion Workshop with the Council; at this time we expect to present options for streamlining and simplifying the procedures, including a reconsideration of the Ordinance as a whole. Numerous amendments over the years have resulted in some unintended consequences and a convoluted process that need to be revised to better reflect the Council's intentions.

Staff considered delaying this proposed change until Fall 2007, to include as part of the overall evaluation of the Ordinance. However staff rejected this approach, since numerous Map Applications are close to completion, requiring development of fee agreements within the next couple of weeks that reflect the Ordinance as written. It seemed inappropriate to ask these applicants either to pay a much higher fee than intended or to wait until Fall 2007 in hopes the Ordinance would be amended to reflect the Council's earlier intent.

CITY MANAGER

The City Manager concurs with the content and recommendations of this request.

CONTACT PERSON

Debra R. Sanderson, Principal Planner, 981-7417

Attachments:

1. Proposed Ordinance with proposed new language underlined

ORDINANCE NO. -N.S.

AMENDING SECTION 21.28.065.B.1.OF THE BERKELEY MUNICIPAL CODE
REGULATING AFFORDABLE HOUSING MITIGATION FEES FOR CERTAIN
CONDOMINIUM CONVERSIONS

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

Section 1. That Berkeley Municipal Code Section 21.28.065.B.1 is amended to read as follows:

B. Further Reductions in Affordable Housing Fee. There will be further reductions in the affordable housing fee as follows:

[PLEASE NOTE: THE FOLLOWING CHANGES SHOULD NOT BE ACCEPTED—THEY SHOW THE CORRECT REDLINE OF THE AMENDMENT]

1. If the owner converting the property agrees to limit future rent increases for all all current tenants at the time of conversion 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 for all units within the building shall not exceed 12.5% of the sales price of the unit.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.