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Office of the City Manager

INFORMATION CALENDAR
November 27, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & 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 calendar years 2008, when the current program went into effect, through August 24, 2018 (the date that data was 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, 41 units have selected this option. The other 51 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 $2,560,463 in mitigation fee payments from 92 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. 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. The 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. 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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Attachment:
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 2008-2018 (up to August 24, 2018). 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 Condominium Conversion Program.

Table 1: General Summary for Calendar Years 2008-2016

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
Total	**50**	**162**	**52**	**190**

Table 2: Applications Currently in the Process

	Applications	Units
Cumulative Pending Applications	6	14

Table 3: Revenue Received from 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	$495,888	14	9	2	3
2018	$183,246	4	3	0	1
Total	**$2,560,463**	**92**	**41**	**17**	**34**