

OAKLAND PEOPLES HOUSING COALITION PROPOSAL FOR A MODEL CONDOMINIUM CONVERSION POLICY

A Humane Approach to Conversion that Preserves Diversity, Increases Homeownership Opportunities & Prepares for Oakland's Economic Future

In recent years, Oakland has been experienced a dramatic increase in condominium conversions (390 conversions in 2006). Conversions are extremely stressful and traumatic for tenants and families, including both low-income as well as middle-class renters. Current replacement requirements have not sufficiently protected existing tenants or the rental housing stock while, on the other hand, implementation of minimal protections presently available has proven to be difficult.

As a primary objective, the Oakland People's Housing Coalition favors retention of the Condominium Conversion Ordinance. The original purpose of the Ordinance was to preserve the stock of existing rental housing. That purpose remains valid, and is needed now more than ever. Toward effective implementation of its purpose, the Condominium Ordinance must not be weakened, but must instead be strengthened, and current loopholes that have contributed to the recent sharp increase in conversions must be closed.

Policy Objectives:

1. Protect existing tenants from displacement through: a) strictly limiting the number of allowable conversions; b) enabling willing and able tenants to purchase their unit; c) providing an effective and manageable tenant assistance plan that provides to affected persons reliable information and a real safety net; d) a moratorium on conversions when the rental vacancy rate reaches the crisis threshold; and e) stronger procedural guarantees.
2. Protect affordable rental housing stock needed to grow Oakland's workforce/economic development strategies through a) an operating cap directly linked to rental housing production; b) a numerical cap that functions as a ceiling on the maximum number of conversions; and c) a conversion fee to be deposited in the City's affordable housing trust fund.
3. Support affordable homeownership opportunities for existing qualified Oakland tenants through a) grants from conversion fees to assist tenants as first-time homebuyers; b) increasing the redevelopment funding housing set-aside to support homeownership programs; and c) encouraging the city to explore programs for the construction of new condominiums affordable to existing Oakland resident.

I. Policy Proposals to Prevent or Mitigate Tenant Displacement Caused by Conversions, Including Safeguarding Education for Children:

Under Oakland’s current laws, the tenant assistance plans have minimal requirements and do little to provide a safety net for tenants who either remain in converted buildings; or who are forced to re-locate due to conversion. The current laws also fail to provide meaningful funding assistance for tenants who wish to purchase their own units. The following proposals, based upon research of policies in other cities, seek to address these limitations:

- A. **Provide priority for conversions to buildings where at least 75% of the existing tenants demonstrate in writing, without coercion, both their intent and their financial capability to purchase a unit in the building.** Financial viability can be demonstrated through certification with a first-time homebuyers assistance program or by a reputable mortgage lending institution.
- B. **Require lifetime leases for people with disabilities¹ and seniors over the age of sixty-two.²** The first year’s monthly base rent for the unit of a lifetime lease tenant shall be set at no more than the rent existing on the unit at the time of filing for the condo conversion. Subsequent rent adjustments shall be limited to no more than one per year, and to the annual percentage determined by Oakland’s Residential Rent and Relocation Board in conjunction with the U.S. Bureau of Labor Statistic’s Consumer Price Index (CPI) for the San Francisco Bay Area.³
- C. **Require that existing tenants have the right of first refusal (otherwise known as the “exclusive right to contract for purchase”⁴) for their converted unit, or any other available unit in their building, at 10% below the purchase price offered to the general public.** The 10% purchase discount shall be provided to low-income tenants unable to purchase their converted unit. The purchase discount for non-purchasing tenants shall be deposited into a city-administered condominium trust fund, which shall be available to such tenants upon their subsequent eviction or relocation from the building. Also, require that after current tenants, existing Oakland residents be designated second preference to purchase the converted condos, consistent with fair housing laws.⁵

¹ As defined by California Government Code 12926.1.

² See O.M.C 16.36.050(A)(6); see also City of Hayward 10-3.370(c)(1).

³ See City of Hayward 10-3.370(c)(1)(iv-v).

⁴ See O.M.C 16.36.050(A)(4).

⁵ Our research shows that residency requirements may be allowed under certain conditions pursuant to fair housing laws. Mike Rawson from the California Affordable Housing Law Project would be a resource for crafting this provision.

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D. Require that existing tenants not purchasing their unit shall receive:

a) **moving assistance** in the form of a \$1,000 flat fee, paid 30 days in advance, for moving from the subject property⁶ allowing for annual increases of rent adjusted to the index in rent control laws⁷ AND

b) **relocation assistance** equivalent to one year (twelve months) of rent at fair market⁸ OR relocate tenant to a comparable rental unit in Oakland acceptable to the tenant. Comparable unit is defined by:⁹

- i. rent price
- ii. unit size by square feet
- iii. number of bedrooms
- iv. similar access to public transportation;
- v. meets special needs of the household to be displaced, AND
- vi. for tenants with school age children, a rental unit located in the same catchment of the child's current school

In order to ensure the guaranteed payment of relocation expenses for a tenant, require the landlord, as a condition of approval for the conversion, to deposit the equivalent of twelve months rent into a city-administered trust fund that a tenant can access upon terminating tenancy.¹⁰

AND

⁶ See City of Hayward Subdivision Ordinance section 10-3.370 (c)(4)(ii)(describing the \$1,000 financial assistance for moving expenses); see also Kathryn Richard, Housing Policy Intern for Lawyer's Committee for Better Housing, "The Illinois Condominium Property Act and the Stealth Conversion Problem: A Comparative Analysis of Tenant Protections in the Nation's Top 20 Conversion Markets" at 17 (Summer 2006). The City of Boston provides much higher one-time flat fee relocation benefits to non-purchasing tenants. Tenants that move within the notice period must be paid \$3,000 by the landlord within 10 days of vacating. Protected classes receive \$5,000.

⁷ Pursuant to CPI Rent Adjustments as determined in O.M.C 8.22.070(B).

⁸ The City of Los Angeles recently increased relocation assistance for evicted tenants. The new fee structure is: (a) \$6,810 for tenants who have lived in their apartments less than three years (or \$14,850 for seniors, the disabled or people who have minor children); (b) \$9,040 for tenants who have lived in their apartments more than three years (or \$17,080 for seniors, the disabled or with minor children); (c) Between \$9,040 and \$17,080 for tenants whose income is 80% or below the area's median income (\$55,450 for a family of four) regardless of the length of tenancy). Tenants who voluntarily move after approval of the condo-map and before notice of termination are entitled to relocation assistance. The new ordinance also establishes a compliance monitoring program to ensure tenant relocation assistance requirements when buildings are demolished. See Larry Gross "What We Won: Los Angeles Fights Condo Conversions" *BeyondChron* (Apr. 14, 2007); see also "Wesson Plan Aid Renters Facing Condo Conversion Eviction" City of Los Angeles Press Release (Apr. 13, 2007).

⁹ See generally City of Hayward Subdivision Ordinance section 10-3.370 (c)(4)(i) ("A complete current listing of vacant available replacement housing in the Hayward Planning Area which is comparable in location, size, amenities, and cost to the unit being converted and meets special needs of the household to be displaced").

¹⁰ Coalition suggestion: "Failure of a landlord to provide relocation assistance for a tenant is grounds for denial of a condo conversion." This is problematic to implement since condo conversion is on a timeline. Payment of relocation expenses would happen after conversion permit has been granted. Failure to provide a tenant with relocation assistance could be grounds to revoke a conversion already granted, not grounds for denying the conversion, but such a policy would be strongly challenged by a landlord who has already spent considerable money after the City of Oakland has granted a conversion. Compliance with the relocation assistance requirement could be enforced through the use of a city trust fund instead.

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c) **referrals** to a complete current listing of vacant, comparable, available rental units in the City of Oakland.¹¹

- E. **Require that tenants with a child or children under 18 years of age residing with them shall be offered leases of at least two years for their unit or, at tenant’s option, on any other available unit in the project.**¹² Such leases shall be subject to the same conditions as leases pertaining to people with disabilities and seniors over the age of 62.¹³
- F. Amend the Tenant Rights section of the Oakland Condominium Conversion Ordinance¹⁴ to provide that **no remodeling** of interiors of tenant-occupied units shall begin without consent of the continuing tenant.¹⁵
- G. Require as a condition of any proposed conversion, that all tenants be provided certified copies of a city-developed “Tenants’ Bill of Rights” and “Tenant Assistance Program,” spelling out in clear language all rights, responsibilities, privileges, obligations, regulations, order of proceedings, avenues of appeal, and filing of complaints relating to the process of conversion and tenancy. As a **remedy for a landlord’s non-compliance** with the Tenant Bill of Rights and Tenant Assistance Program (O.M.C 16.36.050), the tenant shall be entitled to recover actual damages and punitive damages of not less than three times actual damages, costs and reasonable attorney’s fees.¹⁶

II Policy Proposals to Protect Oakland’s Rental Housing Stock

- A. **Limit the number of conversions to the lesser of these two amounts:**
- a) 50% of the yearly average of rental units constructed in the previous two years¹⁷; OR
 - b) 100 units.¹⁸
- B. **Require one-for-one replacement, or eligible “conversion rights” for all conversions. Retain present primary and secondary “impact areas.” Consider designation of all**

¹¹ *Id.*

¹² City of Hayward Subdivision Ordinance section 10-3.370(c)(2) (“Require that leases of at least two years shall be offered to tenants with a child or children under 18 years of age residing with them for their unit or, at tenant’s option on any other available unit in the project. Such lease rights shall expire no earlier than 180 days from the date of receipt of a notice from the subdivider that a subdivision public report has been issued by the Department of Real Estate”).

¹³ See City of Hayward 10-3.370(c)(1)(iv-v) (“(iv) The first year’s base monthly rent for the unit shall be set at no more than the rent existing on the unit at the time of the filing of the tentative map or tentative parcel map; (v) Subsequent rent adjustments shall be limited to no more than one per year, and to the annual percentage change in the U.S. Bureau of Labor Statistic’s Consumer Price Index (CPI) for the San Francisco Bay Area.”).

¹⁴ O.M.C 16.36.050(A).

¹⁵ See City of Hayward Subdivision Ordinance section 10-3.370(b)(5).

¹⁶ See O.M.C 8.22.370(A)(2).

¹⁷ This cap is the exact same cap in the condo conversion ordinance for the City of La Mesa, Chapter 22.03.020. The ordinance also allows the City Council to consider providing an exemption from the annual unit limitation for projects that create “for-sale” owner-occupied housing restricted to households earning less than 80% of the regional median household income as defined by HUD (\$51,789 for San Diego County).

¹⁸ Dellums Housing Task Force Proposed Policy #2. San Francisco, with about double Oakland’s population, has an annual cap of 200 units.

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of the “Gold Coast” and “Piedmont Avenue” neighborhoods as “secondary” impact areas.

- C. **Create a conversion fee that is directly tied to the City subsidy to build new affordable housing units, to be placed into the City’s housing fund.**
- D. **Conversions should be spread equitably throughout the City, such that no district shall exceed 15% of the maximum cap as averaged over the city.**
- E. **Apply a moratorium on all conversions if the City’s vacancy rate falls below 5%.¹⁹**
- F. **Re-instate the one-for-one replacement limit on conversions of buildings with 4 of less units with a cap that these buildings cannot exceed 25% of approved annual conversions.**

III. Support Affordable Homeownership Opportunities for Existing Oakland Tenants

Many people who currently reside in Oakland want to be able to own their own homes and have moved to places like Stockton in order to purchase more affordable homes. A conversion policy is needed that will directly support the current tenants first, and then other Oakland residents next, to purchase the converted unit. The following proposals provide greater financial resources for homeownership programs for Oakland residents.

- A. **Utilize the conversion fee described above for the production of new rental housing units, OR to help fund homeownership programs.**
- B. **Create a new source of funding for homeownership programs through increasing the existing redevelopment housing set-aside from 25% to 35%, with a goal of 50% as current debt obligations are retired. 10% of the set-aside funds shall be used for homeownership programs and 25% for rental housing production for lower income residents.**

IV. Displacement Registry

There is currently no data collecting system that helps the City understand the nature of the displacement problem. Accordingly, the City of Oakland shall initiate a displacement registry working with social service providers, schools, and other organizations that provide direct services to Oakland residents. The registry shall record all displacement by source, cause, and time of occurrence. The registry will help guide informed City decision-making on housing, workforce development, and other policies.

V. Procedural, Monitoring & Enforcement Provisions

- A. **Provide annual reports on conversion applications and approvals to the Planning Commission and City Council** including at least the following information: a) location

¹⁹ This moratorium threshold is based upon Los Angeles’ policy. EBCLC’s Community Economic Justice Practice, 17 May 07; OTU edited and submitted as “Draft,” 4 June 07

and the number of rental housing available in each City district, b) number of impacted tenants and their ages, c) whether the tenants purchased their unit, d) tenant replacement housing status, and e) the funds captured by the conversion fees and their utilization.

B. Streamline and clarify the administrative appeals process.

1. Amend the Oakland Condominium Conversion Ordinance (O.M.C 16.36) to include applicable and relevant state law. This includes:
 - i. All state notice requirements, as well as a clear expression that the failure to meet these notice requirements will result in the denial of a condo conversion application.²⁰
 - ii. Notice of a public hearing regarding a condo conversion should be delivered to all real property owners within 300 feet of the building in question.²¹ Additionally require notice by mail of a public hearing to all residents living within 300 feet of property in question, to include:
 - iii. A clear description of the grounds on which a conversion shall, and shall not, be approved.²²
 - iv. A clear description that there is a 90 day window, after a decision to approve a conversion, in which a tenant whose appeal is denied can sue in state court.²³
 - v. A clear description of the tenant's rights after the rental unit is converted. This should include the grounds on which a tenant must vacate their unit, the limits on the original owner to raise rent and the ability of the new owner of the converted unit to raise the rent.²⁴
 - vi. A clear description of the tenant's right to quiet enjoyment.²⁵
 - vii. A clear description of the prohibition of interruption or termination of a tenant's utility service.²⁶

2. Amend the Oakland Condo Conversion Ordinance (O.M.C 16.36) to include provisions regarding applicable and relevant local law. This includes:
 - i. Reference to Oakland Municipal Code 8.22 regarding the tenant's right to petition to rent board due to a decrease in services.
 - ii. Reference to Oakland Municipal Code 16.04.100 detailing the administrative appeals process.
 - iii. Reference to the applicability of Oakland's Just Cause Ordinance (O.M.C 8.22.350) to the condo conversion process.
 - iv. Reference to the applicability of Oakland's Ellis Act (O.M.C. 8.22.400) to the condo conversion process.

²⁰ Cal. Gov't Code 66427.1.

²¹ Cal. Gov't Code 65091.

²² Cal. Gov't Code 66474.

²³ Cal. Gov't Code 66499.37.

²⁴ California Civil Code 1254.52.

²⁵ California Civil Code 1927.

²⁶ California Civil Code 789.3.

C. Constructive Eviction and Condo Conversion

1. Amend the Tenant’s Rights section of the Oakland Condominium Conversion Ordinance²⁷ to include: “Construction during the condominium conversion process while tenant is still in possession is constructive eviction.” Damages for constructive eviction should include non-payment of rent and/or back pay of rent during the period of disruptive construction.
2. Amend the Tenant’s Rights section to include a prohibition on landlord retaliation against any tenant or household members of a tenant because of the tenant’s use of any remedy provided in the Tenant Bill of Rights²⁸ or Tenant Assistance Program²⁹ causing the tenant to involuntarily quit the premises (constructive eviction.)³⁰
3. Amend the Tenant Assistance Program section of the Oakland Condominium Conversion Ordinance³¹ to include: “Constructive Eviction qualifies a tenant for the Tenant Assistance Program.”
4. Amend the Oakland Ellis Act ordinance to provide that any tenants evicted under Ellis Act provisions, and where application to convert the building to condominiums within three years of tenant eviction, that such tenant evictions constitute “constructive evictions,” and remedies for constructive eviction shall be applicable.

D. Require enforcement provisions to address “stealth conversions” where a tenant vacates a unit based on a reason other than a just cause for eviction, and the unit remains vacant during the conversion process, allowing the landlord an end-run around the Tenant Assistance Program.

- b. Require a rebuttable presumption of condo conversion eviction.³² This policy is in place in Boston and has been called “particularly noteworthy” in addressing the problem of stealth conversions by the Lawyer’s Committee for Better Housing in Chicago.³³ Any tenant who contests a rent increase before or after the conversion process (rent increases are not allowed in the year-window during the conversion process), or any tenant who sues to recover possession of their unit, can establish a rebuttable presumption of condo conversion eviction, if one or more of the following has occurred:
 - a) any unit has been sold as a condo
 - b) a master deed has been recorded
 - c) a landlord who gave notice of conversion within 12 months after an action is brought to recover possession or increase rent
 - d) any tenant in any unit of the building has received a conversion notice

²⁷ O.M.C 16.36.050(A).

²⁸ *Id.*

²⁹ O.M.C 16.36.050(B).

³⁰ *See* City of Fremont section 3-1945.

³¹ O.M.C 16.36.050(B).

³² *See* Richard, *supra* note 8 at 17 (discussing the City of Boston Municipal Code 10-2.10).

³³ *Id.*

- e) in any converted unit the landlord has increased the rent beyond the authorized increase, unless the landlord can show the intent is not to facilitate the sale of the unit to a prospective buyer

This presumption could also allow for civil remedies for tenants whose landlord has demanded excessive rent from a conversion tenant. Remedies may consist of liquidated damages of \$1000, or three times the excess rental increase amount.

Amend O.M.C 16.36 to ensure that a tenant who opts out (or is persuaded to opt out) of their tenant rights and the TAP would automatically be represented by a lawyer and their buyout/waiver of rights must be approved by a judge. Such a provision would read: “no such buyouts, waivers of right without tenant being represented by lawyer and approved by judge.”³⁴

³⁴ See San Francisco Administrative Code 37.9(c), or suggestion by Marc Janowitz, EBCLC staff attorney, Mar. 23 2007.

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