



Office of the City Manager

INFORMATION CALENDAR

January 19, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services
 Subject: Condominium Conversion Program – Annual Report

INTRODUCTION

This report provides the regular annual assessment of condominium conversion program activities as required by Berkeley Municipal Code (BMC) 21.28.020.D. This report focuses on the period starting with calendar year 2008, when the current program went into effect, through October 20, 2020 (the date that data were compiled for this report).

CURRENT SITUATION AND ITS EFFECTS

The Condominium Conversion Ordinance (CCO) requires an annual report to the City Council which includes an assessment of the program and any recommendations for changes to the ordinance. The ordinance allows property owners to convert rental units to ownership units subject to certain requirements and payment of an Affordable Housing Mitigation Fee (AHMF). (This fee shares a name with—but is different from—the Affordable Housing Mitigation Fee for new construction market-rate housing in BMC 22.20.065.)

Attachment 1 has a summary of submitted and approved applications since 2008 and a breakdown of revenue the City has received to date. The ordinance gives owners a 25 percent reduction if they have paid the AHMF when the City approves their applications, an option that was added in 2009 with other revisions. To date, 52 units have selected this option. The other 58 units have selected to pay the fee based on the appraised value or sales price of the unit. The fee is 4% for properties with two units and 8% for properties with three or more units. The City has received a total of \$3,081,003 in mitigation fee payments from 110 converted units (see Table 3 of Attachment 1). Eighty percent of these funds are deposited into the Housing Trust Fund (HTF). Ten percent of the funds are used for HTF administration and 10% are used for monitoring HTF projects.

BACKGROUND

Condominium conversion is the process of subdividing a multi-unit property into separately owned housing units with individual mortgages. Subdivisions are regulated under the California Subdivision Map Act and Subdivided Lands Act. State law also

allows local governments to impose additional requirements. In Berkeley, these additional requirements are in the CCO (BMC Chapter 21.28 *et seq.*) and include an annual limit on the number of approved units, compliance with local laws, payment of an AHMF, and various tenant protections. The City's current ordinance has been in place since 2009.

In 1992, the City imposed a housing mitigation fee for condominium conversions and banned the creation of Tenancy-in-Common (TIC) properties. Council found TIC ownership problematic and the conversion of rental units to condominiums and TICs reduced the stock of affordable rental units in Berkeley. In a TIC, people share ownership and financing of multi-unit properties and agree among themselves on each part-owners' rights to occupy one unit, often expressed as pro rata shares of property ownership. Some owners of these TIC properties developed legal and financial difficulties among their partners. They sought help from the City Council and Council banned the creation of TICs as a result of those issues.

In 2004, California's Court of Appeals held that cities could not prohibit the conversion of rental units to TICs.¹ The City Council found that while condominium conversions were not ideal, a condominium conversion ordinance was preferred over unregulated TIC conversions. Council changed the ordinance to encourage condominiums over TICs, and completely overhauled the ordinance in 2008 and 2009.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

Staff are reviewing the Condominium Conversion Ordinance along with other housing fee ordinances and may recommend a revised ordinance.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts will depend on specific changes recommended in the future, if any.

CONTACT PERSON

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Attachments:

1: Summary Tables for the Condominium Conversion Program

¹ *Tom v. City and County of San Francisco*, 2004, 120 Cal. App. 4th 674.



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Attachment 1 Summary Tables for the Condominium Conversion Program

The tables below provide data on calendar years 2008-2020 (up to October 20, 2020). Data prior to 2008 are difficult to compile and analyze due to changes in the process and definitions. Therefore the total number of approved applications may not match up with the total number of submitted applications due to discrepancy from prior years. Also, applications may take more than one year to obtain approval or may not complete the process under the Condominium Conversion Program.

Table 1: General Summary

Year	Number of Submitted Applications	Number of Units in Submitted Applications	Number of Approved Applications	Number of Units in Approved Applications
2008	10	35	8	26
2009	5	24	13	66
2010	7	20	4	19
2011	5	22	3	11
2012	5	15	6	20
2013	6	15	7	15
2014	2	7	3	11
2015	1	2	2	7
2016	7	17	1	2
2017	1	3	4	9
2018	1	2	1	4
2019	3	9	5	12
2020	1	4	2	8
Total	54	175	59	210

Table 2: Applications Currently in the Process

	Applications	Units
Pending Applications	5	16

Table 3: Revenue Received from Affordable Housing Mitigation Fee

Of the approved units required to pay the fee, the owners of 110 units have paid the fee up front at the time of application approval, at refinance, or at time of sale. The owners of the remaining units will pay the fee when they sell or refinance their units. Linking the fee payment with sales means that fee revenue trends follow the real estate market, which is why revenue varies from year to year.

Year	Amount Received	Total Number of Units	Number of Units Paid at Time of Application Approval	Number of Units Paid at Refinance	Number of Units Paid at Time of Sale
2008	\$47,072	3	0	0	3
2009	\$0	0	0	0	0
2010	\$116,200	2	0	1	1
2011	\$76,280	4	3	0	1
2012	\$269,145	13	9	1	3
2013	\$237,795	14	9	0	5
2014	\$820,529	28	5	13	10
2015	\$249,708	8	3	0	5
2016	\$64,600	2	0	0	2
2017	\$495,888	14	9	2	3
2018	\$386,346	11	6	0	5
2019	\$60,200	1	0	0	1
2020	\$334,640	10	8	0	2
Total	\$3,158,403	110	52	17	41