

ORDINANCE NO. 6,996–N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 21.28.040 AND 21.28.050 TO PROHIBIT THE CONVERSION OF RENTAL UNITS TO CONDOMINIUMS FOR TEN YEARS IF AN OWNER INITIATES A NO-FAULT EVICTION AT A PROPERTY AND MAKE CLARIFYING AMENDMENTS TO EXISTING LANGUAGE

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

Section 1. That Berkeley Municipal Code Section 21.28.040 is hereby amended to read as follows:

Section 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.

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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6852-NS § 4 (part), 2005: Ord. 6352-NS § 1 (part), 1996: Ord. 6221-NS § 1 (part), 1993: Ord. 6192-NS § 1 (part), 1993: Ord. 6158-NS § 2, 1992: Ord. 6144-NS § 2 (part), 1992)

Section 2. 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 ten 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 or have recovered possession of any unit at the property pursuant to subdivision 8 or 9 of Section 13.76.130.A of the Berkeley Municipal Code (relating to eviction for purposes of demolition and owner-occupancy or occupancy by relatives of the owner.

B. 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 either Civil Code Section 1946 or Civil Code Section 1946.1; 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 being constructively evicted because 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.

C. 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.

D. 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. 070.

E. The owner must comply with all applicable laws of the City. (Ord. 6947-NS § 1, 2006: 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 3. 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.

At a regular meeting of the Council of the City of Berkeley held on July 10, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

