




Housing Department
Planning and Development Department
Offices of the Director

WORKSHOP SESSION
November 6, 2007

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Renelda Mary, Interim Director, Housing Department; and Dan Marks,
Director of Planning and Development

Subject: City Council Work Session: Revision of the Condominium Conversion
Ordinance (BMC Chapter 21.28)

SUMMARY

The Condominium Conversion Ordinance (CCO) is the process by which property owners seek an entitlement to convert existing multi-unit properties from one ownership structure to another. Condominium conversion directly affects existing tenants and the mix of housing within Berkeley. To address this in the CCO, the City Council sought to balance competing policy objectives of mitigating the loss of comparatively affordable existing rental housing through an affordable housing mitigation fee, protecting sitting tenants to the maximum possible extent, and limiting the amount of conversion so as to minimize the overall impact of conversions. However, because of changes in California case law, the City also concluded it was more beneficial for owners of multi-unit buildings wishing to convert their properties to choose condominiums over conversions to tenancies-in-common (TICs). Therefore the ordinance also needed to avoid creating burdens so as to encourage TIC conversions over condominium conversion.

When the ordinance was revised in 2005, the Council requested that staff return with an assessment of how it was working. The Council at that time had two key issues:

- Is the 12.5 percent affordable housing mitigation fee on conversions appropriate; and
- Is the 100-unit annual quota on conversions appropriate?

The Council has subsequently asked that staff address issues related to the length and complexity of the conversion process.

In regard to the conversion fee, staff experience with CCO administration indicates that there have been few if any objections to the 12.5 percent fee rate. As there has not been an excessive number of applications to convert, and there is no evidence that

property owners are choosing TIC's (where no such fee applies) over condominiums, staff believes the fee may be appropriate, but has not conducted any further sensitivity analysis. Staff does not recommend any fee changes at this time.

With regard to the 100-unit per year quota, as noted above, the City has not experienced an overwhelming number of applications. The selection process itself has added several months to the overall process. Many applicants who have obtained quota slots have moved through the conversion process slowly; therefore the number of actual conversions is far below the 100 per year allowed. As further described below, staff is recommending that the Council retain the 100 unit per year quota, but eliminate the "request for selection" process and allow staff to process applications on a first-come, first-served basis. Staff believes this change will streamline the overall process while maintaining protections for current tenants. Staff also recommends several technical changes to the ordinance to clarify provisions and close what staff believes are unintended impacts and loopholes in its tenant protection provisions.

This report summarizes current provisions of the City's Condominium Conversion Ordinance (Berkeley Municipal Code [BMC] Chapter 21.28), describes staff efforts to administer the Ordinance and the recurring challenges this involves, and recommends changes in the process. Attachments to this report provide background information on staff's concepts for revising the Ordinance (Attachment 1); a detailed description of Ordinance administration, challenges, options summarized in the staff report (Attachment 2); an overview of tenant protections contained in the Ordinance (Attachment 3), a brief Ordinance history (Attachment 4), a brief review of home buyer assistance strategies (Attachment 5), and text of the current Ordinance (Attachment 6).

RECOMMENDATIONS

Staff from the Planning and Development Department, the Housing Department, the Rent Stabilization Board and the City Attorney's office have collaborated for a year to evaluate the operation of the current CCO, develop further options for improving its administration, and recommend changes to the ordinance. Many administrative improvements have already been implemented. The following recommendations require changes to the ordinance. Staff reviewed the current challenges and options as set forth in the attached reports and presented its recommendations to the Housing Advisory Commission (HAC) and the Rent Board. With some exceptions (noted below, and discussed further later in the report under "Background"), the HAC and Rent Board generally support the staff recommendations.

Staff's recommendations fall under three main topics: process improvements; technical changes to close "loop holes" in tenant protection and address what staff believes are unintended impacts, and fees and the use of fees.

Process Improvements

Staff recommends the following changes to minimize delays and simplify the condominium conversion process:

1. Eliminate the “request for selection” process and integrate determination of eligibility into the tentative map application process.
2. Process applications on a first-come, first-served basis until the quota of 100 units per year are determined to be eligible; further applications would move to the top of the list for the following year.¹
3. Retain the current scope of local law compliance, but require that inspections be conducted as part of submitting a complete subdivision application, and allow any required improvements to be made prior to final map approval, rather than full local law compliance being required prior to applying for a parcel/tentative map.
4. Modify the CCO to allow for Tentative Parcel Maps, in order to accommodate recommendation #3 for smaller projects. Parcel Maps for 2 to 4 unit buildings are usually done in one step rather than the usual tentative to final as in subdivision maps on larger properties.
5. Require posting of large yellow notice signs for condominium conversions. Staff recommends that the signs currently required for posting on a property for other discretionary land use entitlements be required for condominium conversions, thereby supplementing tenant and neighborhood notification in an efficient manner.

Staff recommended technical changes to the ordinance regarding eligibility include the following:

6. Revise the 10-year prohibition on converting after an owner occupancy eviction. Prior to the Council’s 2005 CCO changes, this prohibition was for only five years. The intent of this section is to reduce the incentive to displace tenants via owner occupancy prior to applying to convert. Since the ordinance effectively prevented conversions prior to 2005, owners that had evicted tenants to occupy a unit prior to 2005 did not do so with the intent of eventually converting to a condominium structure. Therefore this provision could not logically have affected an owner’s decision prior to 2005, but subsequently prevents those same owners from converting to condos. This adversely affects potential applicants without protecting anyone. Staff therefore recommends that this ten-year prohibition apply only for owner-occupancy evictions filed after October 27, 2005 when the major CCO revisions took effect. Evictions for owner occupancy filed prior to October 27, 2005 would be precluded from converting for five years from the date of the owner occupancy, rather than 10 years.

¹ The Rent Board had a somewhat different recommendation in its action on October 15, 2007, concerning a “split process” for properties of specific size. This is discussed below in the Public Process section of this report.

7. Further protect Section 8 tenants. Staff recommends that information be gathered on the Section 8 status of existing tenants as part of subdivision map applications, and that applicants be prohibited from opting out except for cause as defined in 24 CFR Part 982.310 of federal regulations for a specified number of years.
8. Limit rent increases for tenants in owner-occupied duplexes and other units exempt from rent control. Staff suggests adding to Section 21.28.050 that tenants not have been effectively evicted by a rent increase over 10 percent in any of the five years prior to filing an application to convert. If an owner is found to have done so (involving Rent Board verification), the owner would have to wait five years before filing to convert the property to condominium.

In regard to fees, Staff recommends minor modifications to application fees to better recover the costs of the application process. Staff further recommends that eligible uses include a maximum of 10 percent of revenues go for housing program delivery and a maximum of five percent for ongoing monitoring of projects.

The existing ordinance has errors and ambiguities from prior drafting and numerous amendments. Staff therefore recommends that regardless of whatever technical and policy changes to existing policy the Council may direct staff to bring back as a result of this workshop, that the Council also direct staff to bring back a reorganized and “cleaner” ordinance for adoption in December 2007.

Finally, staff recommends that we return in March 2008 with an analysis of and recommendation for how to increase the effectiveness of the opportunity afforded existing tenants to purchase their units through the existing right of first refusal offered in the CCO. Options to be evaluated would include an inclusionary requirement and a first-time homebuyer program.

CURRENT SITUATION AND ITS EFFECTS

Since June 2005, has been amended nine times, including a significant revision to the CCO in October 2005, largely to address changes in case law related to regulation of TICs (see Attachment 4). In staff's opinion the CCO is now in need of thorough reorganization and rewriting to clarify provisions and eliminate ambiguities. As noted in the Summary, the law sought to

- Protect sitting tenants from evictions for owner-occupancy,
- Mitigate loss of affordable rental housing resulting from both tenancy-in-common (TIC) and condominium ownership conversions, and

- Encourage condominium conversion as the preferable and lower-risk form of real property investment in ownership housing than TICs.

To accomplish these goals, the revised ordinance established incentives intended to reward owners for protecting sitting tenants, and encouraging condominium conversions over TICs, while also protecting public health and safety. At the time Council adopted the CCO in October 2005, staff acknowledged several outstanding questions about how well the ordinance would operate, yet which could not be answered until it was implemented. Key questions centered on whether the 12.5 percent fee on a unit's sales price and the annual limit of 100 conversions were appropriate. The Council therefore requested that staff return with an update as to how the ordinance was working.

Although a condominium conversion ordinance has existed for many years (see Attachment 4), it was much more restrictive than the 2005 revised ordinance. Very few applications were processed under that earlier ordinance. The revised ordinance required the City to establish new procedures and provide for reduced conversion fees and—along with a very strong housing market—led to a significant increase in the number of applications. Over the past 18 months staff has been modifying procedures to improve its performance to the degree we could within the limits of the current CCO. Staff certainly acknowledges that there have been issues with implementation and that, in many cases, processing applications has taken longer than it should have. Staff believes some of the issues have been addressed through changes in administration.

SUMMARY OF CCO PROVISIONS

The CCO calls for applicants to pay substantial affordable housing mitigation fees to mitigate loss of comparatively affordable rental units resulting from conversion to condominiums. Since this is disincentive to conversion to condominiums as opposed to TICs, the central strategy in Berkeley's revised CCO for inducing converters to choose condominiums over TICs is to offer mitigation fee reductions for smaller (2 to 4 unit) properties in return for protecting tenants (sitting tenants as well as tenants newly renting units in the property prior to conversion or sale).

Fee revenues accrue to the City's Housing Trust Fund Program where they are to be used to finance construction of permanently affordable rental housing in Berkeley. Prior to the recent CCO amendments (see Attachment 4), no mitigation fee revenue accrued to the Housing Trust Fund because there were no provisions allowing reduction of the mitigation fee established in 1992 and 1997, and the size of the fee discouraged condominium conversions. Local prohibitions on conversion to TICs were later invalidated by the *Tom*² decision.

Since the recent (post-*Tom*) CCO went into effect in June 2005, no mitigation fee revenue has yet accrued to the Housing Trust Fund. However, approximately 150 units are moving through the process at this time, with the first projects receiving approvals in

² *Tom v. City and County of San Francisco* (2004) 120 Cal.App.4th 674.

September 2007. Some of these conversions are expected to yield significant revenues once units begin selling.

Cumulatively, the recent amendments (see Table 3 in Attachment 4) created an incentive structure for potential converters that would set fees low enough to encourage them to choose to convert to condominiums rather than to TICs without sacrificing tenant protections in the CCO.

However, the piecemeal nature of these adjustments, especially when grafted onto a process that was originally designed to discourage conversion, has also made the CCO quite challenging for City departments to administer. Applicants seeking to convert have similarly found it difficult to interpret the CCO and plan their projects. Early on in the City's administrative efforts, the CCO's requirement for local law compliance also contributed to delays for applicants. Local law compliance involves an inspection of condominiums to address health and safety violations of the building code, and to ensure that any modifications to the building were done with permits.

The Housing Trust Fund Program has long been the CCO's vehicle for mitigating the loss of affordable rental housing in Berkeley (see Attachment 4). However, the Housing Department is constrained by limited funding sources for program delivery and monitoring functions, both of which are needed to ensure mitigation of condominium conversions is maximized over the long-term. Currently, the CCO precludes use of mitigation fee revenues for mitigation program delivery and long-term monitoring.

BACKGROUND AND ANALYSIS

Staff from the Planning and Development Department (which processes applications), the Housing Department (which determines mitigation fees and processes related legal agreements with owners), and the Rent Stabilization Board (which focuses on tenants' rights) have worked very closely together with the City Attorney's office, in drafting this report. Staff has gained considerable experience in the last two years administering and interpreting the CCO, the elements of which are summarized in Attachment 1 to this report. Staff's analysis of the ordinance proceeds along the following areas:

Ordinance Structure

The 2005 revisions to the CCO were grafted onto an ordinance that was originally based on different objectives, policies and assumptions. The revisions were drafted and adopted in some haste to address changes in case law and more amendments were needed to address specific issues (see Attachment 4, Table 3). The result is an ordinance that is difficult to understand and administer. Staff believes it should be reordered so that the ordinance structure mirrors the process, chronologically. Eligibility requirements should be clearer. In developing recommendations, staff felt that changes would restructure and reword its provisions based on the current ordinance without

altering staff's understanding as to the intent of the Council. Staff also recommends other changes to the ordinance as described in this report.

Application/Selection Process

The Planning and Development Department administers the CCO. The overall conversion process involves 4 steps: 1) eligibility determination and request for selection; 2) local law compliance, including necessary building corrections; 3) subdivision map application and processing; and 4) mitigation fee estimation (full text of the current CCO is found in Attachment 6).

Applicants have been frustrated by the length of the application process, and some Council members have noted that the expected revenue to the Housing Trust Fund from the conversion process has not yet been realized. Each of the steps in the process have been evaluated by staff. The following summarizes staff's findings and recommendations. For further information, please see attachments 1 and 2.

Selection and Quotas. The City accepts applications for selection and then on a quarterly basis evaluates the applications based on criteria in the CCO and selects up to 25 units that may then submit a subdivision application. The subdivision application process is a separate process with its own findings of completeness, etc. Under the current CCO, the selection process involves significant evaluation by staff as to the eligibility of an applicant, including a determination as to properties which may be exempt from the quota. Currently, selection criteria call for ranking conversion applications based upon the percentage of tenants indicating an interest in purchasing their units.

Staff believes the tenant and other protections intended by the selection process can be equally or better served by integrating those protections into the subdivision map application process. The process of evaluating eligibility criteria can be significantly streamlined by requiring applicants to provide all needed information as part of a subdivision application. In this way, applicants could submit all required information (including tenant noticing, offers of right of first refusal, long-term tenant leases, etc.), at the beginning of the review process, instead of several months before the review process. Staff would, of course, verify the information provided (as we do for any application). Falsified or inaccurate information would be grounds for denial.

Because there have not been an excessive number of applications and many of those selected have not proceeded in a timely manner, the City is currently well below having 100 units converting per year. Staff believes a "first-come, first-served" process up to the maximum 100 units annually could be instituted, with applicants who do not make it into any given year, going to the top of the list for the following year. Should a backlog grow too large, staff could return at a later date to seek modifications to either the quota or selection criteria.

Eligibility and Tenants' Rights. A summary of various tenants' rights provisions is contained in Attachment 3 to this report. As staff gains experience implementing the current ordinance, three changes relating to tenant rights and applicant eligibility have come to light.

Staff believes the current prohibition on a property owner from applying for a condominium conversion for 10 years after an eviction for owner occupancy is problematic if the eviction occurred prior to the change in CCO in October 2005. Prior to the Council's 2005 CCO changes, this prohibition was for only five years. The intent of this section is to reduce the incentive to displace tenants via owner occupancy prior to applying to convert. Since the ordinance effectively prevented conversions prior to 2005, owners that had evicted tenants to occupy a unit prior to 2005 did not do so with the intent of eventually converting to a condominium structure. Therefore this provision could not logically have affected an owner's decision prior to 2005, but subsequently prevents those same owners from converting to condos. This adversely affects potential applicants without protecting anyone. Staff therefore recommends that this ten-year prohibition apply only for owner-occupancy evictions filed after October 27, 2005 when the major CCO revisions took effect. Evictions for owner occupancy filed prior to October 27, 2005 would be precluded from converting for five years from the date of the owner occupancy, rather than 10 years.

In regard to protections for current tenants, staff found what we believe to be a "loophole" for applicants with Section 8 tenants. The tenant protections afforded to existing tenants in the CCO apply to people without regard to whether they are Section 8 tenants. An owner could opt out of the Section 8 program, and thereby make it very difficult for a Section 8 tenant to remain in a unit because the cost to the tenant would increase dramatically (even if the charged rent did not increase). The Section 8 tenant would have to choose between keeping their Section 8 voucher (but having to move where an owner would accept the voucher) and remaining in the unit (but having to pay full rent). If the tenant leaves, the owner's action would have effectively "evicted" that Section 8 tenant and denied that tenant the protections afforded other tenants after conversion. This would effectively nullify application of the "life lease" provisions of the CCO for Section 8 tenants that is provided to non-Section 8 tenants. Staff recommends that information be gathered on the Section 8 status of existing tenants as part of the subdivision map application, and that applicants be prohibited from opting out except for cause as defined in the 24 CFR Part 982.310 in federal regulations for a specified number of years.

Another "loophole" in the existing ordinance allows owner-occupants in a duplex or other unit not subject to rent control to substantially raise rents, thereby forcing out an existing tenant prior to applying for condominium conversion. Staff recommends adding to Section 21.28.050 a requirement that owners in owner-occupied properties shall not have raised rent on a (market rate) tenant-occupied unit more than 10 percent in any of the five years prior to filing to convert, if it led to the departure of the tenant receiving the

rent increase. An exception would be made for instances where the Rent Board had itself approved the rent increase. If an owner is found to have done so (involving Rent Board verification), the owner would have to wait five years before filing to convert the property to condominium.

Local Law Compliance

Once selected to proceed within the quota, prior to applying for a Subdivision or Parcel Map, the applicant must obtain a Notice of Local Law Compliance. This is not a requirement of State law, but of local ordinance. The Notice of Local Law Compliance (NLLC) "state[s] 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" (BMC Section 21.28.090.C). The process involves a review of the permit history of the building(s) subject to the application and an inspection by the City's contract inspector. In order to receive a Notice, all violations noted by the inspection must be corrected.

In an older City such as Berkeley where many buildings have had work done without permits, this provision of the CCO has proven to be a significant hurdle. The City has adopted guidelines for inspections and, when 50 units were approved at one time (as was the case earlier in the process), the City's inspectors had a difficult time getting them done in a timely manner. Because most properties have needed corrections, financing and getting the work done has sometimes also led to delay in the process, and seems to have raised barriers for applicants proceeding with condominium conversion. Some applicants question why such an inspection is required at all, when similar compliance is not required for single-family homes.

Staff surveyed other cities and found that Berkeley's requirement for local law compliance for condominium conversions is consistent with the law and practice of several other nearby cities. Condominiums differ from single-family homes in that several individuals own a single building; thus what happens in one unit can significantly affect the value and safety of another unit (e.g., an electrical fire or a plumbing mishap). Non-permitted work, especially electrical work, is a significant safety concern. While there are risks to neighbors from what happens in a neighboring single family home, the degree and types of risk clearly differ from condominiums. Staff therefore recommends retaining the current requirement for local law compliance.

However, we believe the timing of local law compliance can be modified to improve the process. Specifically, we recommend that inspections be done early in the process as a submittal requirement, and that any improvements required as a result of the inspection be a condition of approval on the final map. This relieves property owners from committing to the costs of making necessary improvements until after the tentative map is approved. Applicants with smaller buildings may then use the tentative map entitlement to obtain financing for all necessary corrections.

Processing the Tentative Map

As with other steps in this process, there have been start-up concerns as staff geared up to process the larger number of maps. However, staff believes this process now runs smoothly and makes no recommendations for improvements at this time.

Mitigation Fees

Again, there have been start-up issues as staff has developed the legal agreements fee estimation tool to implement the various fee mitigations provisions of the ordinance. The tool for screening applications to determine the fee is made available to assist applicants planning their projects. Staff recommends minor modifications to the CCO to address some errors and ambiguities (particularly regarding fee formulae), and to include program delivery and monitoring as eligible uses of fee revenues (Section 21.28.060 C). The Housing Advisory Commission (HAC) and Rent Board have suggested that there be an option for up-front payment of fees. Staff does not see any benefit (and some potential detriment) to property owners of smaller properties, but recommends further study, especially as to how it might apply to larger projects.

PUBLIC PROCESS FOR REVISING THE CCO

Staff presented the content of this report (see Attachment 2) to the HAC and the Rent Board in the past few weeks. Staff also held a meeting with property owner representatives on September 28, 2007, prior to the HAC meeting (and a second one on October 30). A subcommittee of the Rent Board on condominium conversion also convened to study policy options for revising the Ordinance using the staff report provided to the HAC.

In general, both the HAC and Rent Board support the changes recommended in this report, with some differences.

The HAC and the Rent Board both strongly support improving efforts to increase sitting tenants' ability to purchase their units. Staff's initial evaluation is that a first time homebuyer program may not be feasible and that inclusionary requirements may be more achievable. The Board has asked staff to return in December with a recommendation, but staff does not believe it can accommodate that schedule and instead recommends that we return in March 2008.

Both the HAC and Rent Board were concerned by the first-come, first-served approach and suggested a "split process" whereby smaller projects (say, six or less units) would be processed on that basis, but that any larger projects would still be subject to a selection process. Staff notes that no large projects (that is, buildings with over 15 units) have yet applied for conversion and that at this time the City is far below having 100 units of conversion per year. Staff recommends that should an issue arise with larger projects absorbing all available units under the quota in the future that we return with a modification to the process and a potential re-establishment of a selection process.

The HAC and Board also thought that there should be some incentive to encourage applicants for conversions to pay a mitigation fee up front. Staff believes such a program could have some detriment to owners of smaller projects, but may have some benefit in regard to larger projects, and recommends that it be further evaluated and a recommendation be brought back in the future.

The HAC recommended expansion of noticing efforts to tenants and the neighborhood of potential condominium conversions. Staff believes the yellow signs should be sufficient notice.

ALTERNATIVES CONSIDERED

Staff has identified numerous alternatives as options for change within the body of this report, and detailed presentation of these options is provided in Attachment 2.

Beyond this round of amendments to the Ordinance under consideration by Council, there will be further opportunity to address other condominium conversion policy issues, such as whether and how to adopt an inclusionary requirement; whether and how to provide first-time homebuyer assistance; and whether and how to provide converters with an option to pay the affordable housing mitigation fee at the time of conversion, rather than at time of sale.

CONTACT PERSONS

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Tim Strohane, Senior Planner, Housing Department, 981-5422

Attachments:

1. Staff Concepts for Revising the Condominium Conversion Ordinance.
2. Ordinance Administration, Challenges, and Options.
3. Protections Against Loss of Affordable Housing and Tenant Displacement.
4. Brief History of the Berkeley Condominium Conversion Ordinance.
5. Assisting Tenants with Purchase Of Their Units.
6. Current Condominium Ordinance in effect as of August 22, 2007.

Attachment 1

Staff Concepts for Revising the Condominium Conversion Ordinance

Staff from four departments (Rent Board, Housing, Planning and Development departments, and the City Attorney's Office) has gained considerable experience in the last two years administering and interpreting the City's CCO. For the two years since 2005, the CCO has been hard to interpret both by City staff and the public attempting to comply with its provisions. Nonetheless, it remains the City's objective to encourage condominium conversion as an alternative to creation of TICs, while protecting affected tenants and providing mitigation fee revenue for future affordable housing construction finance and program delivery.

Staff's efforts to address the CCO's problems rely on the following concepts:

- **Simplify the Ordinance.** Staff works to make the CCO easier to explain to the public and simpler to administer the process itself. Simplification would include:
 - Reorder the CCO to reflect how the process is conducted chronologically;
 - Describe eligibility requirements more transparently;
 - Provide clearer criteria for eligibility determinations and;
 - Provide reasonable, accurate estimation of affordable housing mitigation fees to be paid;
 - Examine alternatives for the selection/allocation process (while retaining the tenants' rights of first refusal to purchase) to meet the 100-unit quota annually.
 - Integrate all phases into the conversion application. Staff feels that eligibility determinations (including tenant noticing, offers of right of first refusal, long-term tenant leases, etc.), application selection, and local law compliance should be placed squarely within the actual subdivision map (that is, conversion) application. This will save a great deal of applicant and staff time by eliminating duplicative processes.
- **Maintain, and Where Appropriate, Expand Eligibility Criteria.** Staff sees no need to change basic eligibility criteria associated with the CCO. Rather than be a basis for "selection," these criteria should be applied in the subdivision map stage to determine application completeness.
- **Maintain, and Where Appropriate, Expand Tenant Protections.** Tenant protections should be retained and integrated into the expanded subdivision map

application process (again, as criteria for determining application completeness). In addition, the Planning Department recommends including “big yellow signs” on proposed condominium conversion projects to enhance both direct tenant notification as well as notification of the public at large.

- **Streamline Local Law Compliance Administratively.** This is probably the area of the Ordinance with potential for the most efficiencies.
- **Clarify Ambiguous Terminology Based on Administrative Experience.** Staff has incorporated into its work drafting revisions to the Ordinance a number of “clean-up” amendments that correct language in the Ordinance in order to conform more fully with efficient administration of the Ordinance.
- **Confirm Eligibility and Tenant Protections Through Fee Estimation.** Information needed in the fee-estimation step relates to tenant protections and other eligibility criteria; consequently, estimation of fees becomes a check on the completeness of the map application process itself. Staff’s fee estimation model is also made available to applicants who seek to understand their application’s status with regard to the fee so they may plan their conversion project in advance.
- **Ensure Real Mitigation of Lost Affordable Rental Housing.** The Housing Trust Fund Program has long been the CCO’s vehicle for mitigating the loss of affordable rental housing in Berkeley (see Attachment 4). The Housing Department is constrained by limited funding sources for program delivery and monitoring functions, both of which are needed to ensure mitigation of condominium conversions is maximized over the long-term. Currently, the Housing Department is inadequately staffed to attend to monitoring obligations required by both the federal government’s HOME entitlement grant and HTF development loan agreements.
- **First-time Condominium Buyer Assistance for Berkeley Tenants is probably infeasible.** In a report to the Housing Advisory Commission earlier this year, Housing staff reported on Berkeley condominium sales in 2006 and found that the incomes needed to support a mortgage on median-priced one-, two-, and three-bedroom units far exceed income limits for low and moderate income households in Berkeley in 2007. The cost of subsidizing homebuyers increases significantly the lower the household incomes of intended beneficiaries gets.³

³ Memorandum of Stephen Barton and Tim Strohane, Housing Department, to the Housing Advisory Commission, “Berkeley’s Condominium Market and Prospects for First-Time Homebuyer Assistance for Berkeley Tenants,” June 7, 2007. Excerpts of this report are provided in Attachment 5.

Attachment 2

ORDINANCE ADMINISTRATION, CHALLENGES, AND OPTIONS

The City of Berkeley Planning and Development Department has the lead for administering the current Condominium Conversion Ordinance (CCO). The existing CCO creates four steps in the overall conversion process: 1) eligibility determination and request for selection; 2) local law compliance; 3) subdivision map application and processing; and 4) mitigation fee estimation.⁴ Full text of the current CCO is found in Attachment 6.

Eligibility and Request for Selection

The CCO imposes a 100-unit per year quota on conversions. Conversion applicants file a “request for selection” application to learn whether the City will allow them eventually to apply to convert their multi-family units to condominiums. To be eligible for selection among the 100 rental units permitted to convert each year, potential applicants:

- Must at no time within ten years of application to convert have filed a notice of intent to withdraw the accommodations from rent or lease under the City’s Ellis Ordinance.
- Must at no time within ten years of application to convert have filed with the City of Berkeley to recover possession of a unit at the property to evict for purposes of demolition, owner-occupancy, or occupancy by the owner’s relatives.
- May not have created a vacancy by terminating a tenancy through constructive evictions within five years prior to the time an application to convert is filed with the City.
- Must agree to pay at the time of sale of each unit an affordable housing mitigation fee to the City.
- Must provide a notice of tenants’ rights regarding condominium conversion served on each tenant household at least 60, but not more than 120 days prior to the filing of the owner’s request for selection.
- Must comply with all applicable laws of the City.

⁴ Readers should bear in mind two aspects of “eligibility” in Berkeley’s CCO: eligibility for selection to be permitted to apply for conversion, and eligibility for fee exemptions or reductions. Eligibility for selection hinges in part on the property’s rental history as maintained by the Rent Stabilization Board (BMC Section 21.28.050). Eligibility for fee exemption or reduction hinges on the property’s ownership history, and the ability of owner-occupants to demonstrate use of their units as their principal place of residence (or long-term Berkeley tenancy history) for purposes of claiming fee exemptions or reductions (BMC Section 21.28.065). The present discussion deals with the first type of “eligibility.”

- Must demonstrate to the best of their ability that they qualify for a mitigation fee exemption or reduction if, as owners of converting properties, they hope to obtain affordable housing mitigation fee exemptions or fee reductions (discussed below).

One key purpose of these criteria is to create strong disincentives for owners of multi-unit properties to evict prior to filing condominium conversion applications. The disincentives are intended to protect sitting tenants from evictions or otherwise being forced out of their units in advance of conversion applications.

The Planning Department forwards the application to the Rent Stabilization Board to assist with determining whether a request for selection may go forward through the Board's research into property history for any eviction and other rent and eviction control-related history. Once the Rent Board has checked the property's history, the Board communicates its findings to the Planning Department, which uses the information to determine whether a property may be selected to convert.

There is currently no fee charged to applicants to request selection. If there are more than 100 eligible units for whom applicants request selection, Section 21.28.080 states the following priorities are to be used by the City to determine selection:

- Proposals with the highest percentage of proposed tenant-purchasers.
- Proposals with tenant purchasers who have lived in their unit for five years or more shall count as two tenant-purchasers for purposes of determining that percentage.
- All other factors being equal, applications filed first in time will be preferred.

Tenant protection provisions (and proposed changes) are summarized in Attachment 3, Table 2. At the selection stage applicants must declare whether tenants express interest in purchasing their unit, at what price the owner is offering the unit to the tenant, and whether they volunteer to limit rent increases on all of their units to 65 percent of the Bay Area CPI. This information is relevant to the fee estimation stage of the current CCO process, and to gauge tenants' interest in exercising their rights of first refusal in the event that priorities for selection of applicants must be set.

Requests for selection have been evaluated twice a year in groups of up to 50 units in each six-month period. Most properties selected in the first two periods had at least one tenant expressing interest in buying their unit. Beginning in February 2007, the Planning Department reorganized this stage of the process so that requests for selection are now evaluated quarterly (up to 25 eligible units in the quota per quarter). Properties selected to be among the 100-unit annual quota will receive a "notice of selection" and may then request a notice of local law compliance prior to applying to convert to condominiums or cooperatives.⁵

⁵ Berkeley Municipal Code (BMC) § 21.28.090.B. See Attachments 1 and 3 to this report.

Owner-applicants have a potential interest in stating a low sale price to limit the overall fee charged by the City and to make it more feasible for a tenant to purchase the unit. However, owners also have interests in having flexibility to offer the unit eventually for sale at a price the market will bear, thereby maximizing profits from the converted unit, even though that reduces the likelihood that tenants would be able to exercise their right of first refusal. Current City CCO noticing forms to tenants state that the tenant's right of first refusal is contingent upon:

- The City approving the owner's conversion application;
- The owners and tenant agreeing to terms of such a sale;
- The tenant obtaining financing to purchase the unit; and
- The tenant exercising their right within two (2) years of the City's final approval of the conversion of the property to condominiums.

Challenges:

- **Length of the Process.** Early on, City staff improved the request for selection application form and the tenant notification and tenants' rights forms, and clarified what constitutes a completed application for purposes of meeting Subdivision Map Act deadlines. Even with these improvements, the process remains lengthy. In addition, the eligibility evaluation, which is partly based on statements about future events that may not occur, creates additional opportunities for both staff and applicant errors, some of which are inevitable given reliance of the process on predicting such future events. Errors that result may be difficult to correct months later if applicants and tenants have relied on erroneous findings, while applicants may already have been found eligible to apply for conversion.
- **Heading to the Back of the Line.** Properties not selected are currently treated as new applications and compete each time they try for selection. Where no tenants indicate interest in purchasing their units, such applications may face potentially lengthy delays without assurance of being able to convert.
- **Uncompensated Staff Work.** Because no fees are charged to request selection of a conversion project, the request for selection stage results in extra staff work at the Rent Board and Planning and Development Department that is not offset by application fees. One option, of course, would be to charge a fee for this step in the process.
- **Status of Section 8 Tenants Under the CCO.** Currently, Berkeley rent stabilization regulations exempt Section 8 units from rent controls. Under Rent Board regulations, property owners opting out of Section 8 contracts may charge their Section 8 tenants only the rent controlled rent for the unit based on when it was last registered (i.e., not exempt), factoring in AGA and other appropriate adjustments, as part of the Rent Board's efforts to protect sitting tenants. Tenants with Section 8 vouchers however, would face a difficult choice in this circumstance: if they choose to stay in their unit to receive protection by rent and eviction controls but possibly paying more in rent than they had under the

Section 8 arrangement, they would eventually be forced by Berkeley Housing Authority regulations to surrender their Section 8 voucher, a personal property right they earned by virtue of their low-income status. Their other choice is to retain their voucher, but face the challenge of finding a new unit where the property owner takes Section 8 tenants. The CCO currently states no requirement concerning owners and converters opting out of Section 8 housing assistance contracts with the Berkeley Housing Authority.

- **Determining Exemption From the 100-Unit Quota.** The CCO allows certain projects to be exempt from the annual 100-unit quota. The following types of conversion projects are exempt from the quota:
 - Existing inclusionary units in properties developed under BMC Section 23C.12;
 - Two- to four-unit properties with owner-occupied units eligible for reduced mitigation fees capped at five (5) percent of the unit sale price;
 - Properties where the initial request for selection was made prior to June 16, 2005, and property would have been exempt from the affordable housing mitigation fee under the ordinance then in effect (this provision sunsets December 31, 2007);
 - Properties with buildings containing five or fewer units as of May 10, 2005 with owner-occupants who have used the unit as their principal place of residence since January 1, 1995 (this sunsets on December 31, 2007 or once 15 units are exempt under this provision, whichever comes first).

As mentioned previously, the request for selection stage requires a lot of staff time but does not contain a fee to offset staff labor costs. In addition to determining the eligibility of each project, staff must also use the above criteria to determine if a project is exempt from the quota (and, by necessary implication, from the mitigation fee). In almost all projects exempt from the quota, staff must determine whether there is an affordable housing mitigation fee involved, and whether it can be capped at five (5) percent of the unit sale price.

- **Can We Know Whether Tenants Who Express an Interest in Buying Their Units Really Will Do So?** Berkeley's CCO provides a right of first refusal for tenants to purchase their units and makes that right the object of application preferences under the 100-unit annual quota. Combined with the selection criterion of tenant purchases, the right of first refusal was intended to create an incentive for owners to be flexible in choosing the prices they choose to offer their sitting tenants. This incentive structure sometimes creates a dynamic in which applicants may pressure tenants to say they are interested in buying their unit, even if the tenants are not, so that the applicant's request for selection would receive a higher priority in the Planning Department's selection process. Consequently, staff cannot know whether the tenant intent to purchase is backed by the tenant's willingness to buy. In addition, even a truly willing tenant may not be able to make a purchase if they cannot arrange financing.

Options:

- **Consider Integrating Selection into the Map Application Stage.** At this time, the request for selection stage provides no clear benefit either to applicants or staff. Tenant protections, which the request for selection process is intended to provide, could be equally or better served by integrating them directly into the subdivision map application and approval process. This could also substantially reduce guesswork involved in an early selection process.
- **Consider First-Come, First-Served Application Process.** Explicitly stating that applicants would be treated on a first-come, first-served basis could reduce uncertainty and delay for applicants whose projects may indicate no tenants willing to purchase their units. This way, if they missed a quota in one year, they would go to the top of the next year's list to be processed as part of the next annual 100-unit quota, rather than possibly having to wait indefinitely.
- **Consider Splitting the Process of Selection.** Smaller rental properties are at greater risk of conversion at this time because of the potential absolute profits per unit (when compared with the per-unit profitability of converting to TICs). This is due to higher property values condominium units command over TIC units when they more closely resemble "single-family" amenities, design, and location in the market. Smaller properties, perhaps based on a 4-unit maximum threshold, could be subject to less stringent requirements for selection, while properties with larger numbers of units would be subject to them. This could be justified because the City wishes to encourage condominium conversions in smaller properties to avoid TIC conversion relative to conversions in larger buildings. Furthermore, setting the threshold at 4 units or less would align smaller properties treated this way with parcel map application treatment. Tenant protections would be retained on these smaller properties; only tenant purchasing would not be applied as a criterion in enabling a parcel map application from moving forward toward application completeness and map approval.
- **Consider Expanding Eligibility Criteria.** Staff suggests adding to Section 21.28.050 a requirement that owner-occupied duplexes that are exempt from rent and eviction controls and should not have raised rent on a (market rate) tenant-occupied unit more than, say, 10 percent in any year of the preceding five (or some number of) years prior to filing to convert, followed by departure of the tenant receiving the rent increase. If it is found they have done so (involving Rent Board verification), to be eligible to convert they would have to wait a specified number of years before filing to convert the property to condominium.
- **Opting Out of Section 8 Housing Assistance Contracts.** The City's subdivision map application could be revised to ask applicants whether the owner currently rents to Section 8 tenants. In addition, in properties where there are Section 8 tenants, consider amending the Ordinance to state one of two potential options: In current BMC section 21.28.065.B.1, provide that in return for the owner agreeing to stay with the Section 8 housing assistance contract from the date of the property's conversion, the maximum affordable housing mitigation fee would not exceed 10 percent; and if the owner does opt out of the Section 8

housing assistance contract, the tenant's rent would not exceed their household contribution plus annual additions based on 65 percent of the Bay Area Consumer Price Index, and the owner's maximum affordable housing mitigation fee on that unit would remain at 12.5 percent.

- **Should the City Intervene to Make Tenants' Exercise of Their Right of First Refusal Easier?** The City's current regulatory strategy for condominium purchases by sitting tenants of converting properties is to require converters to offer their tenants a right of first refusal to purchase their units. Two alternative approaches for such an objective:
 - A *regulatory program* (e.g., an inclusionary approach⁶ which designates units within a condominium subdivision) in lieu of mitigation fees; or
 - A *financial assistance program* (e.g., designating a portion of the affordable housing mitigation fee revenue to a first-time home buyer assistance program).

It must be stressed that both types of programs have limitations, and these program concepts are described in more depth in Attachment 5 to this report.

Local Law Compliance

The next step in applying for the condominium conversion is for the applicant to obtain a Notice of Local Law Compliance (NLLC) from the City. This notice is intended to "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."⁷ The NLLC is intended to guide placement of conditions on approval of any conversion (that is, the subdivision map for the property). The fee for obtaining the NLLC is currently set at \$1,799.

Local law compliance inspections are handled currently by a contract inspection service, supervised by the Land Use Planning Division of the Planning and Development Department. Permit history of the property is checked, a building inspection is performed, and a report is issued to the property owner by the contract inspector at the conclusion of the inspection. The contract inspectors check for three types of violations:

- Housing code violations;

⁶ An inclusionary requirement for the CCO was considered by the City Council back on September 20, 2005. It was not approved at that time, but staff suggests further study of the idea would be appropriate. Among the questions a regulatory approach would raise include: What changes should be made to the CCO, if any, to address whether the prices converting owners would charge sitting tenants for their units should be affordable to the tenants? For example, should the City consider requiring converters to designate "inclusionary" units in their properties for purposes of encouraging low-income tenants to purchase their units? If so, should those inclusionary units be exempted from the affordable housing mitigation fee? What threshold property size should be the basis for such a policy? What thresholds and procedures should be identified for means-testing tenants who wish to buy an inclusionary unit? What overall percentage of units in a threshold property be required as inclusionary?

⁷ BMC § 21.28.090.C.

- Life-safety violations; and
- Previously non-permitted work done at the property.

The local law compliance report issued to the owner becomes the basis on which the owner is to make corrections prior to the City issuing the NLLC and allowing the owner to apply for their subdivision map. The owner typically retains a contractor to apply for relevant building permits and perform the corrections. Once permits to correct the work are issued, additional inspections are performed, but at this stage in the LLC process, they are performed by City building inspectors from the Building and Safety Division and their inspections relate specifically to the work called for in the issued building permits.

Previously non-permitted work may include:

- Kitchen and bathroom remodels. Such remodels not benefiting from formal code inspections may have hidden electrical problems and improperly installed gas lines. Such problems are typically invisible and to ensure work was properly done, walls must be opened for inspection. Either problem can create fire hazards;
- New stairs lacking handrails, improper landings, or having incorrect rise/run dimensions that could lead to trip-and-fall accidents;
- Removal of load-bearing walls, potentially creating a collapse or seismic safety hazard; and (not least)
- Creation of illegal units.

The local law compliance inspection process may reveal such problems and then would require the property owner to correct these conditions. The inspection process places the City in the position of having an ethical obligation to avoid turning a blind eye to work that was done without permits. If the work was done improperly, then public health and safety may be compromised as a result. City inspection for local law compliance helps to implement this ethical obligation, to avoid rewarding people whose properties are not in compliance, and to ensure that newly converted condominium units entering Berkeley's real estate market are safe and habitable.

Since TICs became unregulated, this requirement is seen by some applicants as impeding condominium conversion in Berkeley. Under the clear terms of the CCO, Building and Safety Division inspectors must identify health and safety concerns, as well as determine if there is previously non-permitted work. Owners must correct all building code violations (including non-permitted work). Because so many owners in Berkeley have done non-permitted work, the inspections often lead to a requirement for significant repair work prior to issuance of the City's NLLC, resulting in delays and unplanned expenses even before re-inspection can occur. Property owners may not have funds immediately available to address the initial inspection findings, leading to further delay.

Many NLLC applicants are unfamiliar with permit application procedures, practices, and requirements triggered by this step in the condominium conversion process. This step in the process may be done as a condition of approval, since the challenge for applicants is the time and financing involved. Having a tentative map approval step may facilitate applicants' attempts to secure financing to carry out needed improvements.

Property owners, consultants, and Planning and Development Department staff have discussed local law compliance issues and other options available to protect health and safety while allowing projects to proceed more expeditiously. Building and Safety Division staff has developed application checklists to guide LLC applicants, many of whom have not had to prepare building permit applications before and who may be unfamiliar with permit application procedures, practices, and requirements.

Challenges:

- **Local Law Compliance Can Be Lengthy and Uncertain.** Inspectors finding previously non-permitted work have required owners to complete significant repair work prior to issuance of the City's Notice of Local Law Compliance, resulting in substantial delays and unplanned expenses even before re-inspection can occur. Property owners may not have funds immediately available to address the initial LLC inspection findings, further compounding delay.
- **Addressing Substantive Life-safety Issues.** The CCO currently states in Section 21.28.100 that applicants may obtain a determination (or "notice") from the "zoning office" that their building complies with applicable local laws, for purposes of obtaining approval of a conversion. The notice states whether the property complies with CCO requirements and whether all units and any building additions or modifications were legally constructed with permits required at the time of construction, and will state what, if anything, *must* be corrected in order to bring the property into compliance. Moreover, standards of compliance may vary among contractors performing the corrections, resulting in additional corrections required by the City with consequent frustration and delay. On the other hand, applicants, consultants and the City seem to agree that current health and safety violations must be addressed immediately.
- **How Far Back Should the City Review?** Inspections can sometimes reveal non-permitted work completed decades ago, even though the units may have been operated safely during that time. Should the City require permits for that work?
- **Correcting Violations.** Options exist for the timing of *when* corrections should be completed. Under state law, there are two types of subdivision maps: parcel maps for subdivisions of four (4) units or less, and subdivision maps involving five (5) units or more). Parcel maps in many jurisdictions may be approved administratively as a relatively simple matter. Subdivision maps must be processed in two stages: a *tentative* map stage in which the City makes findings and places conditions that must be performed prior to approval of the *final* map. The City of Berkeley Subdivision Ordinance (BMC Chapter 21.16) enables the

City to apply a two-step process to parcel maps. Thus, a “tentative” parcel map could be invoked so that local law compliance corrections would be made prior to the “final” administrative approval of a parcel map. This way actual conversion for all proposed subdivisions (whether large or small) would proceed only when code-related corrections are made. Should local law compliance (however the range of laws for compliance is defined) be required as part of the completeness of a map application or as conditions of map approval? Or should the CCO only require that violations be disclosed to potential buyers as part of negotiation of sale?

Options:

- **Continue To Include Previously Non-permitted Work As Part of Local Law Compliance.** Together with correction of any current housing and building code violations, the City of Berkeley could continue reviewing condominium conversion projects for previously non-permitted work as it now does, but implement ways to streamline the process, such as which party (the City or the applicant) does permit history research.
- **Delete Previously Non-permitted Work As Part of Local Law Compliance in the Condominium Conversion Ordinance.** This could potentially reduce the overall amount of time and expense of local law compliance under the CCO. However, to do so would reward applicants for completing improvements to their property without permits and may result in some newly converted condominiums entering the market that may not be entirely safe.
- **Timing Options.** Staff seeks policy guidance on the point in the process at which applicants should be required to attain compliance with local laws:
 - Require local law compliance as part of the completeness of a subdivision map application.
 - Require local law compliance at the tentative map stage but prior to final map approval (see discussion above under “Correcting Violations”).
 - Require only that violations disclosed in an LLC inspection report be disclosed to potential buyers as part of a negotiation of sale.
- **Choice in Inspection.** Another possibility would be to allow applicants to choose between the following options:
 - A permit-history inspection (of the sort currently performed) resulting in a requirement that all illegal and non-permitted work be corrected as a condition of approval of the tentative map, prior to conversion (i.e. recordation of the final map) and sale of any units.
 - A permit-history inspection (of the sort currently performed) plus a narrower but more in-depth inspection (which might include destructive testing) that would be limited to life-safety problems. Any life-safety problems would have to be corrected prior to application as a condition of approval of the tentative map, prior to conversion (i.e. recordation of the final map) and sale of any

units. However illegal or non-permitted work that did not pose a life-safety risk would not have to be corrected, but could simply be disclosed to buyers, who could be required to correct the identified violations if they sought additional permits in the future.

Map Application/Conversion

Once all local law violations are corrected, the Planning Department issues the NLLC and the applicant may apply for a subdivision map to complete the conversion process.⁸ The Berkeley Planning Commission is charged with approving condominium subdivisions of five units or more (a tentative map) under the current CCO. For properties of two to four units, the Planning Director may approve a parcel map, as allowed under state law.

Challenges: None currently. Note that options suggested in this report that would integrate the request for eligibility and selection, and local law compliance stages into the map application itself will increase the information and scheduling requirements and prominence of subdivision map applications generally. Also, elimination of the request for selection process would require inclusion of comprehensive information relevant to tenant protections and owner-occupancy history in map application requirements and in findings and conditions required for approval of conversions. Ordinance redrafting following this work session can take account of these new requirements.

Options:

- **Consider Treating Parcel and Tract Maps Alike.** Currently, parcel maps (subdivisions of four (4) or fewer units) are approved administratively by the Planning Director, while tentative tract maps (subdivisions of five (5) or more units) must be brought before the Planning Commission. Berkeley's Subdivision Ordinance (BMC Section 21.16) provides that the City may approve "tentative" parcel maps on which conditions for final approval are placed. Such a process could be implemented administratively to allow applicants to fulfill conditions relating to local law compliance, fee estimation, and other requirements as appropriate after approval of conversion but before sale of any units.

Mitigation Fee Estimation

Mitigation fees are used to bridge the gaps between the City's objectives of encouraging condominiums over TICs, protecting tenants, and mitigating lost affordable rental housing. Smaller properties of 2 to 4 units are at greater risk of converting to TICs, and of consequently displacing tenants in the process, than are larger properties. The CCO's mitigation fee sections (BMC sections 21.28.060 and 21.28.065) intervene to

⁸ A handful of older TIC projects were allowed to submit their map application before their applicants obtained their NLLCs because the City sought to accommodate projects affected by the sunset clause when the previous deadline was July 1, 2007.

create incentives for owner-applicants to consider in weighing whether to do a TIC versus condominium conversion of their property.

Currently, the CCO's affordable housing mitigation fee is governed by two sections of the Ordinance: BMC sections 21.28.060 (the default fee) and 21.28.065 (fee exemptions and reductions). The default fee requirement is estimated as the decrease in affordability by taking the difference between monthly ownership and rental costs of the unit converting, annualizing that difference, and then dividing it by an appropriate mortgage (capitalization) rate to arrive at a fee.⁹ For example, if monthly ownership costs are \$2,500, and monthly rental costs of the unit are about \$1,200, the difference is \$1,300. The fee is then calculated by multiplying this difference by 12 months, and dividing it by a mortgage rate assumed for estimating the ownership costs (say, currently 6.5 percent). The affordable housing mitigation fee for this unit—under BMC section 21.28.060.A—would be \$240,000.¹⁰

Fee Exemptions. As noted, BMC Section 21.28.065 provides for exemptions and reductions in this fee. Exemptions (Section 21.28.065.A) from the fee currently include:

- Units designated as inclusionary units in multi-family or mixed-use developments constructed since 1987.
- Properties requesting selection prior to June 16, 2005, and would have been exempt under the Ordinance then in effect (for example, TIC properties with at least 40 percent owner-occupancy in existence on or before August 20, 1992), and which complete their subdivision applications by December 31, 2007.
- Residents who are TIC owner-occupants and can demonstrate residency in Berkeley since January 1, 1995 and began the application process before May 31, 2007, subject to a 15 unit cap¹¹, or when this provision sunsets on December 31, 2007, whichever comes first.

Fee Reductions. Reductions (Section 21.28.065.B) in the affordable housing mitigation fee may occur when an owner converting the property agrees to limit future rent increases for all tenants at the time of conversion to no more than 65 percent of the increase in the Bay Area Consumer Price Index (CPI). In return for agreeing to limit rent increases to tenants in their properties, owners qualify to have their affordable housing mitigation fee capped at 12.5 percent of the sale price of their unit(s). For example, if a

⁹ The step of annualizing the monthly rental and ownership costs is not explicated in Section 21.28.060.A. However, the City has long interpreted the formula described therein as an annualized calculation, as discussed and illustrated by example in reports on this section's original adoption by the City Council in 1997.

¹⁰ Note that this fee amount is estimated without regard for the unit's potential or actual sale price, but is instead based on the annualized, capitalized change in the unit's cost of occupancy as a condominium versus as a rental. This fee formula measures the capital gain to the owner from the lost affordability of the rental unit to condominium conversion and strives to recapture it for use in acquiring and developing permanently affordable housing through the Housing Trust Fund.

¹¹ This is an absolute cap under the CCO, which is not renewed annually.

newly-created condominium unit is to sell for \$400,000, the affordable housing mitigation fee for such a rental unit would be capped at 12.5 percent of this price, or \$50,000, under Section 21.28.065.B.1. Compared with the above “default fee” example, this represents a substantial fee reduction of 79 percent. *This fee reduction will vary with specifics of each converted unit, but the example indicates the importance of the incentive to converters mentioned above. The central strategy in Berkeley’s CCO for inducing converters to choose condominium over TIC conversion is to have the mitigation fee reduction in BMC Section 21.28.065.B.1 enlist the property owner/converter in protecting tenants (both sitting tenants as well as tenants newly renting units in the property prior to conversion and sale).*

Two other fee reductions are also included in the Ordinance:

- A sliding scale for the 12.5 percent fee rate applied to two, three, and four-unit properties that subtracts 1.25 percentage points from the fee *rate* for each year that an owner-occupant has lived in their unit or continuously rented another previous unit (or units) in Berkeley as their principal place of residence; and
- 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 *rate* is five percent.

To claim either of these fee reductions the applicant must choose to limit rents on sitting tenants to 65 percent of the Bay Area CPI (Section 21.28.065.B.1).

Challenges:

- **Complexity of Criteria.** As applications proceeded staff was compelled to develop an efficient means to screen applications for fee determinations. The Housing Department developed a spreadsheet tool to model mitigation fee eligibility criteria as a means for streamlining the process of determining whether applications are exempt from the fee, are eligible for a fee reduction, or must pay the full fee. This tool is made available to applicants for their project planning purposes. Staff employs the tool to verify fee determinations concerning exemptions and fee reductions. If the default fee is warranted (Section 21.28.060.A), a separate and more detailed calculation is involved.
- **Implementation of Fee Determination.** With assistance from legal consultants, staff developed legal documents to implement and collect any fee that would be charged, including:
 - An agreement covering the tenants’ options to purchase their units, the tenants’ rights of continuing occupancy, rent limitations, and calculation and collection by the City of the affordable housing mitigation fee;
 - A deed of trust; and
 - A promissory note.
- **Mitigation of Lost Affordable Rental Housing.** The Housing Trust Fund Program has long been the CCO’s vehicle for mitigating the loss of affordable rental housing in Berkeley (see Attachment 4). However, the Housing

Department is constrained by limited funding sources for program delivery and monitoring functions, both of which are needed to ensure mitigation of condominium conversions is maximized over the long-term. Currently, the Housing Department is inadequately staffed to monitor its obligations under both the federal government's HOME entitlement grant and HTF development loan agreements.¹²

Options:

- **Correct Errors and Eliminate Ambiguities.** Staff has been working on a list of errors and areas of ambiguity in Ordinance drafting. Some problems that came to light already have been addressed by three of the Ordinance amendments just completed in the summer of 2007 (see Attachment 4, Table 3).
- **Ensure Mitigation of Lost Affordable Rental Housing.** Amend BMC Section 21.28.060.C to include program delivery and monitoring as eligible uses of fee revenue.
- **Reduced Mitigation Fee for Up-Front Payment.** Both the HAC and Rent Stabilization Board suggest providing owners with an option in the Ordinance to pay mitigation fees up front so that the City will have mitigation revenue to the Housing Trust Fund sooner than when condominium units actually sell (and fees are then collected). Staff believes this option deserves consideration, but notes that owner-occupants of smaller, 2- to 4-unit properties would have no incentive to participate given then sliding scale that they can apply to their mitigation fee rate the longer they reside in their units as their principal place of residence. After sufficient time, their affordable housing mitigation fee obligation would reduce to zero. This option deserves further study for its potential application to larger properties, however. It will require informed judgment how the City should view its rental housing mitigation objective with respect to the time value of money.

¹² The Housing Department delivers the City's Housing Trust Fund Program's permanently affordable housing units in Berkeley utilizing 3.8 FTE and nearly \$530,000 in federal funds (Community Development Block Grant and HOME Partnership for Investment entitlement grant programs). These federal sources have been flat or slightly decreasing for many years, and yet the City needs to provide program delivery services (such as technical assistance to developers and feasibility analyses) to ensure affordable housing development proposals follow through to completion, while meeting all funding obligations of the Program. In addition, the City's portfolio of over 50 properties contains over 600 units since its inception in 1990, and is expected to continue growing. Existing units must be monitored to ensure continued compliance with HTF development loan agreements by developers, including required interest payments, rent and income qualification and verification of resident households, and overall condition of each property.

Attachment 3

Protections Against Loss of Affordable Housing and Tenant Displacement

Table 1	
Ordinance Section	Purpose/Rationale
<u>21.28.040B</u> Conversions limited to 100 per year.	Limit overall displacement and loss of affordable units in City.
<u>21.28.050A</u> 10 year prohibition if an Ellis Bill resulted in displacement of tenant	Prevent tenant displacement prior to filing. Limit TIC to Condo evictions
<u>21.28.050A10</u> year prohibition if a tenant is displaced for owner or relative occupancy.	Prevent tenant displacement prior to filing Limit TIC to Condo evictions
<u>21.28.050B</u> 5 year prohibition against eviction without a listed “just cause” and various constructive evictions.	Prevent tenant displacement prior to filing and receipt of notice of rights under the law.
<u>21.28.050C and 21.28.060</u> Payment of affordable housing fee to Housing Trust Fund.	Replaces lost affordable housing units.
<u>21.28.050D</u> Tenants must be provided notice of their rights under the Condo Ordinance.	Prevents displacement of long-term tenants.
<u>21.28.065B1</u> Reduction of the affordable housing fee paid to the Housing Trust Fund if the owner agrees to limit future rent increases to any tenant in possession at the time of conversion.	Maintaining the stock of existing affordable units and prevention of displacement of sitting tenants that otherwise could face unlimited rent increases.
<u>21.28.065B2</u> Additional reduction of the affordable housing fee paid to the Housing Trust Fund for 2-4 unit properties with owner/occupant that are “long-term Berkeley residents and future rent increases are limited on other units.	Maintenance of existing affordable units and reduced displacement of sitting tenants. Protects tenants most at risk due to size of property being those properties more likely to convert to Tenancies in Common (TIC).
<u>21.28.065B3</u> Additional reduction of the affordable housing fee paid to the Housing Trust Fund for owner-occupied duplexes exempt from eviction protection and rent-controls.	Prevents displacement. Protects class of tenants that otherwise would be at high risk of displacement due to unregulated rent increases based on exempt status. These properties most likely to convert to TIC.
<u>21.28.080A</u> Priority for selection based upon the percentage of proposed tenant purchasers. Additional priority given for long-term tenants.	Owners may lower the price of sale for long-term tenants to increase the likelihood of being selected.
<u>21.28.120B1</u> Tenant has exclusive right to purchase their unit for one year after the conversion is completed.	Reduces displacement and increases the likelihood that an owner may sell to a sitting tenant.
<u>21.28.120B3</u> After conversion, the tenant may continue to occupy the unit with a “life lease”. As long as the tenant uses the unit as their principle place of residence the owner may not evict for relative or owner occupancy.	Reduces displacement of sitting tenants.

PROPOSED CHANGES	
New Ordinance Concept/Provision	Purpose/Rationale
Modify the time period that notice of rights must be served on any sitting tenant.	Eliminate the 60-120 day window and replace with a specific period prior to filing with the City.
Modify or eliminate the requirements in Section 21.28.080A (see above) that basis priority of selection upon the percentage of proposed tenant purchasers.	This adds additional steps and time to the administrative process. Questions have been raised about the accuracy of the information provided to date. No evaluation is done to verify the tenants' interest or ability to actually purchase the unit.
Add a prohibition against rent increase of 10% or greater in any year which causes tenant of an exempt owner-occupied duplex to vacate.	Prevent tenant displacement of otherwise potentially unprotected tenant.
Add a prohibition against opt-out of government program/ subsidy, such as Section 8 or Shelter Plus Care post-conversion	Prevent tenant displacement (added emphasis for low-income tenants). Discourages a form of constructive eviction by prohibiting owner from forcing low-income tenant from unit by opting out of regulated rental scheme (Section Eight) in order to obtain vacancy.

Attachment 4

Brief History of the Condominium Conversion Ordinance (CCO)

Introduction

The CCO governs conversion of rental apartments and tenant-in-common (TIC) buildings, to condominiums, community apartments, and other types of mutual or cooperative housing. In Berkeley, this means assuring that the newly created condominiums represent safe and decent housing, that the process of regulating their creation mitigates to the maximum extent feasible the loss of affordable rental housing conversion entails, while maximizing protection of existing tenants while reducing displacement their potential for unnecessary displacement. In narrower economic terms, the CCO regulates production of a new commodity—a set of separately owned condominium units from previously unseparated (rental or TIC-owned) housing units contained in a single property. Purposes of the CCO include ensuring a reasonable balance in availability of rental and ownership housing in Berkeley, and an adequate supply of housing affordable to existing residents. The CCO also seeks to avoid displacement of and undue hardship to residents of Berkeley who may otherwise be forced to leave Berkeley due to a shortage of affordable housing. Finally, the CCO seeks to collect mitigation fee revenue from properties converting to condominium so that funds can be spent to create new or acquire existing permanently affordable rental housing elsewhere in Berkeley.

Conversion of rental units to tenancies-in-common (TICs) or condominiums removes rental units from the market, and reduces affordability of rental housing, both directly by increasing the monthly cost of converted units, and indirectly by increasing the cost of other rental units through reduced supply relative to demand. For lower income tenants, loss of rental housing can have major harmful effects, since they are unlikely to be able to buy housing without substantial subsidies or price reductions, and, in the absence of some form of intervention, are therefore likely to lose their homes eventually if they reside in units to be converted. Even conversion of units with high rents that are not affordable to low income tenants will be harmful if it removes these units from the rental market and results in greater competition by some higher-income tenants for units previously rented to low income people.¹³

Pressure to convert rental housing to condominiums results from unsatisfied demand for home ownership. The cost of home ownership has increased to an extraordinary

¹³Some high-income householders prefer renting to owning their housing, despite tax advantages associated with homeownership. To the extent they remain in the rental market, their willingness and ability to pay rising rents enables them to outcompete lower income tenants in the rental market. Many such tenant households are older householders, often associated with the University, and rent for only short periods in Berkeley. They do not represent an extensive component of the tenant household base in Berkeley.

degree in the Bay Area since 1980, and particularly so in Berkeley.¹⁴ Rapid price appreciation characterizes Berkeley’s single-family home market (see Table 2, below). Where the median home price in 1999 was \$310,000, by 2006 the median rose in Berkeley to \$750,000, a 142 percent increase during that period. The 10th percentile sale price during 2006 was \$515,000 up from \$450,000 in 2005.¹⁵

Table 2 Summary of Residential Real Estate Sales in Berkeley, 1999 to 2006								
Type of Property	1999	2000	2001	2002	2003	2004	2005	2006
Single Family Units								
Total # of sales (units)	770	554	532	540	661	663	632	591
Median Sales Price	\$310,000	\$425,500	\$491,000	\$520,500	\$560,000	\$631,000	\$725,000	\$750,000
Condominium Units								
Total # of sales (units)	120	87	105	92	113	122	136	102
Median Sales Price	\$228,500	\$305,000	\$301,500	\$335,000	\$355,000	\$443,000	\$482,500	\$494,000
Source: RealQuest.com, vendor of Alameda County Assessor’s Office data; City of Berkeley Housing Department.								

Sale prices of condominium units in Berkeley also increased but not as rapidly as prices in the single-family market. Since 1999, median condominium prices rose 111 percent by 2006 to \$494,000 (more than doubling over that 7-year period). This median price is also a 39 percent increase over condo prices in 2003.

In its early stages, the effects of conversion from rental to owner-occupancy were moderated because conversions were concentrated among higher rent single family and duplex units. With the pool of single-family and duplex rentals reduced, however, the late 1980s saw conversion of units in some larger buildings, where more affordable units were concentrated. In response, in 1992 the City Council passed a permanent ban on conversion of properties with four units or more to TIC projects¹⁶, and instead, allowed TICs that existed as of 1992 to convert to condominiums in order to provide these homeowners with a more workable form of ownership.¹⁷ The City of Berkeley General Plan Housing Element of 2001 reported 764 units converted under Ordinance

¹⁴This discussion is summarized from Memorandum from James Keene, City Manager, to the Berkeley City Council, “Condominium Conversion Fees for Rental Units,” March 11, 1997.

¹⁵ The 10th percentile sale price represents the lowest-priced single family homes selling in Berkeley’s housing market for the year reported. It represents the threshold price at which first-time buyer households would have to be able to afford in order to purchase a single-family home in Berkeley.

¹⁶ Ordinance No. 6,144-N.S., in effect as of August 20, 1992.

¹⁷ City of Berkeley Municipal Code Section 21.28.040.A of Ordinance No. 6,144—N.S. TICs had other liabilities. For example, if a shareholder wanted to sell their share, the whole property had to be refinanced. Another shareholder who disagreed could delay or stop such action. Disagreements among owners were difficult to resolve because exactly what a shareholder owned could be subject to some dispute (unless clearly spelled out in the TIC agreement). Thus, TICs could be easy to enter but sometimes hard to exit.

6,144-N.S., which were believe to represent approximately 70 to 80 percent of all existing TICs in Berkeley at that time.¹⁸

The CCO seeks to foster condominium conversion of TIC and rental units, up to a 100 unit annual maximum, while protecting the rights of sitting tenants to stay in Berkeley over the long term as an alternative to tenancy-in-common ownership. A related purpose of the Ordinance is provide mitigation fee revenue to the City of Berkeley Housing Trust Fund to help reduce the loss of rental units in Berkeley by providing funding for construction or acquisition of additional permanently affordable rental housing throughout Berkeley.¹⁹

From 1980 to 1992 the City of Berkeley did not permit subdivision of rental property into condominiums, stock cooperatives or community apartments, each of which allow individual ownership of units or of exclusive rights to the use of units.²⁰ Specifically, this ordinance banned condominium conversions unless the vacancy rate in Berkeley was found to be 5 percent or greater. This ordinance also contained several other condominium conversion policy principles that continue in today's ordinance:

- Exemption, or special treatment of new condominium construction or properties not previously rented or leased;
- Exemption of limited equity cooperatives (since they preserve affordable housing opportunities for low and moderate income households);
- Requirement of prior notice to tenants concerning a property owner's intent to convert; and
- Requirement to provide sitting tenants with a right of first refusal to purchase their unit.
- Provision for applicants to demonstrate compliance with local laws.

Ordinance No. 5793-N.S. did not provide for a mitigation fee for lost affordability in the rental housing stock. Despite this condominium conversion ban, conversion to owner-occupancy continued among single-family homes and through "tenancies in common" (TICs), which allow people to use joint ownership of multi-unit buildings to become owner-occupants, without actually subdividing the property. In TICs people share ownership of a property with multiple units and agree among themselves on each part-owners' right to occupy one unit, often expressed as pro rata shares of property ownership. This alternative means of shifting rental units to owner-occupancy resulted

¹⁸ City of Berkeley General Plan Housing Element, adopted December 18, 2001, Table 48, p. 157.

¹⁹ More detailed history of specific amendments to the Condominium Conversion Ordinance are provided in Attachment 1 to this Report.

²⁰ Ordinance No. 5793-N.S., in effect as of March 3, 1987.

in major problems for some buyers. At the beginning of 1991 a new City ordinance required that TIC sellers give prospective buyers a "Tenants in Common General Information Statement." This ensured that buyers receive basic information on the complexities and potential problems of owning property jointly with others.

To address difficulties increasingly faced by TIC shareholders, the Berkeley City Council adopted Ordinance No. 6,144-N.S., effective August 20, 1992. The basic policies enacted under this Ordinance included:

- Enabled lawful TICs as of August 20, 1992, to convert to condominiums to provide many TIC shareholders with a legal means to exit TIC ownership problems.
- Adoption of a 100-unit quota for rental housing conversion.
- Enactment of eligibility criteria for rental housing conversions to condominium, including:
 - No Ellis evictions filed with the City of Berkeley in the 10 years prior to application for conversion.
 - Required a less than 5 percent vacancy rate in conversion applications of 20 units or more.
 - Required current offers to tenants of the right of first refusal.
 - Required half of all units to have tenant purchasers.
 - Agreement by the converter to pay an Affordable Housing Fee to a "discrete fund"
- Adoption of the Affordable Housing Fee calculated as 30 percent of the difference between the sales price and gross rent multiplier of 8 applied to average rents charged in the previous 12 months or permanent rent ceilings, whichever was lower.
- Provisions that sought to reduce or eliminate incentives for speculative or fraudulent transfers of property.

Subsequent amendments to the City's Condominium Conversion Ordinance during the 1990s²¹ adjusted provisions of the affordable housing fee, clarified content of completed applications for purposes of the state's Permit Streamlining Act, and instituted a request

²¹ Ordinance Nos. 6,158-N.S. (effective December 17, 1992), 6,352-N.S. (effective November 26, 1996), and 6365-N.S. (effective March 18, 1997).

for allocation process for rental housing conversions and a “request for selection” process for TIC conversions. Collaborative communities, such as co-housing projects, were exempted from these provisions of the Ordinance, limited only to comply with provisions of the City’s Inclusionary Housing Ordinance. In addition, provisions were added to the Condominium Conversion Ordinance requiring owners to bring their property up to current codes for noise separation, and to provide all prospective buyers of their newly converted units with a report on the property’s seismic safety. Most significantly, The City Council amended the Ordinance in March 1997 so that the affordable housing fee would be calculated based on the decrease in affordability using a capitalization method. This method remains part of the CCO’s affordable housing fee provisions today. Between 1997 and 2005, it was the only means by which the affordable housing mitigation fee for condominium conversions was calculated, and often yielded estimated fees in the range of six-figures per unit (see example in “Mitigation Fee Estimation” in the main report). The scale of this fee calculation proved to be discouraging to most seeking to convert rental units to condominiums, even as home prices appreciated rapidly during the early part of this decade.

Conversion of rental units affects not only the rental housing market (by further reducing supply and increasing rents) but also the market for newly constructed condominiums. With TIC conversions (that is, rental to TIC conversions) banned in Berkeley since 1992, the City believed that the demand for condominium ownership should be met by a combination of conversion of TICs to condominiums and new construction. Berkeley saw several new condominium projects constructed between 1992 and today (particularly since 2000). More recently, many new multi-family and mixed-use developments are initially developed as rental properties, but have also obtained underlying subdivision maps so they may eventually convert to condominiums.

The *Tom*²² Decision and Deregulation of TICs

From 1992 to mid-2005, the City has prohibited creation of new TICs in properties of over 3 units and administered regulations for conversion of existing TICs to condominiums. This ban came about due to the loss of 1,000 to 1,500 rental housing units to TIC conversions in the late 1980s and early 1990s. Some of these TICs developed legal and financial difficulties among their partners, some of which came to the attention of the City Council in the early 1990s. In enacting the ban, the City of Berkeley sought to avoid recurrence of the problems generated by TICs in Berkeley. In mid-2004, the California Court of Appeal for the First District invalidated a similar regulation in San Francisco on grounds that San Francisco’s regulation was an unconstitutional invasion of privacy. The Berkeley City Attorney’s office concluded that the *Tom* ruling applied equally to the Berkeley’s TIC regulations, and the City Council repealed them as of June 16, 2005.

²² *Tom v. City and County of San Francisco*, 2004, 120 Cal. App. 4th 674.

At the same time, the City enacted regulations to encourage limited condominium conversion as an alternative to unregulated creation of TICs (Attachment 1 briefly summarizes this earlier history of Berkeley’s CCO). Since TICs remain a generally undesirable form of homeownership and since conversion of multi-family property to owner-occupancy through TIC ownership would reduce the stock of housing available to low-income residents of Berkeley, the City concluded it would be more desirable to encourage limited conversion of 100 units per year of some multi-family property to condominiums (and thereby obtain fees to make other units permanently affordable) than to do nothing and lose those potential fees as a result of unregulated creation of TICs.

The new regulations thus made some targeted reductions in housing mitigation fees applicable to condominium conversions, while maintaining existing protections for existing tenants.

Recent Ordinance Amendments

The CCO has been amended nine times by the City since TIC regulations were repealed in June 2005. During this period, most amendments addressed the affordable housing mitigation fee (see Table 3). This is because the magnitude of the fee is critical to maintaining the incentive for multi-unit property owners to prefer converting to condominiums rather than to TICs (see Mitigation Fee Estimation below). In May 2006, a Housing Department cost study examined tradeoffs between TIC and condominium conversions and found that owners of larger buildings receive larger per-unit profits from condominium conversions versus TIC conversions.²³ However, the study also found that owners of smaller properties have potentially more incentive to convert to TICs rather than condominiums should the sale premium of condominium units in the marketplace over that of TIC units decline. Other factors also affect a property owner’s TIC versus condominium conversion decision, including the property’s locational advantages in the residential market (including neighborhood characteristics), and availability and relative difficulty of financing. The challenge of addressing the owner’s incentive structure is addressed further in the section on Mitigation Fee Estimation in Attachment 1.

Table 3		
Recent History of Condominium Conversion Ordinance Amendments, 2005-2007		
Ordinance No.	Effective Date	Provisions
6,852-N.S.	June 16, 2005	Section 21.28.060.A was amended to cap the affordable housing fee for all projects at 12.5% of the sales price of each unit. An expiration date of October 26, 2005 was included.

²³ Report from Phil Kamlarz, City Manager to the Mayor and City Council, “Background Information Related to the Condominium Conversion Ordinance,” May 16, 2006. Available online at <http://www.ci.berkeley.ca.us/citycouncil/2006citycouncil/packet/051606/2006-05-16%20Item%2036%20Condo%20Conversion%20Workshop.pdf>

Table 3		
Recent History of Condominium Conversion Ordinance Amendments, 2005-2007		
Ordinance No.	Effective Date	Provisions
6,857-N.S.	July 21, 2005	No change to affordable housing fee cap.
6,878-N.S.	October 27, 2005	Section 21.28.060.A was amended to extend the expiration date of the affordable housing fee cap to January 31, 2006.
6,882-N.S.	November 24, 2005	The cap on the affordable housing fee was deleted from Section 21.28.060.A. Section 21.28.065 was inserted. It provides for reductions in the affordable housing fee. Section 21.28.065.B.1 provides for a cap on the affordable housing fee; however it only applies to conversions where the owner agrees to limit future rent increases for "current tenants". The clause also included an expiration date of January 31, 2006.
6,918-N.S.	June 22, 2006	The expiration date was completely removed from Section 21.28.065.B.1.
6,950-N.S.	November 23, 2006	No change to Section 21.28.065.B.1.
6,985-N.S.	July 19, 2007	<ul style="list-style-type: none"> • Extends deadline in Section 21.28.065.B.2 to enable lawful TICs on or before August 20, 1992, to qualify for an affordable housing mitigation fee exemption provided the conversion application is deemed complete by December 31, 2007. • Extends sunset deadline in Section 21.28.065.B.3 to enable longtime owner-occupants of TICs to qualify for fee exemption provided that they have begun their application by May 31, 2007. This section sunsets on December 31, 2007
6,995-N.S.	August 16, 2007	Clarifies that Section 21.28.065.B.1 applies to all units in a property, whether vacant or occupied by tenants.
6,996-N.S.	August 16, 2007	Clarify that Sections 21.28.040 and 21.28.050 prohibit condominium conversion for 10 years for no-fault evictions, including Ellis Ordinance, evictions for demolition, and evictions for owner-occupancy and relatives of owner.

Attachment 5

Assisting Tenants with Purchasing Their Units

(Excerpted from a report to the Housing Advisory Commission, June 7, 2007; see also footnote 12 in main report.)

INTRODUCTION

General Plan housing policies support the idea that Berkeley tenants be able to purchase homes if they wish and can qualify for a mortgage. The Condominium Conversion Ordinance increases the potential size of Berkeley's condominium market over the long term. Under terms of the Ordinance, the more tenants express an interest in purchasing their units, the higher a converting property will be ranked as part of the 100-unit annual conversion cap in the ordinance.

The Condominium Conversion Ordinance also levies an affordable housing mitigation fee on sales of newly converted units to capture a portion of the foregone affordability that had been maintained while the unit remained a rental unit. Revenues from the fee will accrue to the Housing Trust Fund. Some of this revenue could be used to help tenants purchase their current or another unit in Berkeley.

...

PROGRAM ISSUES AND ALTERNATIVES

Key issues emerging from this analysis include:

- There is a significant gap between the sale prices of most condominiums on the market and the ability of Berkeley tenant households to afford purchasing condominium units.
- What is the best way to create affordability for homeownership units, inclusionary requirements using permanent deed restrictions, or direct down payment assistance?
- What criteria should be applied to qualify Berkeley tenant households as program beneficiaries?
- What would be appropriate level(s) of assistance to enable Berkeley tenant households to make purchases?
- Should the program benefit only sitting Berkeley tenants buying the unit in which they live, or any qualifying Berkeley tenants interested in purchasing a condominium unit?

There are two broad alternative policy instruments available to the City of Berkeley to address purchases of affordable condominium units: the City's regulatory power, and funding.

Regulatory Programs

The City's police power could be used to require through regulation, for example, that properties over a certain number of units provide a specific percentage of the units as inclusionary condominiums, much the way the City's Zoning Ordinance does through its Inclusionary Housing Requirements (Berkeley Municipal Code Section 23C.12 *et seq.*). In theory, because of the permanent affordability requirement, these units could be exempted from the affordable housing mitigation fee, regardless of their rental or eviction history. They could then be identified as inclusionary units on the subdivision map, and subject to deed restriction to ensure City notification of pending sales and permanent resale at an affordable price.

...

In the late 1980s and early 1990s, the University of California acquired the blocks bounded by Jefferson, California, and Addison streets, and Allston Way, to develop condominium housing that would be affordable specifically to UC Berkeley faculty. The prices on these units are also affordable to low and moderate income households, and range from 39 percent to 59 percent of the median-priced Berkeley condominium in 2006. A manager of the University of California's Real Estate Services office provided staff this summary of the project:

"The University developed the project to provide affordable housing options for its faculty and staff, and maintains ownership of the land. The land is ground leased to the homeowner's association, with individual subleases to each homeowner. The CC&R's provide the guidelines for who is a qualified owner, and for the method of establishing the price of units when they are sold. The University can change the priority of who can purchase at University Terrace, and currently only ladder rank faculty are eligible. The pricing is based on a formula, using the purchase price and date of purchase as the base, and increasing it based on the consumer price index or faculty salary index, whichever is higher, plus the depreciated value of any Architectural Review Board approved improvements. The campus maintains a waiting list for the units, and resales are handled through my office.

"There are 75 units in 9 separate buildings. One building was the original Presentation High School building, and the other 8 are new construction. There are 27 - 3 bedroom, 2 bathroom units, 43 - 2 bedroom, 2 bathroom units, 3 loft style units, and 2 - 1 bedroom, 1 bathroom units, ranging in size from 686 sf to 1,861 sf. Recent sales range from \$187,500 to \$290,300, and depend on the size of the unit, the original price, and the amount of improvements made by the

seller. Amenities include the large landscaped grounds, a community room and patio, and a mini-park and children's play area on site.”²⁴

...

Funding Programs for Homeowner Assistance

Mortgage Credit Certificate Program. The City of Berkeley pays a small administrative fee of \$1,500 annually to the Alameda County Housing and Community Development Program to operate the County's Mortgage Credit Certificate (MCC) Program, a first-time homebuyer program. The holder of an MCC receives a federal tax credit of 15 percent of mortgage interest paid, which is then subtracted from the holder's federal tax liability. According to Alameda County, the current MCC allotment of \$7 million is used up for FY 2007 (ending June 30, 2007). Alameda County applied to obtain another \$7 million for FY 2008. The total MCC allocation is shared by all participating cities here on a first-come, first-served basis.

The average home price of units purchased with aid of an MCC throughout the County in the last five years was \$281,295, and the average mortgage amount was about \$231,500. The County program manager did not provide information on the average benefit per MCC recipient, but stated that the average interest rate in this period was between 5.5 and 7.0 percent. Taking the midpoint of these rates, the average interest on a \$231,500 mortgage would be about \$14,469, and the tax credit would be worth 15 percent of that amount, or about \$2,170. County records indicate that just two Berkeley homeowners receive the MCC benefit (one in 2003 and the other in 2006).²⁵

CalHOME. The California Department of Housing and Community Development (State HCD) administers a grant program for homebuyer assistance called CalHOME. Under CalHOME, the City would apply for an allocation of funds to supplement its own (hypothetical) first-time homebuyers program. State HCD issued a Notice of Funds Available (NOFA) in February 2007 for approximately \$50 million provided by voter passage of Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006. The deadline for submitting applications was April 18, 2007.

Under the NOFA, State HCD would provide grants to local public agencies and nonprofit developers to assist individuals households through deferred-payment loans. Direct, forgivable loans to assist development projects with multiple ownership units are also eligible for funding. To have been eligible, Berkeley would need a first-time homebuyer assistance program in operation for a minimum of two years within the four years immediately preceding the application deadline in April. This was not the case.

²⁴ Helen Levay, Real Estate Services Manager, email to Tim Strohane, Housing Department, regarding University Terrace, 18 May 2007.

²⁵ Ener Cueva, Housing Department, email to Tim Strohane, Housing Department, regarding Alameda County's Mortgage Credit Certificate Program, 10 May 2007.

Eligible programs may apply for up to \$600,000, and these funds must be leveraged with other program funds. CalHOME places a \$40,000 cap on assistance to individual households. The maximum amount of the sale price eligible for assistance is to be set at 100 percent of the area median income in the jurisdiction in which the CalHOME program would be located. Eligible participants must have household incomes at or below 80 percent of the area media income.

While the City is not currently positioned to obtain a CalHOME grant for first-time homebuyer assistance, it may be in the future once revenues from the Condominium Conversion Ordinance's Affordable Housing Mitigation Fee accrue to the Housing Trust Fund. This revenue source could provide a dedicated source of funds for a first-time homebuyer program in Berkeley that could also be used to leverage CalHOME funds in any future NOFA.

Cost of Subsidy. In October 2002, Housing staff prepared a report to the Housing Advisory Commission...that compares and analyzes relative affordability gaps that face households at income levels that are at or below the area median income for the East Bay Area. The models contained in that report ...demonstrate that the lower the household income attempting to purchase a unit, the greater the subsidy required in the absence of other assets.

**Attachment 6
(IN EFFECT AS OF AUGUST 16, 2007)**

Chapter 21.28

**CONDOMINIUMS, COMMUNITY APARTMENTS, AND STOCK COOPERATIVES
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.
- 21.28.075** Repealed by 6852-N.S.
- 21.28.080** Standards for determining priorities in selection of one hundred units in rental properties.
- 21.28.085** Repealed by 6852-N.S.
- 21.28.090** Procedure for determining the one hundred units selected in rental properties.
- 21.28.095** Repealed by 6852-N.S.
- 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.

Section 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6852-NS § 1 (part), 2005: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6852-NS § 2 (part), 2005: Ord. 6158-NS § 1, 1992: Ord. 6144-NS § 2 (part), 1992)

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. 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6852-NS § 3 (part), 2005: Ord. 6221-NS § 1, 1993: Ord. 6144-NS § 2 (part), 1992)

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. 6996-NS § 1 (part), 2007: 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 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. 6996-NS § 2 (part), 2007: 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 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. (Ord. 6882-NS § 1 (part), 2005; Ord. 6878-NS § 1, 2005; Ord. 6857-NS § 1 (part), 2005; Ord. 6852-NS § 6 (part), 2005; Ord. 6365-NS § 1, 1997; Ord. 6352-NS § 1 (part), 1996; Ord. 6221-NS § 1 (part), 1993; Ord. 6192-NS § 1 (part), 1993; Ord. 6158-NS § 4, 1992; Ord. 6144-NS § 2 (part), 1992)

Section 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 December 31, 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, and have formally begun the application process before May 31, 2007, 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 December 31, 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 all 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.

2. In two, three and four unit properties the maximum affordable housing fee for any unit shall be reduced by one and one-quarter percent (1.25%) for each year that an

owner has lived in the unit or previously rented another unit in Berkeley as their principal place of residence.

3. 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 on either unit shall be five percent. (Ord. 6995-NS § 1, 2007: Ord. 6985-NS § 1, 2007: Ord. 6950-NS § 1, 2006: Ord. 6918-NS § 1, 2006: Ord. 6882-NS § 1 (part), 2005)

Section 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. (Ord. 6352-NS § 1 (part), 1996: Ord. 6158-NS § 5, 1992: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6352-NS § 1 (part), 1996: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6352-NS § 1 (part), 1996: Ord. 6158-NS § 8, 1992: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6852-NS § 10 (part), 2005: Ord. 6158-NS § 10, 1992: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6852-NS § 11 (part), 2005: Ord. 6352-NS § 1 (part), 1996: Ord. 6158-NS § 11, 1992: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6882-NS § 1 (part), 2005: Ord. 6459-NS § 3, 1998: Ord. 6352-NS § 1 (part), 1996: Ord. 6158-NS § 12, 1992: Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

Section 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. (Ord. 6144-NS § 2 (part), 1992)

