Office of the City Manager

INFORMATION CALENDAR
November 28, 2017

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services

Subject: Condominium Conversion Program – Annual Report

INTRODUCTION
This report provides an assessment of the condominium conversion program per Berkeley Municipal Code [BMC] 21.28.020.D. This report focuses on calendar years 2008, when the current program went into effect, through August 31, 2017 (the most current date for which data was available prior to 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 pay the AHMF when the City approves their applications, an option that was added in 2009 with other revisions. To date, 34 units have selected this option. The City has received a total of $2,134,891 in mitigation fee payments from 82 converted units (see Table 3 of Attachment 1).

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.

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.

The number of applications submitted has declined over the years. Staff believe that much of the pent up demand among TIC owners for conversion has been addressed and that conversions will probably continue at a low rate.

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 2008-2017 (up to August 31, 2017). 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 2008-2016

Year	Number of Submitted Applications (1)	Number of Units in Submitted Applications	Number of Approved Applications (2)	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	0	0	2	5
Total	**48**	**157**	**49**	**182**

Table 2: Applications Currently in the Process

	Applications	Units
Pending Applications	12	31

Table 3: Revenue Received from Condominium Conversion Program's Affordable Housing Mitigation Fee

Of the approved units required to pay the fee, the owners of 82 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	$253,562	8	5	2	1
Total	**$2,134,891**	**82**	**34**	**17**	**31**

Table 4: Projects Subject to Sliding Scale Fee Reductions

This table shows how many paid units qualified for a full or partial reduction in the fee owed under prior ordinances. Ordinances before 2009 contained sliding scale reductions in the fee owed for some owner-occupants. Since the fee is typically paid at the unit's sale, the City continues to see units qualifying for a full or partial reduction at time of payment even though this option is no longer available to applicants coming into the program.

Year	Number of Units Qualified for Partial Reduction	Number of Units Qualified for Full Reduction to $0
2012	1	2
2013	1	0
2014	4	0
2015	0	0
2016	0	1
2017	1	2