



Office of the City Manager

INFORMATION CALENDAR

November 18, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Department

Subject: Condominium Conversion Program – Annual Report

INTRODUCTION

The purpose of this report is to provide the City Council with an assessment of the condominium conversion program (per Berkeley Municipal Code [BMC] 21.28.020.D). This report will focus on calendar years 2008 through 2014 (up to the date this report was written on September 16, 2014).

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. In 2008 and 2009, Council revised the CCO to streamline the process and simplify the administration of the Affordable Housing Mitigation Fee (AHMF), the fee owners must pay when they convert rental units to ownership units. The attachment has a summary of submitted and approved applications since 2008 and a breakdown of revenue the City has received to date. The 2009 ordinance revisions provided owners a 25 percent reduction if they pay the AHMF when the City approves their applications. To date, 26 units have selected this option. The City has received a total of \$1,536,158 in mitigation fee payments from 62 converted units.

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, various tenant protections, etc.

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. The 1992 mitigation fee for condominium conversions recaptured the entire difference in affordability that resulted from conversion and accrued to the City's Housing Trust Fund to help finance construction and rehabilitation of permanently affordable housing. This large fee had the deliberate effect of discouraging conversions.

In 2004, California's Court of Appeals held that cities could not prohibit the conversion of rental units to TICs.¹ 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 but continued to change the ordinance nine more times between 2005 and 2007. The piecemeal nature of the adjustments (especially when grafted onto a process originally designed to preclude condominium conversions) made the CCO difficult for applicants to understand and challenging for City departments to administer. As a result, Council decided to completely overhaul the ordinance so they changed the application process in 2008 and the AHMF structure in 2009.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

None.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

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.

Attachment 1

Summary Tables for the Condominium Conversion Program

The tables below provide data on calendar years 2008-2014 (up to September 16, 2014). Data prior to 2008 are difficult to compile and analyze due to changes in the process and definitions.

Table 1: General Summary for Calendar Years 2008-2014

Year	Number of Submitted Applications ²	Number of Units in Submitted Applications	Number of Approved Applications ³	Number of Units in Approved Applications	Number of Approved Units Required to Pay Mitigation Fee ⁴
2008	10	35	8	26	5
2009	5	24	13	66	55
2010	7	20	4	19	19
2011	5	22	3	11	6
2012	5	15	6	20	12
2013	6	15	7	15	15
2014*	1	3	3	11	11

* As of September 16, 2014

Table 2: Applicable Ordinance in Approved Projects by Year*

Year	Pre-2009 Ordinance		2009 Ordinance	
	Number of Approved Applications	Number of Units in Approved Applications	Number of Approved Applications	Number of Units in Approved Applications
2009	11	58	2	8
2010	0	0	4	19
2011	1	4	2	7
2012	1	4	4	16
2013	0	0	7	15
2014	0	0	3	11

*Applicable ordinance depends on when the application was submitted and approved

² An application is deemed submitted when the subdivision map (or step three in the older process) is submitted.

³ An application is deemed approved when the City takes the final action to approve a final subdivision map.

⁴ Ordinances before 2009 contained sliding scale fee reductions for some owner-occupants so it is unknown whether these owners will have to pay the mitigation fee. Most of these owners expressed their intentions to reside in their units long enough to reduce the fee to \$0 so these units were not counted in this category.

Table 3: Applications Currently in the Process

	Applications	Units
Pending Applications	10	37

Table 4: Revenue Received from Affordable Housing Mitigation Fee

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	\$789,666	26	5	13	8
Total	\$1,536,158.02	62	26	15	21