



City and County of San Francisco

San Francisco Public Works · Bureau of Street Use and Mapping

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August 15, 2017

Re: Suspension of Portion of Expedited Condominium Conversion Program Due to Legal Challenge

To whom it may concern:

Please be advised that a recent legal challenge to the City and County of San Francisco's Expedited Condominium Conversion Program ("ECP") has required the City and County of San Francisco ("City") to suspend the ECP with respect to certain ECP applications for buildings with non-owning tenants. This letter describes the scope and applicability of this suspension. We encourage you to consult your legal counsel regarding the applicability of the suspension to your property and the status of any associated ECP application.

On June 26, 2017, a complaint was filed in the United States District Court to challenge provisions in the ECP requiring property owners seeking to convert a building into a condominium to offer any non-purchasing, non-owning tenant a written offer to enter into a "life time lease," as set forth in the San Francisco Subdivision Code. (See Attachment A [S.F. Subd. § 1396.4(g)]; see also Attachment B [Complaint, *Pakdel v. City and County of San Francisco et al.*, Case No.: 3:17-cv-03638 (U.S. District Court, N.D. Cal.)].) According to Board of Supervisors Ordinance No. 117-13 (effective July 28, 2013), the service of the complaint upon the City on June 27, 2017, triggered the suspension of the ECP with respect to buildings with a unit occupied by a non-owning tenant. (See Attachment C [Ordinance No. 117-13].) Please note that ECP applications for buildings without any units occupied by a non-owning tenant shall continue to be accepted and processed.

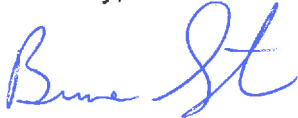
The scope and effects of the suspension for various categories of ECP applications are described below.

- *ECP Applications With Final and Effective Tentative Parcel Map or Tentative Map Approval On or Before June 27, 2017.*
Applicants that obtained final and effective Tentative Parcel Map or Tentative Map approval on or before June 27, 2017 (for buildings with or without non-owning tenants) may proceed to final Parcel Map or Final Subdivision Map approval and recordation of such maps, subject to Public Works' authority and discretion under the Subdivision Code.
- *ECP Applications for Buildings Without Non-Owning Tenants.*
ECP applications for buildings without any non-owning tenants may be accepted, tentatively approved, and finally approved.
- *ECP Applications for Buildings With Non-Owning Tenants (Submitted After June 27, 2017).*
ECP applications submitted after June 27, 2017 for buildings with any non-owning tenants will not be accepted or approved until further notice from the City and County Surveyor.
- *ECP Applications for Buildings With Non-Owning Tenants (Without Tentative Parcel Map or Tentative Map Approval as of June 27, 2017).*
ECP applications for buildings with non-owning tenants that lack Tentative Parcel Map or Tentative Map approval as of June 27, 2017 will be suspended until further notice from the City and County Surveyor.

ECP applications that have not been approved, or for which final and effective Tentative Parcel Maps or Tentative Maps have not been approved, by June 27, 2017 shall remain suspended until final judgment (or dismissal) in all courts with respect to the above-referenced lawsuit or January 1, 2024, whichever occurs first. During the suspension of a portion of the ECP, any applicant may seek a refund of any previously paid ECP application fee or condominium conversion fee. Upon receiving an applicant's request for an application fee refund, Public Works and any other reviewing City Departments will deduct costs incurred by the City, based on time and materials expended, and will refund any remaining portion of the application fee.

If you have any questions, please do not hesitate to contact my office at (415) 554-5827.

Sincerely,



Bruce R. Storrs, P.L.S.

City and County Surveyor

Enclosures:

Attachment A. Subdivision Code Section 1396.4(g)

Attachment B. Complaint, *Pakdel v. City and County of San Francisco et al.*, Case No.: 3:17-cv-03638 (U.S. District Court, N.D. Cal.)

Attachment C. San Francisco Board of Supervisors Ordinance No. 117-13

Attachment A

Subdivision Code Section 1396.4(g)

SEC. 1396.4. CONDOMINIUM CONVERSION FEE AND EXPEDITED CONVERSION PROGRAM.

(a) **Findings.** The findings of Planning Code Section 415.1 concerning the City's inclusionary affordable housing program are incorporated herein by reference and support the basis for charging the fee set forth herein as it relates to the conversion of dwelling units into condominiums.

(b) Any building may be exempted from the annual lottery provisions of Section 1396 if the building owners for said building comply with Section 1396.3 (g)(1) and all the requirements of this Section 1396.4 .

Notwithstanding the foregoing, no property or applicant subject to any of the prohibition on conversions set forth in Section 1396.2 , in particular a property with the eviction(s) set forth in Section 1396.2 (b), is eligible for the Expedited Conversion program under this Section 1396.4 . Eligible buildings as set forth in this Section (b) may exercise their option to participate in this program according to the following requirements:

(1) Any building that participated in but was not selected for the 2012 or 2013 condominium conversion lottery consisting of (a) four units or less in which one unit has been occupied continuously by one of the applicant owners of record for no less than five years prior to April 15, 2013, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by the applicant owners of record for no less than five years as of April 15, 2013, is eligible for conversion under this Subsection. The applicant(s) for the subject building seeking to convert under this Subsection shall pay the fee specified in Subsection (e) no later than April 14, 2014 for the entire building along with additional information as the Department may require including certification of continued eligibility; however, the deadline for an applicant to pay the fee may be extended pursuant to (j)(3) of this Section.

(2) Any building that participated in but was not selected for the 2012 or 2013 condominium conversion lottery consisting of (a) four units or less in which one unit has been occupied continuously by one of the applicant owners of record for no less than three years prior to April 15, 2014, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by the applicant owners of record for no less than three years as of April 15, 2014, is eligible for conversion under this Subsection. The applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2014 and shall pay the fee specified in Subsection (e) no later than January 23, 2015 along with additional information as the Department may require including certification of continued eligibility; however, the deadline for an applicant to pay the fee may be extended pursuant to (j)(3) of this Section.

(3) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years as of April 15, 2015 or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2015, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2015 and shall pay the fee specified in Subsection (e) no later than January 22, 2016 along with additional information as the Department may require including certification of continued eligibility.

(4) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years as of April 15, 2016, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2016, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2016 and shall pay the fee specified in Subsection (e) no later than January 20, 2017 along with additional information as the Department may require including certification of continued eligibility.

(5) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years as of April 15, 2017, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2017, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2017 and shall pay the fee specified in Subsection (e) no later than January 19, 2018 along with additional information as the Department may require including certification of continued eligibility.

(6) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years prior to April 15, 2018, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2018, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2018 and shall pay the fee specified in Subsection (e) no later than January 25, 2019 along with additional information as the Department may require including certification of continued eligibility.

(7) For Additionally Qualified Buildings consisting of (a) four units or less in which one unit has been occupied continuously by one owner of record for no less than six years prior to April 15, 2019, or (b) buildings consisting of five or six units in which 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of April 15, 2019, the applicant(s) for the subject building may apply for conversion under this Subsection on or after April 15, 2019 and shall pay the fee specified in Subsection (e) no later than January 24, 2020 along with additional information as the Department may require including certification of continued eligibility. An Additionally Qualified Building subject to Subsection 9(A) shall be eligible to convert pursuant to this Subsection as long as there is fully executed written agreement in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units and 50 percent or more of the units have been occupied continuously by owners of record for no less than six years as of January 24, 2020.

(8) For applications for conversion pursuant to Subsections (3)-(7) only, a unit that is "occupied continuously" shall be defined as a unit occupied continuously by an owner of record for the six year period without an interruption of occupancy and so long as the applicant owner(s) occupied the subject unit as his/her principal place of residence for no less than one year prior to the time of application.

(A) Notwithstanding the occupancy requirements set forth above, each building may have one unit where there is an interruption in occupancy for no more than a three month period that is incident to the sale or transfer to a subsequent owner of record who occupied the same unit. For any unit with an interruption of occupancy, the applicant shall provide evidence to establish to the satisfaction of the Department that the period did not exceed three months.

(B) Notwithstanding the occupancy requirements set forth above, each building may have one unit where there is an interruption in occupancy for no more than a one year period if the sale or transfer to a subsequent owner of record who occupied the same unit was delayed during the term of a bank foreclosure against the former owner's interest in the building related to the subject unit. For any unit with an interruption of occupancy as a result of a foreclosure as described in Subsection (B), the applicant shall provide evidence to establish to the satisfaction of the Department that the period did not exceed one (1) year.

(9) An "Additionally Qualified Building" within the meaning of this Section is defined as a building in which the initially eligible applicant owners of record have a fully executed written agreement as of April 15, 2013 in which the owners each have an exclusive right of occupancy to individual units in the building to the exclusion of the owners of the other units; provided, however, that said agreement can be amended to include new applicant owner(s) of record as long as the new owner(s) satisfy the requirements of Subsection (8) above. In addition to the requirements listed in this Subsection (8), an Additionally Qualified Building also includes a five or six unit building that: (A) on April 15, 2013, had 50 percent or more of the units in escrow for sale as a tenancy-in-common where each buyer shall have an exclusive right of occupancy to an individual unit in the building to the exclusion of the owners of other units or (B) is subject to the requirements of Section 1396.2 (f)

and 50 percent or more of the units have been occupied continuously by owners of record for no less than ten years prior to the date of application as set forth in Subsections (3)-(7).

(10) In addition to all other provisions of this Section, the applicant(s) must meet the following requirements applicable to Subdivision Code Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a) and (b), 1392, 1393, 1394, and 1395. Also, the applicant(s) must certify that to the extent any tenant vacates his or her unit after March 31, 2013 and before recordation of the final parcel or subdivision map, such tenant did so voluntarily or if an eviction or eviction notice occurred it was not pursuant to Administrative Code Sections 37.9(a)(8)-(14). If an eviction has taken place under 37.9(a)(11) or 37.9(a)(14) then the applicant(s) shall certify that the original tenant reoccupied the unit after the temporary eviction.

(11) If the Department finds that a violation of this Section occurred prior to recordation of the final map or final parcel map, the Department shall disapprove the application or subject map. If the Department finds that a violation of this Section occurred after recordation of the final map or parcel map, the Department shall take such actions as are available and within its authority to address the violation.

(c) Decisions and Hearing on the Application.

(1) The applicant shall obtain a final and effective tentative map or tentative parcel map approval for the condominium subdivision or parcel map within one (1) year of paying the fee specified in Subsection (e).

(2) No less than twenty (20) days prior to the Department's proposed decision on a tentative map or tentative parcel map, the Department shall publish the addresses of building being considered for approval and post such information on its website. During this time, any interested party may file a written objection to an application and submit information to the Department contesting the eligibility of a building. In addition, the Department may elect to hold a public hearing on said tentative map or tentative parcel map to consider the information presented by the public, other City department, or an applicant. If the Department elects to hold such a hearing it shall post notice of such hearing and provide written notice to the applicant, all tenants of such building, any member of the public who submitted information to the Department, and any interested party who has requested such notice. In the event that an objection to the conversion application is filed in accordance with this Subsection, and based upon all the facts available to the Department, the Department shall approve, conditionally approve, or disapprove an application and state the reasons in support of that decision.

(3) Any map application subject to a Departmental public hearing on the subdivision or a subdivision appeal shall have the time limit set forth in this Subsection (c)(1) extended for another six (6) months.

(4) The Director of the Department of Public Works is authorized to waive the time limits set forth in this Subsection (c)(1) as it applies to a particular building due to extenuating or unique circumstances. Such waiver may be granted only after a public hearing and in no case shall the time limit extend beyond two (2) years after submission of the application.

(d) Should the subdivision application be denied or be rejected as untimely in accordance with the dates specified above, or the tentative subdivision map or tentative parcel map disapproved, the City shall refund the entirety of the applicant's fee specified in Subsection (e).

(e) The fee amount is \$20,000.00 per unit for all buildings that seek to convert under Subsection (b)(1)-(7). Said fee shall be adjusted annually in accordance with the terms of Section 1315 (f). Said fee is reduced for each year the building has participated in the condominium conversion lottery up to and including the 2013 lottery in accordance with the following formula:

- (1) 2 years of participation, 20% fee reduction per unit;
- (2) 3 years of participation, 40% fee reduction per unit;
- (3) 4 years of participation, 60% fee reduction per unit; and
- (4) 5 or more years of participation, 80% fee reduction per unit.

(f) For purposes of Section (e), a building's owner(s) shall get credit only for those years that he or she participated in the lottery even though such building could have qualified for and participated in other condominium conversion lotteries.

(g) Life Time Lease for Non-purchasing Tenants.

(1) Any application for conversion under this Section shall include a certification under penalty of perjury by the applicants that any non-purchasing tenant(s) in the building has been given a written offer to enter into a life time lease in the form and with the provisions published and prescribed by the Department in consultation with the Rent Board. Such written offer for a life time lease shall be executed by the owners of the building(s) and recorded prior to the time of Final Map or Parcel Map approval. Any life time leases made pursuant hereto shall expire only upon the death or demise of the last such life-tenant residing in the unit or the last surviving member of the life-tenant's household, provided such surviving member is related to the life-tenant by blood, marriage, or domestic partnership, and is either disabled, catastrophically ill, or aged 62 or older at the time of death or demise of any such life-tenant, or at such time as the life-tenant(s) in the unit voluntarily vacates the unit after giving due notice of such intent to vacate.

(2) (A) Each lease shall contain a provision allowing the tenant to terminate the lease and vacate the unit upon 30 days' notice and a provision that rent charged during the term of the lease shall not exceed the rent charged at the time of filing of the application for conversion, plus any increases proportionate to the increases in the residential rent component of the "Bay Area Cost of Living Index, U.S. Dept. of Labor," provided that the rental increase provisions of this Section shall be operative only in the absence of other applicable rent increase or arbitration laws.

(B) The lease also shall state that it shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including but not limited to the provision of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, 1941.2, 1941.3, and 1941.4 of the California Civil Code and that there shall be no decrease in dwelling unit maintenance or other services historically provided to such units and such life-tenants.

(C) The lease shall include the following language:

Tenant agrees that this Lease shall be subject and subordinate at all times to (i) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Real Property or any portion thereof; (ii) the lien of any mortgage, deed of trust, assignment of rents and leases or other security instrument (and any advances thereunder) that may now exist or hereafter be executed in any amount for which the Real Property or any portion thereof, any ground leases or underlying leases or Landlord's interest or estate therein, is specified as security; and (iii) all modifications, renewals, supplements, consolidations and replacements thereof, provided in all cases the mortgagees or beneficiaries named in mortgages or deeds of trust hereafter executed or the assignee of any assignment of rents and leases hereafter executed to recognize the interest and not disturb the possession, use and enjoyment of Tenant under this Lease, and, in the event of foreclosure or default, the lease will continue in full force and effect by operation of San Francisco Administrative Code Chapter 37, Section 37.9D, and the conditions imposed on each parcel or subdivision map pursuant to Section 1396.4 (g), as long as Tenant is not in default under the terms and conditions of this Lease. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional reasonable documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, mortgages, deeds of trust, assignment of rents and leases or other security instruments. Subject to the foregoing, Tenant agrees that Tenant shall be bound by, and required to comply with, the provisions of any assignment of rents and leases with respect to the Building.

(3) The Department shall impose the following tentative map conditions on each parcel and subdivision map subject to this Subsection 1396.4 (g) and require that the conditions be satisfied prior to Final Subdivision Map or Parcel Map approval: (A) the property owner(s) of the building provide a written offer for a life time lease pursuant to this Subsection to the tenant(s) in the building and record such offer against the building's title, (B) at the time the tenant(s) accepts the life time lease offer, and even if such acceptance occurs after map approval, a binding agreement between the tenant(s) and the property owner(s) shall be executed and recorded against the property's title, and (C) a binding agreement between the City and the property owner(s) concerning the requirements of this Subsection be recorded against the property's title. For purposes of this Subsection, the Board of Supervisors delegates authority to the DPW Director, in consultation with the Mayor's Office of Housing, to enter in said agreement on behalf of the City and County of San Francisco.

(4) If the owner(s) of a building subject to the life time lease provisions of this Section 1396.4 (g) enters into any contract or option to sell or transfer any unit that would be subject to the lifetime lease requirements or any interest in any unit in the building that would be subject to the lifetime lease requirements at any time between the initial application and recording of the final subdivision map or parcel map, said contract or option shall be subject to the following conditions: (a) the contract or option shall include written notice that the unit shall be subject to the life time lease requirements of Subdivision Code Section 1396.4 (g), (b) prior to final execution of any such contract or option, the owner(s) shall record a notice of restrictions against the property that specifically identifies the unit potentially subject to the life time lease requirements and specifies the requirements of the life time lease as set forth in Section 1396.4 (g)(1), and (c) the recorded notice of restrictions shall be included as a note on the final subdivision map or parcel map. Prior to approval of a final subdivision map or parcel map, the applicant(s) shall certify under penalty of perjury to the Department that he, she, or they have complied with the terms of this Subsection as it applies to a building. Failure to provide this certification from every current owner of a building shall result in disapproval of the map. The content of the notices and certifications required by this Subsection shall comply with the instructions and procedures developed by the Department.

(h) In recognition of the rental requirements of Section (g), the fee for each unit in which a non-purchasing tenant resides at the time specified in Section (g) who is offered a life time lease and is unrelated by blood, marriage, or domestic partnership to any owner of the building shall be refunded to the subdivider under the following formula:

- (1) One unit, 10% fee reduction for such unit;
- (2) Two units, 20% fee reduction for each unit;
- (3) Three units, 30% fee reduction for each unit.

(i) Upon confirmation of compliance with the rental requirement, DPW or the City department in possession of the fee revenue shall refund the amount specified in Section (h) to the subdivider and have all remaining fee revenues transferred to the Citywide Affordable Housing Fund, established in Administrative Code Section 10.100-49, in the following percentage allocations:

- (1) 25% to the Mayor's Office of Housing and Community Development's program for small site acquisition to purchase market rate housing and convert it to affordable housing; and
- (2) 75% for the purpose of expanding affordable housing opportunities for low or moderate income households in San Francisco, including, but not limited to, expanding public housing opportunities.

(j) Waiver or Reduction of Fee Based on Absence of Reasonable Relationship.

(1) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged.

(2) Any appeal of requests under this clause shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid to the Treasurer the fee as required in this Section. The appeal shall set forth in detail the factual and legal basis for the claim of waiver,

reduction, or adjustment. Upon receipt of the appeal, the Clerk of the Board of Supervisors shall review the appeal in consultation with the City Attorney. If the Clerk of the Board determines that the appeal on its face challenges, on a factual or legal basis, the relationship or nexus between the impact of development and the amount of the fee charged, then the Clerk of the Board shall schedule a hearing under Subsection (3). If the Clerk of the Board in consultation with the City Attorney determines that the appeal on its face does not challenge, on a factual or legal basis, the relationship or nexus, then the Clerk of the Board shall notify the members of the Board of Supervisors within three business days of the Clerk's receipt of the appeal. If any one member of the Board of Supervisors requests within three business days of the Clerk's notification that the Clerk schedule a hearing on the appeal, then the Clerk shall schedule a hearing under Subsection (3). If no member of the Board requests that the Clerk schedule a hearing, then the Clerk shall inform the appellant and the Department of Public Works, within ten business days from the date of the filing, that the filing does not allege a proper basis for appeal, and shall reject the appeal on behalf of the Board of Supervisors.

(3) If the Clerk of the Board schedules a hearing under this Section, the Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical information to support appellant's position. If a reduction, adjustment, or waiver is granted, any change of use or scope of the project shall invalidate the waiver, adjustment or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer and Department of Public Works.

(k) **Deferred Payment Based Upon Limited Means.** A project applicant may apply to the Department of Public Works for a deferral of payment of the fee applied to a specific unit as described in Subsection (e) for the period beginning when the Department receives a complete application until six (6) months after recordation of the final parcel or subdivision map, provided that for the twelve months prior to the date of application, the applicant resided in his or her unit in the subject property as his or her principal place of residence and the applicant's household income was less than 120% of median income of the City and County of San Francisco as determined by the Mayor's Office of Housing. Prior to the final approval of a parcel or subdivision map for any building where an applicant(s) has obtained a fee deferral, the Department shall cause the recordation of a notice of restrictions or other similar document against the title of all owners of the subject property that guarantees payment of the deferred fee at the time set forth in this Subsection.

(l) Buildings that convert pursuant to this Section shall have no effect on the terms and conditions of Section 1341A , 1385A , or 1396 of this Code.

(Added by Ord. [117-13](#), File No. 120669, Pass. 6/18/2013; amended by Ord. [65-14](#), File No. 131146, App. 5/8/2014, Eff. 6/7/2014; Ord. [75-14](#), File No. 140226, App. 5/28/2014, 6/27/2014; Ord. [143-15](#), File No. 150568, App. 8/6/2015, Eff. 9/5/2015)

Attachment B

Complaint, *Pakdel v. City and County of San Francisco et al.*, Case No.: 3:17-cv-03638
(U.S. District Court, N.D. Cal.)

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PEYMAN PAKDEL and SIMA CHEGINI,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO,
a Chartered California City and County; SAN
FRANCISCO BOARD OF SUPERVISORS;
an elected body of the City and County of San
Francisco; SAN FRANCISCO DEPARTMENT
OF PUBLIC WORKS, a department of the City
and County of San Francisco; and DOES 1-25
inclusive,

Defendants.

Case No.: 3:17-cv-03638

**COMPLAINT FOR VIOLATION OF
FEDERAL CIVIL RIGHTS UNDER 42
U.S.C. §1983 AND CALIFORNIA STATE
LAW (CAL. GOV'T CODE §7060 – 7060.7,
CAL. CIVIL CODE §1954.52, CAL. CONST.
ART. I, §1)**

INTRODUCTION

1
2 1. Plaintiffs Peyman Pakdel and Sima Chegini bring this complaint for relief against
3 the City and County of San Francisco due to its enactment of legislation that illegally and
4 unconstitutionally requires them to enter into a lifetime lease with their tenant after conversion of
5 their property into a condominium.

6 2. The Fifth Amendment to the United States Constitution prohibits local governments
7 from compelling property owners, like plaintiffs, to offer or continue to offer residential real
8 property for lease when the owners or their immediate family wish to use it as their home. In the
9 present case, plaintiffs chose to rent their home temporarily because of their out-of-state residence,
10 but expected to regain possession of their home when they retired. Yet, the City has recently
11 enacted Ordinance 117-13 (the “Ordinance”) that punishes those who lawfully seek to convert
12 property into a condominium by forcing them to give their non-owning tenants lifetime leases,
13 thereby eliminating their fundamental right to reside in their own homes.

14 3. There is no income requirement to be eligible for a lifetime lease. Under the
15 Ordinance, rich tenants as well as low-income ones, are entitled to a lifetime lease. The Ordinance
16 thus effects a blatant transfer of wealth from some private citizens to others, without regard to
17 whether there is a need. As such, the Ordinance does not advance the purpose of providing housing
18 to low-and moderate-income households, which the Ordinance cites as its basis. In fact, the
19 lifetime lease provisions of the Ordinance often have an effect opposite to providing affordable
20 housing for low and moderate income households. Many tenancy-in-common owners affected by
21 the Ordinance are single unit owners whose business is not renting. As reported in the San
22 Francisco Chronicle, Nevius, *Law Change Means Owners of Mission Unit Can’t Move Back Home*
23 (February 4, 2015), the Ordinance can protect those with means, while barring those in need, from
24 returning to their homes.

25 4. As applied to plaintiffs, the lifetime lease mandated by the Ordinance takes property
26 for a private purpose. To the extent the Ordinance serves a public purpose, the provisions
27 unconstitutionally take property, unconstitutionally function as a condition that is unrelated and
28

disproportionate to any impact arising from the potential withdrawal of rental units, unreasonably seize property and impose an impermissible burden on the plaintiffs' Ellis Act, privacy and common law property rights. Consequently, the Ordinance violates the Public Use Clause, Takings Clause, Equal Protection Clause, Due Process Clause and Fourth Amendment of the United States Constitution, the unconstitutional conditions doctrine, the Ellis Act and Art. 1, § 1 of the California constitution. The plaintiffs are therefore entitled to damages and/or equitable relief under 42 U.S.C. § 1983, the Declaratory Judgment Act and California law, including a preliminary injunction.

THE PARTIES

5. Plaintiffs Peyman Pakdel and Sima Chegini are citizens of the State of Ohio. They owned a tenancy in common interest providing for occupancy of one unit in a 6-unit building located at 1170-1180 Green Street, San Francisco, California (the "Property"), which was recently converted into condominiums. The Property is subject to the Ordinance.

6. Defendant City and County of San Francisco is a political subdivision of the State of California, and the local governing authority in San Francisco. The City enacted the Ordinance challenged by this lawsuit. The City is entitled to sue and be sued, and is constrained by the laws of the United States and the State of California, including the United States Constitution, 42 U.S.C. § 1983, the Ellis Act and the California Constitution.

7. Plaintiffs are informed and believe, respondents and defendants CITY AND COUNTY OF SAN FRANCISCO, a Chartered California City and County, SAN FRANCISCO BOARD OF SUPERVISORS, an elected body of the City and County of San Francisco, SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS, a department of the City and County of San Francisco (the "DPW") and DOES 1-25, inclusive (collectively the "City"), are now, and at all times herein mentioned in this petition and complaint have been, organized and existing under the Constitution and Laws of the State of California and under the City of San Francisco's charter. At all times herein mentioned, each of the respondents were agents of the other and were acting within the course and scope of that agency.

JURISDICTION AND VENUE

8. This Court has jurisdiction based on federal question jurisdiction because this Complaint is based on claims under the United States Constitution and federal law, including 42 U.S.C. § 1983, as well as pendent jurisdiction over the state law claims. In addition, this Court has jurisdiction over all of the claims because of diversity of citizenship and the fact that the amount in controversy exceeds \$75,000. Therefore, there is jurisdiction under 28 U.S.C. §§ 1331 and 1332. Venue is proper in this District under 28 U.S.C. § 1391 because the claims arose in this District, defendants are located in this District, and the property at issue is located in this District.

FACTS

9. In 2009, plaintiffs purchased a tenancy-in-common interest (“TIC interest”) in real property in the City and County of San Francisco commonly known as 1170-1180 Green Street (the “Property”) and entered into a Tenancy in Common Agreement (“TICA”) with the other tenancy-in-common interest owners of the Property. The Property contains six dwelling units. The TIC interest purchased by plaintiffs includes the right to exclusively occupy one of the units in the Property, with the address of 1180 Green Street (the “Unit”). Plaintiffs temporarily leased their Unit to a tenant in 2010, because they reside out-of-state and did not intend to use the Unit as their home until after they retire.

10. The TICA provides that plaintiffs agree to take all steps necessary to convert the Property to condominiums and to share the expenses of the conversion to condominiums equally with the other co-tenants. This clause commonly exists in San Francisco TICAs because one of the main objectives of such agreements is to convert to condominiums so the co-tenants can gain title to their respective properties. At the time that the TICA was adopted, the rules governing condominium conversion did not require lifetime leases and respected owners’ rights under state and local law to obtain possession of their property for purposes such as living in the condominium themselves, as Plaintiffs intend to do when they retire.

11. On June 28, 2013, the San Francisco Board of Supervisors enacted Ordinance 117-13 (the “Ordinance”), amending its Subdivision Code by adding Section 1396.4 to permit certain

1 buildings, including the Property, to convert to condominiums. The Board was fully aware that San
2 Francisco TICAs typically have a provision requiring participation in condominium conversion and
3 designed the Ordinance to take advantage of that provision.

4 12. The Ordinance (Section 1396.4(g)(1) and (3)) requires as a condition of a
5 condominium conversion, that a written offer to enter into a lifetime lease with non-owning tenants,
6 in the form prescribed by the San Francisco Department of Public Works (“DPW”), be executed
7 and recorded prior to the time of final map approval for the condominium conversion.

8 13. The Ordinance (Section 1396.4(g)(3)) also requires, as a condition of a
9 condominium conversion, that an agreement between the City and the property owner(s) regarding
10 the requirements of Section 1396.4, be executed and recorded prior to the time of final map
11 approval for the condominium conversion.

12 14. However, the Ordinance (Section 1396.4(g)(3)(B)) does not require that a binding
13 lifetime lease agreement between the property owner(s) and non-owning tenant be executed and
14 recorded as a condition of the condominium conversion. Instead, the Ordinance (Section
15 1396.4(c)(3)(B)) provides that a non-owning tenant may accept a lifetime lease offer after the
16 condominium conversion in which event a binding lifetime lease must then be executed and
17 recorded. The Ordinance (Section 1396.4(b)(11)) provides that if this requirement is violated after
18 the condominium conversion, the DPW “shall take such actions as are available and within its
19 authority to address the violation”.

20 15. The Ordinance (Uncodified, Section 7) further provides that if a lawsuit is filed
21 against the City challenging Section 1396.4(g), the condominium conversion program allowed by
22 Section 1396.4(g) will be suspended for properties with units occupied by non-owning tenants.

23 16. Given the cooperation clause in the TICA, plaintiffs are subject to a legally binding
24 obligation to take all steps necessary to convert the Property to condominiums or compensate their
25 co-tenants for potentially significant damages.

26 17. The Property owners applied to the DPW for a condominium conversion pursuant to
27 the Ordinance on March 13, 2015. The Property owners submitted to the DPW an offer of lifetime
28

1 lease documents relating to the Unit to the DPW on November 3, 2016 and an agreement with the
2 City on November 10, 2016 to provide a lifetime lease of the Unit (the “Agreement”) on or about
3 November 10, 2016. The submission of both of these documents was required as a condition of the
4 condominium conversion under the Ordinance.

5 18. The Agreement, contrary to California law, purported to waive plaintiffs’ rights
6 under the Ellis Act and the Costa-Hawkins Act as a condition of the condominium conversion under
7 the Ordinance.

8 19. The Agreement also purports to fall within an exception to the Ellis Act and the
9 Costa-Hawkins Act for certain programs promoting low-income housing. The Ordinance’s lifetime
10 lease provisions are not focused on providing low-income housing and therefore do not fall within
11 this exception.

12 20. Under the Fifth Amendment, specific performance of the Agreement and the offer of
13 a lifetime lease, cannot be enforced against plaintiffs because they are not just and reasonable as to
14 plaintiffs and because plaintiffs have not received adequate consideration.

15 21. The Agreement purports to provide consideration in the form of a \$4,000 rebate in
16 the conversion application fee and reduction of financing costs. Plaintiffs have no financing costs
17 for the Unit and the \$4,000 is grossly inadequate given the lost property value of more than
18 \$500,000 that will be caused by the transfer of the lifetime lease interest.

19 22. The condominium deeds for the Property, including the Unit were recorded on
20 March 25, 2017.

21 23. The plaintiffs’ tenant in the Unit submitted an executed lifetime lease to the plaintiffs
22 on or about May 5, 2017.

23 24. On June 9, 2017 and June 13, 2017 plaintiffs requested that the City not require them
24 to execute and record the lifetime lease under the Ordinance, or in the alternative to compensate
25 them for transferring a lifetime lease interest in their property.

26 25. On June 12 and 13, 2017, the City stated that failure to execute the lifetime lease
27 would be a violation of the Ordinance (which would subject the plaintiffs to enforcement action)
28

1 and that the City would not compensate plaintiffs for transferring a lifetime lease interest in their
2 property.

3 26. Plaintiffs have not executed and recorded a lifetime lease in connection with the
4 Unit, but will do so by the Ordinance's deadline in March 2019 unless the lifetime lease
5 requirement is enjoined by this court.

6 **FIRST CAUSE OF ACTION**

7 **Taking of Private Property for a Private Purpose—**

8 **As Applied Claim Under 42 U.S.C. § 1983**

9 27. Plaintiffs hereby realleges each and every allegation contained in paragraphs 1
10 through 26 as though fully set forth herein.

11 28. It is well established that, under the Public Use Clause of the Fifth Amendment to
12 the Constitution, local governments may not take private property for a private purpose.

13 29. The Ordinance requires plaintiffs to transfer a lifetime lease interest in his Unit to a
14 private person, namely, his tenant, when plaintiffs' co-tenants in the Property exercise their right to
15 convert the Property to condominiums.

16 30. The Ordinance benefits private persons, not the general public. The private benefit
17 accruing to tenants from the Ordinance's lifetime lease provisions far outweighs any conceivable
18 incidental public benefit.

19 31. The lifetime lease from plaintiffs to their tenant in this case is intended to favor a
20 particular private party with only incidental or pretextual public benefits and therefore violates the
21 Public Use Clause.

22 32. The Ordinance was intended to benefit private parties.

23 33. The Ordinance serves a private purpose and use and therefore violates the Public Use
24 Clause of the Takings Clause of the Fifth Amendment.

25 34. Plaintiffs have been harmed in the amount of the reduced market value of the Unit
26 unless Defendants are enjoined.
27
28

THIRD CAUSE OF ACTION

Unconstitutional Exaction/Condition and Taking of Private Property—

As Applied Claim Under 42 U.S.C. § 1983

44. Plaintiffs hereby realleges each and every allegation contained in paragraphs 1 through 43 as fully set forth herein.

45. The Ordinance obligates plaintiffs to transfer a lifetime lease interest to their tenant under the circumstances of the present case.

46. Real property is constitutionally protected property.

47. If the City had simply demanded that plaintiffs hand over a lifetime lease interest to their tenant, it would be liable for a per se unconstitutional physical taking of property.

48. Under *Nollan v. California Coastal Commission* (Nollan), 483 U.S. 825 (1987), *Dolan v. City of Tigard* (Dolan), 512 U.S. 374 (1994), and *Koontz v. St. Johns River Water Management District* (Koontz), 133 S. Ct. 2586 (2013), the government may constitutionally exact property from property owners, such as plaintiffs, as a condition of allowing the Property owners to exercise a property right only if:

a. The exaction directly mitigates a public impact directly arising from the property owners' exercise of their property right;

b. The exaction is roughly proportionate in both nature and degree to the public impact arising from the property owners' exercise of the property right.

49. The Ordinance provides for lifetime leases for existing tenants in certain buildings converting to condominiums to protect the tenants from increased rents. The differential between market rents and regulated rents arises from two variables, neither of which is attributable to plaintiff.

50. The first variable, the market rent, is caused by entrenched market forces and structural decisions made by the City long ago in the management of its housing stock. The market effect of a potential withdrawal of plaintiffs' Unit, or even annual withdrawals from the rental

1 market of units in the City because of condominium conversions, is infinitesimally small. Such
2 withdrawals do not cause high market prices.

3 51. The regulated rent that plaintiffs' tenant currently enjoys is a creature of regulation
4 that the City imposes on the property owner as rent control. It is the City's rent control scheme that
5 results in lower-than-market rates, not plaintiffs' actions.

6 52. As a result, the Ordinance does not share an essential nexus with and is not roughly
7 proportional to any impact of the condominium conversion in this case.

8 53. In requiring property owners such as plaintiffs to offer a lifetime lease to their tenant
9 as a condition of them and their co-tenants exercising their state law property right to convert the
10 Property to condominiums, the Ordinance imposes an unconstitutional condition and
11 unconstitutionally exacts and takes private property.

12 54. The lifetime lease requirement imposed by the Ordinance violates the constitutional
13 principles articulated in *Nollan, Dolan*, and *Koontz*.

14 55. Plaintiffs have been harmed in the amount of the reduced market value of the Unit
15 unless Defendants are enjoined.

16 56. The City's failures are a substantial factor, in fact the only factor, in causing
17 plaintiffs' harm.

18 57. The unconstitutional exaction arising from the Ordinance is occurring under color of
19 state law and violates 42 U.S.C. §1983.

20 **FOURTH CAUSE OF ACTION**

21 **Unconstitutional Regulatory Taking—As Applied**

22 **Claim Under 42 U.S.C. § 1983**

23 58. Plaintiffs hereby realleges each and every allegation contained in paragraphs 1
24 through 57 as though fully set forth herein.

25 59. If the Ordinance does not amount to a physical taking or an unconstitutional
26 exaction/condition as applied to plaintiffs, it causes a regulatory taking as applied to plaintiffs.
27
28

SEVENTH CAUSE OF ACTION

Violation of Equal Protection – As Applied

Claim Under 42 U.S.C. § 1983

82. Plaintiffs hereby realleges each and every allegation contained in paragraphs 1 through 81 as though fully set forth herein.

83. Plaintiffs are similarly situated with the other tenants-in-common in the Property, which was converted into a condominium. As tenants-in-common, plaintiffs have the right, consistent with the Ellis Act and the Costa-Hawkins Act, to use the Unit as their home. The Ordinance establishes a classification providing that tenants-in-common with existing tenants must offer and enter lifetime leases with tenants, while those who do not have existing tenants have no obligation to offer and enter into a lifetime lease.

84. This classification injures a particular class of private parties, with only incidental or pretextual public justifications and therefore violates the Equal Protection Clause.

85. The City was acting or purporting to act in the performance of their official duties.

86. The City's conduct violated plaintiffs' rights to equal protection of the law.

87. As a result, plaintiffs have been harmed in the amount of the reduced market value of the Unit unless Defendants are enjoined.

88. The City's actions are a substantial factor, in fact the only factor, in causing plaintiffs' harm.

89. The violation of plaintiffs' equal protection rights occurring under the Ordinance arises under color of state law and violates 42 U.S.C. § 1983.

EIGHTH CAUSE OF ACTION

Violation of the Ellis Act and the Costa-Hawkins Act –

As Applied Claim Under

California Government Code § 7060-7060.7,

California Civil Code § 1954.52

113. There is a substantial likelihood that plaintiffs will succeed on the merits of their claims that the Ordinance unconstitutionally takes private property, unconstitutionally deprives plaintiffs of their property, unconstitutionally deprives plaintiffs of equal protection of the law, violates the Ellis Act and violates the California constitution, the Ellis Act and the Costa-Hawkins Act.

114. Plaintiffs are immediately required to transfer a lifetime lease interest in their Unit to their tenant or suffer defendants' enforcement action. They cannot avoid those events without judicial relief, and will suffer irreparable injury absent a preliminary injunction restraining defendants from enforcing the Ordinance pending a final adjudication in this case.

115. Plaintiffs will suffer irreparable injury absent a permanent injunction restraining defendants from enforcing the Ordinance.

116. Plaintiffs' injury—the immediate, unconstitutional, and illegal taking of property for the private use of tenants—outweighs any harm the injunction might cause defendants.

117. An injunction restraining defendants from enforcing the confiscatory, unconstitutional and illegal Ordinance as applied to plaintiffs will not impair, but rather enhance, the public interest.

TWELFTH CAUSE OF ACTION

Writ of Mandate –

Cal. Civ. Proc. Code § 1085 – or Other Appropriate Relief

118. Plaintiffs hereby realleges each and every allegation contained in paragraphs 1 through 117 as though fully set forth herein.

119. The Ordinance is invalid as applied to plaintiffs because of the constitutional and state law violations described above.

120. Plaintiffs have a beneficial interest in insuring that the lifetime lease provisions of the Ordinance are found invalid and void as applied to them, and that respondents are ordered not to apply them to them, so that their constitutional and state law rights are not infringed or limited.

121. Plaintiffs do not have a plain, speedy or adequate remedy in the ordinary course of law, and therefore writ relief is necessary.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray for judgment from this court as follows:

1. Damages in excess of \$500,000 resulting from the diminished value of Plaintiffs' property;

2. A declaratory judgment that the Ordinance's lifetime lease requirement violates the Public Use Clause of the Fifth Amendment as applied to plaintiffs and is therefore invalid and unenforceable against plaintiffs;

3. A declaratory judgment that the Ordinance's lifetime lease requirement violates the Takings Clause as applied to plaintiffs, and is therefore invalid and unenforceable against plaintiffs;

4. A declaratory judgment that the Ordinance's lifetime lease requirement violates *Nollan, Dolan, and Koontz* and the Unconstitutional Conditions doctrine as applied to plaintiffs, and is therefore invalid and unenforceable against plaintiffs;

5. A declaratory judgment that the Ordinance's lifetime lease requirement violates the Due Process Clause of the Fourteenth Amendment as applied to plaintiffs and is therefore invalid and unenforceable against plaintiffs;

6. A declaratory judgment that the Ordinance's lifetime lease requirement violates the Fourth Amendment as applied to plaintiffs and is therefore invalid and unenforceable against plaintiffs;

7. A declaratory judgment that the Ordinance's lifetime lease requirement violates the Equal Protection Clause as applied to plaintiffs and is therefore invalid and unenforceable against plaintiffs;

8. A declaratory judgment that the Ordinance's lifetime lease requirement violates the Ellis Act and the Costa-Hawkins Act as applied to plaintiffs, and is therefore invalid and unenforceable against plaintiffs;

1 9. A declaratory judgment that the Ordinance's lifetime lease requirement violates Cal.
2 Const. Art. 1., § 1 as applied to plaintiffs, and is therefore invalid and unenforceable against
3 plaintiffs;

4 10. A declaratory judgment that specific performance of the Agreement and the lifetime
5 lease requirement is not enforceable against plaintiffs;

6 11. A preliminary and permanent injunction preventing defendants from enforcing or
7 taking further action to enforce the Ordinance's lifetime lease requirement as applied to plaintiffs;

8 12. For a writ of mandate or other appropriate relief, including a mandatory injunction,
9 directing and commanding respondents to rescind the lifetime lease provisions of the Ordinance;

10 13. For an alternative writ against respondents commanding them to file a response to
11 this petition and to appear before this court on a date to be determined and show cause why a writ
12 of mandate should not issue invalidating the lifetime lease provisions of the Ordinance;

13 14. For an immediate stay of enforcement of the lifetime lease provisions of the
14 Ordinance;

15 15. For reasonable attorney's fees and expert fees for bringing and maintaining this
16 action, including under 42 U.S.C. § 1988;

17 16. For costs of suit and attorney's fees pursuant to the California Code of Civil
18 Procedure § 1021.5 and California Government Code § 800;

19 16. For such other and further relief that the court deems just and proper under the
20 circumstances of this case.

21 DATED: June 26, 2017

22 Respectfully submitted,

23 /s/ Paul F. Utrecht

24 _____
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Attachment C

San Francisco Board of Supervisors Ordinance No. 117-13

[Subdivision Code - Condominium Conversion Impact Fee]

Ordinance amending the Subdivision Code, by adding Section 1396.4, to adopt a condominium conversion impact fee applicable to certain buildings qualifying for participating but not being selected or participating in the 2013 or 2012 condominium conversion lottery only that would be permitted to convert during a sixseven year period, and subject to specified requirements, including lifetime leases for non-purchasing tenants; adding Section 1396.5, to suspend the annual condominium conversion lottery until 2024 and resume said lottery under specified circumstances tied to permanently affordable rental housing production; amending Section 1396, to restrict future condominium lotteries to buildings of no more than four units with a specified number of owner occupied units for three years prior to the lottery and provide an exception for certain five- and six-unit buildings to participate in the lottery; and adopting environmental findings.

NOTE: Additions are single-underline italics Times New Roman;
deletions are ~~strike-through italics Times New Roman~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. (a) The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120669 and is incorporated herein by reference.

1 (b) This Board finds that the condominium conversion impact fee as set forth in this
2 legislation is an appropriate charge imposed as a condition of property development, which in
3 this case is the City's approval of a condominium conversion subdivision, a discretionary
4 development approval pursuant to the San Francisco Subdivision Code and the California
5 Subdivision Map Act. Based on data, information, and analysis in a Condominium Conversion
6 Nexus Analysis report prepared by Keyser Marston Associates, Inc., dated January 2011, and
7 the findings of Planning Code Section 415.1 concerning the City's inclusionary affordable
8 housing program, this Board finds and determines that there is ample evidentiary support to
9 charge the impact fee set forth herein as it relates to a subdivision map approval that allows
10 the conversion of existing dwelling units into condominiums. Said impact fee charge also is
11 lower than the fee amount supported in the abovementioned Nexus Analysis report. As a
12 consequence the Board finds that the amount of this charge is no more than necessary to
13 cover the reasonable costs of the governmental activity and programs related to condominium
14 conversion. The Board further finds and determines, that based on this evidence, the manner
15 in which these fees are this charge is allocated and assessed on a per unit cost for each unit
16 converted to a condominium bears a reasonable relationship to the subdivision applicants'
17 burdens on the City that result from the change in use and ownership status from a dwelling
18 unit within an unsubdivided property to a separate interest in a condominium unit. A copy of
19 the report on the fee charge identified herein is in Clerk of the Board of Supervisors File No.
20 120669 and is incorporated herein by reference. The City Controller's Office has
21 independently confirmed that the fee amounts identified in said report remain valid. This
22 determination is on file with the Clerk of the Board of Supervisors File No. 120669 and is
23 incorporated herein by reference.

24 (c)(1) The Board further finds that the present backlog of existing applications for
25 condominium conversion under the existing 200-unit annual condominium conversion lottery

1 process in Subdivision Code Article 9 (Conversions) extends well over a decade. Indicative of
2 this backlog, approximately 700 tenancy-in-common (TIC) and other owner-occupied
3 buildings, containing 2,269 dwelling units, registered for the 2013 lottery condominium
4 conversion lottery in an effort to be selected for the 200 units that were available. The
5 proposed expedited approval process for condominium conversions (the “Expedited
6 Conversion program”) is intended as a one time adjustment to the backlog in applications for
7 conversions given the specific needs of existing owners of tenancy-in-common units.
8 Therefore, the eExpedited eConversion program set forth in this legislation’s proposed
9 Section 1396.4 is intended as the exclusive method for allocating approvals for conversions of
10 apartments and tenancy-in-common buildings into condominiums for the entire period that is
11 established in the proposed Section 1396.5.

12 (2) The Expedited Conversion program that this Ordinance creates will bring
13 significant economic value to owners who utilize it. According to the City Controller’s April 2,
14 2013 Economic Impact Report, condominium conversion “creates clear financial advantages
15 for owners of tenancies-in-common (TIC) buildings.” In addition to the estimated 15%
16 premium gained by converting a TIC to a condominium, as projected in the Keyser Marston
17 Associates 2011 Nexus Analysis, the Controller’s report notes that because State law does
18 not otherwise allow rent limitations on condominiums after the subdivider sells them, future
19 owners of these converted condominiums after the rental limitation period terminates “have
20 the opportunity for greater rental income than owners of TIC units, the vast majority of which
21 are subject to rent control.”

22 (3) Due to the present backlog of existing applications, the Office of the Controller
23 estimates that owners of 1,730 of the units not selected in the 2013 lottery would pay the
24 impact feecondominium conversion charge and avail themselves of the seven-year
25 eExpedited eConversion program. The program also permits TICs that did not enter the 2012

1 and 2013 lottery to convert, which could result in more than 1,730 dwelling units taking
2 advantage of the eExpedited eConversion program. The number of conversions is therefore
3 anticipated to be well in excess of the 200 unit per year allotment in the existing lottery. The
4 Ordinance balances the number of units converted under this program in a relatively short
5 period of time by suspending the lottery until the City's affordable housing production replaces
6 the number of units converted under the eExpedited eConversion program. The maximum
7 number of years of suspension of the lottery will be the number of converted units divided by
8 200. Therefore, under the suspension, there will be no net loss of the number of converted
9 units over time as compared to the existing lottery. Conversions of apartments to
10 condominiums also results in the eviction of existing tenants in the converted buildings
11 because many tenants cannot afford to purchase their units. A large number of conversions
12 under the eExpedited eConversion program would magnify this impact and result in a large
13 number of tenants evicted into a very expensive rental housing market. The Office of the
14 Controller estimates that tenants of these converted properties would likely spend between
15 \$0.8 and \$1.1 million annually in higher rent alone due to displacement and/or rent decontrol.
16 Therefore, the Ordinance balances this impact on existing tenants and the effects of tenant
17 displacement on the City in general by requiring that applicants for the Expedited Conversion
18 program offer existing tenants a lifetime lease. The abovementioned Controller's report is on
19 file with the Clerk of the Board of Supervisors in File No. 120669 and is incorporated herein by
20 reference.

21 (3)(4) In addition, this legislation attempts to integrate this process with the adoption of
22 additional controls on future conversions. This legislation does not intend to affect in any way
23 the conversion of 100% owner-occupied two-unit buildings in accordance with the terms of
24 Subdivision Code Section 1359.

1 (d) As set forth in the Housing Element of the General Plan, in particular Objective 3, it
2 is the City's policy to preserve the existing supply of rent controlled housing and to increase
3 the production of new affordable rental units. Policy 3.1 states that is the City's policy to
4 "[p]reserve rental units, especially rent controlled units, to meet the City's affordable housing
5 needs." Policy 4.4 states it is the City's policy to "[e]ncourage sufficient and suitable rental
6 housing opportunities, emphasizing permanently affordable rental units wherever possible."
7 And, Policy 9.2 provides that it is city policy to "[c]ontinue prioritization of preservation of
8 existing affordable housing as the most effective means of providing affordable housing."
9 Therefore, the conversion of rental housing into condominiums, without replacement, results
10 in the loss of existing rent controlled housing contrary to public policy.

11 (e) In 2012, the voters of the City of San Francisco approved Proposition C that
12 proposed in part to fund and produce 930,000 affordable rental housing units over thirty years,
13 establishing an annual baseline production of approximately 300 net new affordable housing
14 units. The Board determines that this legislation is compatible with the goals of Proposition C
15 and resumption of the condominium conversion lottery is properly benchmarked in
16 relationship to new affordable housing production as contemplated in Proposition C. Further,
17 the Board finds that Proposition C's limitations on new affordable housing fees were intended
18 to apply to fees on new residential construction projects and not to the condominium
19 conversion charges set forth in this Ordinance which would be imposed only on existing
20 residential buildings that obtain a condominium subdivision and involve no net increase in new
21 housing units.

22 (f) It is the further intent of this legislation to suspend future conversions of rental
23 housing pending the one for one replacement of units converted through the eExpedited
24 eConversion program beyond the City's net new annual baseline production and to provide
25 additional protections to tenants in buildings to be converted as specified above.

1 (g) The Board finds that the rate of TIC creation and demand for condominium
2 conversions to date has far exceeded the rate of allowable conversions under existing law.
3 The Board also finds that the unsustainable growth of the TIC form of ownership poses
4 challenges and adverse consequences for which many consumers are unprepared and that
5 those challenges are greater for larger building sizes. However, increasing the number of
6 allowable conversions would impose a burden on the City's capacity to develop sufficient
7 replacement rental housing units and to assist displaced tenants. Therefore, it is the intent of
8 this legislation to re-establish the condominium lottery conversion process on a more
9 sustainable basis following the restart of the lottery and to encourage long-term ownership in
10 smaller buildings.

11 Section 2. The San Francisco Subdivision Code is hereby amended by adding
12 Sections 1396.4 and 1396.5, to read as follows:

13 SEC. 1396.4. CONDOMINIUM CONVERSION IMPACT FEE AND EXPEDITED
14 CONVERSION PROGRAM.

15 (a) Findings. The findings of Planning Code Section 415.1 concerning the City's inclusionary
16 affordable housing program are incorporated herein by reference and support the basis for charging
17 the fee set forth herein as it relates to the conversion of dwelling units into condominiums.

18 (b) Any building that: (1) participated in the 2013 or 2012 condominium conversion
19 lottery, but was not selected for conversion or (2) could have participated in the 2013
20 condominium conversion lottery, but elected not to do so, may bypass be exempted from the
21 annual lottery provisions of Section 1396 (the annual lottery conversion limitation) if the building
22 owners for said building comply with Section 1396.3(g)(1) and pay the condominium conversion
23 impact fee subject to the all the requirements of this Section 1396.4. In addition Notwithstanding
24 the foregoing, no property or applicant subject to any of the prohibition on conversions set
25 forth in Section 1396.2(e), in particular a property with the eviction(s) set forth in Section

1 1396.2(b), is eligible for said bypass the eExpedited eConversion processprogram under this
2 Section 1396.4. Eligible buildings as set forth in this Section (b) may exercise their option to
3 participate in this fee program according to the following requirements:

4 ~~(c) Eligible buildings as set forth in Subsection (b) may exercise their option to~~
5 ~~participate in this fee program according to the following requirements:~~

6 ~~—— (1) The applicant(s) for the subject building shall pay the fee specified in~~
7 ~~Subsection (e) no later than January 24, 2014 for the entire building.~~

8 ~~—— (2) No later than the last business day before July 25, 2014:~~

9 ~~—— (i) DPW shall determined that the applicant's condominium conversion~~
10 ~~subdivision application is complete, or~~

11 ~~—— (ii) The application is deemed complete by operation of law.~~

12 ~~—— (3) The applicant shall obtain final and effective tentative approval of the~~
13 ~~condominium subdivision or parcel map no later than December 31, 2014.~~

14 ~~—— (4) Any map application subject to a required public hearing on the subdivision~~
15 ~~or a subdivision appeal shall have the time limit set forth in Subsection (c)(3) suspended until~~
16 ~~March 13, 2015.~~

17 ~~—— (5) The Director of the Department of Public Works is authorized to waive the~~
18 ~~time limit set forth in Subsection (c)(3) as it applies to a particular building due to extenuating~~
19 ~~or unique circumstances. Such waiver may be granted only after a public hearing and in no~~
20 ~~case shall the time limit extend beyond July 24, 2015.~~

21 (1) Any building that participated in but was not selected for the 2012 or 2013
22 condominium conversion lottery consisting of (a) four units or less in which one unit has been
23 continuously occupied continuously by one of the applicant owners of record for no less than
24 five years prior to April 15, 2013, or (b) buildings consisting of five or six units in which 50
25 percent or more of the units have been continuously occupied continuously by the applicant

1 owners of record for no less than five years as of April 15, 2013, is eligible for conversion
2 under this Subsection. The applicant(s) for the subject building seeking to convert under this
3 Subsection shall pay the fee specified in Subsection (e) no later than January 24 April 14,
4 2014 for the entire building along with additional information as the Department may require
5 including certification of continued eligibility; however, the deadline for an applicant to pay the
6 fee may be extended pursuant to (j)(3) of this Section.

7 (2) Any building that participated in but was not selected for the 2012 or 2013
8 condominium conversion lottery consisting of (a) four units or less in which one unit has been
9 continuously occupied continuously by one of the applicant owners of record for no less than
10 three years prior to April 15, 2014, or (b) buildings consisting of five or six units in which 50
11 percent or more of the units have been continuously occupied continuously by the applicant
12 owners of record for no less than three years as of April 15, 2014, is eligible for conversion
13 under this Subsection. The applicant(s) for the subject building may apply for conversion
14 under this Subsection on or after April 15, 2014 and shall pay the fee specified in Subsection
15 (e) no later than January 23, 2015 along with additional information as the Department may
16 require including certification of continued eligibility; however, the deadline for an applicant to
17 pay the fee may be extended pursuant to (j)(3) of this Section.

18 (3) For Additionally Qualified Buildings consisting of (a) four units or less in which one
19 unit has been continuously occupied continuously by one of the applicant owners of record for
20 no less than six years as of April 15, 2015 or (b) buildings consisting of five or six units in
21 which 50 percent or more of the units have been continuously occupied continuously by the
22 applicant owners of record for no less than six years as of April 15, 2015, the applicant(s) for
23 the subject building may apply for conversion under this Subsection on or after April 15, 2015
24 and shall pay the fee specified in Subsection (e) no later than January 22, 2016 along with
25

1 additional information as the Department may require including certification of continued
2 eligibility.

3 (4) For Additionally Qualified Buildings consisting of (a) four units or less in which one
4 unit has been continuously occupied continuously by one of the applicant owners of record for
5 no less than six years as of April 15, 2016, or (b) buildings consisting of five or six units in
6 which 50 percent or more of the units have been continuously occupied continuously by the
7 applicant owners of record for no less than six years as of April 15, 2016, the applicant(s) for
8 the subject building may apply for conversion under this Subsection on or after April 15, 2016
9 and shall pay the fee specified in Subsection (e) no later than January 20, 2017 along with
10 additional information as the Department may require including certification of continued
11 eligibility.

12 (5) For Additionally Qualified Buildings consisting of (a) four units or less in which one
13 unit has been continuously occupied continuously by one of the applicant owners of record for
14 no less than six years as of April 15, 2017, or (b) buildings consisting of five or six units in
15 which 50 percent or more of the units have been continuously occupied continuously by the
16 applicant owners of record for no less than six years as of April 15, 2017, the applicant(s) for
17 the subject building may apply for conversion under this Subsection on or after April 15, 2017
18 and shall pay the fee specified in Subsection (e) no later than January 19, 2018 along with
19 additional information as the Department may require including certification of continued
20 eligibility.

21 (6) For Additionally Qualified Buildings consisting of (a) four units or less in which one
22 unit has been continuously occupied continuously by one of the applicant owners of record for
23 no less than six years prior to April 15, 2018, or (b) buildings consisting of five or six units in
24 which 50 percent or more of the units have been continuously occupied continuously by the
25 applicant owners of record for no less than six years as of April 15, 2018, the applicant(s) for

1 the subject building may apply for conversion under this Subsection on or after April 15, 2018
2 and shall pay the fee specified in Subsection (e) no later than January 25, 2019 along with
3 additional information as the Department may require including certification of continued
4 eligibility.

5 (7) For Additionally Qualified Buildings consisting of (a) four units or less in which one
6 unit has been occupied continuously by one owner of record for no less than six years prior to
7 April 15, 2019, or (b) buildings consisting of five or six units in which 50 percent or more of the
8 units have been occupied continuously by owners of record for no less than six years as of
9 April 15, 2019, the applicant(s) for the subject building may apply for conversion under this
10 Subsection on or after April 15, 2019 and shall pay the fee specified in Subsection (e) no later
11 than January 24, 2020 along with additional information as the Department may require
12 including certification of continued eligibility. An Additionally Qualified Building subject to
13 Subsection 9(A) shall be eligible to convert pursuant to this Subsection as long as there is
14 fully executed written agreement in which the owners each have an exclusive right of
15 occupancy to individual units in the building to the exclusion of the owners of the other units
16 and 50 percent or more of the units have been occupied continuously by owners of record for
17 no less than six years as of January 24, 2020.

18 (8) For applications for conversion pursuant to Subsections (3)-(7) only, a unit that is
19 "occupied continuously" shall be defined as a unit occupied continuously by an owner of
20 record for the six year period without an interruption of occupancy and so long as the
21 applicant owner(s) occupied the subject unit as his/her principal place of residence for no less
22 than one year prior to the time of application. Notwithstanding the occupancy requirements
23 set forth above, each building may have one unit where there is an interruption in occupancy
24 for no more than a three month period that is incident to the sale or transfer to a subsequent
25 owner of record who occupied the same unit. For any unit with an interruption of occupancy,

1 the applicant shall provide evidence to establish to the satisfaction of the Department that the
2 period did not exceed three months.

3 (9) An "Additionally Qualified Building" within the meaning of this Section is defined as
4 a building in which the initially eligible applicant owners of record have a fully executed written
5 agreement as of April 15, 2013 in which the owners each have an exclusive right of
6 occupancy to individual units in the building to the exclusion of the owners of the other units;
7 provided, however, that said agreement can be amended to include new applicant owner(s) of
8 record as long as the new owner(s) satisfy the requirements of Subsection (8) above. In
9 addition to the requirements listed in this Subsection (8), an Additionally Qualified Building
10 also includes a five or six unit building that: (A) on April 15, 2013, had 50 percent or more of
11 the units in escrow for sale as a tenancy-in-common where each buyer shall have an
12 exclusive right of occupancy to an individual unit in the building to the exclusion of the owners
13 of other units or (B) is subject to the requirements of Section 1396.2(f) and 50 percent or more
14 of the units have been occupied continuously by owners of record for no less than ten years
15 prior to the date of application as set forth in Subsections (3)-(7).

16 (6) (7)-(8)(10) The In addition to all other provisions of this Section, the applicant(s)
17 must meet the following requirements applicable to Subdivision Code Article 9, Conversions:
18 Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a) and (b), 1392, 1393, 1394,
19 and 1395. In additionAlso, the applicant(s) must certify that to the extent any tenant vacates
20 his or her unit after March 31, 2013 and before recordation of the final parcel or subdivision
21 map, such tenant did so voluntarily or if an eviction or eviction notice occurred it was not
22 pursuant to Administrative Code Sections 37.9(a)(8)-(14). If an eviction has taken placed
23 under 37.9(a)(11) or 37.9(a)(14) then the applicant(s) shall certify that the original tenant
24 reoccupied the unit after the temporary eviction.

1 (11) If the Department finds that a violation of this Section occurred prior to recordation
2 of the final map or final parcel map, the Department shall disapprove the application or subject
3 map. If the Department finds that a violation of this Section occurred after recordation of the
4 final map or parcel map, the Department shall take such actions as are available and within its
5 authority to address the violation.

6 (c) Decisions and Hearing on the Application.

7 (1) The applicant shall obtain a final and effective tentative map or tentative parcel
8 map approval for the condominium subdivision or parcel map within one (1) year of paying the
9 fee specified in Subsection (e).

10 (2) No less than twenty (20) days prior to the Department's proposed decision on a
11 tentative map or tentative parcel map, the Department shall publish the addresses of building
12 being considered for approval and post such information on its website. During this time, any
13 interested party may file a written objection to an application and submit information to
14 DPWthe Department contesting the eligibility of a building. In addition, the Department may
15 elect to hold a public hearing on said tentative map or tentative parcel map to consider the
16 information presented by the public, other City department, or an applicant. If the Department
17 elects to hold such a hearing it shall post notice of such hearing and provide written notice to
18 the applicant, all tenants of such building, any member of the public who submitted
19 information to the Department, and any interested party who has requested such notice. In
20 the event that an objection to the conversion application is filed in accordance with this
21 Subsection, and based upon all the facts available to the Department, the Department shall
22 approve, conditionally approve, or disapprove an application and state the reasons in support
23 of that decision.

1 (3) Any map application subject to a Departmental public hearing on the subdivision or
2 a subdivision appeal shall have the time limit set forth in this Subsection (c)(1) extended for
3 another six (6) months.

4 (4) The Director of the Department of Public Works is authorized to waive the time
5 limits set forth in this Subsection (c)(1) as it applies to a particular building due to extenuating
6 or unique circumstances. Such waiver may be granted only after a public hearing and in no
7 case shall the time limit extend beyond two (2) years after submission of the application.

8 (d) Should the subdivision application be denied or be rejected as untimely in accordance with
9 the dates specified above, or the tentative subdivision map or tentative parcel map disapproved, DPW
10 the City shall refund the entirety of the applicant's fee specified in Subsection (e).

11 (e) The fee amount is \$20,000.00 per unit for all buildings that participated in the lottery for
12 the first time in 2013 or seek to convert under Subsection (b)(1)-(6)(7). Said fee shall be
13 adjusted annually in accordance with the terms of Section 1315(f). Said fee is reduced for each
14 year the building has participated in the condominium conversion lottery up to and including the 2013
15 lottery in accordance with the following formula:

16 (1) 2 years of participation, 20% fee reduction per unit;

17 (2) 3 years of participation, 40% fee reduction per unit;

18 (3) 4 years of participation, 60% fee reduction per unit; and

19 (4) 5 or more years of participation, 80% fee reduction per unit.

20 (f) For purposes of Section (e), a building's owner(s) shall get credit only for those years that
21 it he or she participated in the lottery even though such building could have qualified for and
22 participated in other condominium conversion lotteries.

23 (g) Life Time Lease for Non-purchasing Tenants.

24 (1) No subdivider or subsequent condominium unit owner shall refuse to renew a lease
25 or extend a rental agreement to any Any application for conversion under this Section shall

1 include a certification under penalty of perjury by the applicants that all any non-purchasing
2 tenant(s) in the building have been offered has been given a written offer to enter into a life
3 time lease in the form and with the provisions published and prescribed by DPW the
4 Department in consultation with the Rent Board. Such written offer for a life time lease shall
5 be executed by the owners of the building(s) and recorded prior to at the time of Final Map or
6 Parcel Map approval. Any extended Any life time leases or rental agreements made pursuant
7 hereto shall expire only upon the death or demise of the last such life-tenant residing in the unit or
8 the last surviving member of the life-tenant's household, provided such surviving member is related to
9 the life- tenant by blood, marriage, or domestic partnership, and is either disabled, catastrophically
10 ill, or aged 62 or older at the time of death or demise of any such life-tenant, or at such time as the life-
11 tenant(s) in the unit voluntarily vacates the unit after giving due notice of such intent to vacate.

12 (2) (A) Each lease shall contain a provision allowing the tenant to terminate the lease and
13 vacate the unit upon 30 days' notice. Rent and a provision that rent charged during the term of any
14 extended the lease or rental agreement pursuant to the provisions of this Section shall not
15 exceed the rent charged at the time of filing of the application for conversion, plus any increases
16 proportionate to the increases in the residential rent component of the "Bay Area Cost of Living Index,
17 U.S. Dept. of Labor," provided that the rental increase provisions of this Section shall be operative only
18 in the absence of other applicable rent increase or arbitration laws. This Section

19 (B) The lease also shall state that it shall not alter or abridge the rights or
20 obligations of the parties in performance of their covenants, including but not limited to the provision
21 of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, and 1941.2, 1941.3,
22 and 1941.4 of the California Civil Code. There and that there shall be no decrease in dwelling unit
23 maintenance or other services historically provided to such units and such life-tenants. A binding and
24 recorded agreement The provision of a lifetime lease pursuant to this Subsection shall be a
25 condition imposed on each tentative parcel or tentative subdivision map subject to this

1 ~~Subsection 1396.4(g). Binding and recorded agreements between the tenant(s) and the~~
2 ~~property owner(s) and between the City and the property owner(s) concerning this~~
3 ~~requirement shall be a tentative map condition imposed on each parcel or subdivision map~~
4 ~~subject to this Subsection 1396.4(g).~~

5 (C) The lease shall also include the following language:

6 Tenant agrees that this Lease shall be subject and subordinate at all times to (i) all
7 ground leases or underlying leases that may now exist or hereafter be executed affecting the
8 Real Property or any portion thereof; (ii) the lien of any mortgage, deed of trust, assignment of
9 rents and leases or other security instrument (and any advances thereunder) that may now
10 exist or hereafter be executed in any amount for which the Real Property or any portion
11 thereof, any ground leases or underlying leases or Landlord's interest or estate therein, is
12 specified as security; and (iii) all modifications, renewals, supplements, consolidations and
13 replacements thereof, provided in all cases the mortgagees or beneficiaries named in
14 mortgages or deeds of trust hereafter executed or the assignee of any assignment of rents
15 and leases hereafter executed to recognize the interest and not disturb the possession, use
16 and enjoyment of Tenant under this Lease, and, in the event of foreclosure or default, the
17 lease will continue in full force and effect by operation of San Francisco Administrative Code
18 Chapter 37, Section 37.9D, and the conditions imposed on each parcel or subdivision map
19 pursuant to Section 1396.4(g), as long as Tenant is not in default under the terms and
20 conditions of this Lease. Tenant agrees to execute and deliver, upon demand by Landlord and
21 in the form requested by Landlord, any additional reasonable documents evidencing the
22 priority or subordination of this Lease with respect to any such ground leases, underlying
23 leases, mortgages, deeds of trust, assignment of rents and leases or other security
24 instruments. Subject to the foregoing, Tenant agrees that Tenant shall be bound by, and

1 required to comply with, the provisions of any assignment of rents and leases with respect to
2 the Building.

3 (3) The Department shall impose the following tentative map conditions on each parcel
4 and subdivision map subject to this Subsection 1396.4(g) and require that the conditions be
5 satisfied prior to Final Subdivision Map or Parcel Map approval: (A) the property owner(s) of
6 the building provide a written offer for a life time lease pursuant to this Subsection to the
7 tenant(s) in the building and record such offer against the building's title, (B) at the time the
8 tenant(s) accepts the life time lease offer, and even if such acceptance occurs after map
9 approval, a binding agreement between the tenant(s) and the property owner(s) shall be
10 executed and recorded against the property's title, and (C) a binding agreement between the
11 City and the property owner(s) concerning the requirements of this Subsection be recorded
12 against the property's title. For purposes of this Subsection, the Board of Supervisors
13 delegates authority to the DPW Director, in consultation with the Mayor's Office of Housing, to
14 enter in said agreement on behalf of the City and County of San Francisco.

15 (2)(4) If the owner(s) of a building subject to the life time lease provisions of this
16 Section 1396.4(g) enters into any contract or option to sell or transfer any unit that would be
17 subject to the lifetime lease requirements or any interest in any unit in the building that would
18 be subject to the lifetime lease requirements at any time between the initial application and
19 recording of the final subdivision map or parcel map, said contract or option shall be subject to
20 the following conditions: (a) the contract or option shall include written notice that the unit shall
21 be subject to the life time lease requirements of Subdivision Code Section 1396.4(g), (b) prior
22 to final execution of any such contract or option, the owner(s) shall record a notice of
23 restrictions against the property that specifically identifies the unit potentially subject to the life
24 time lease requirements and specifies the requirements of the life time lease as set forth in
25 Section 1396.4(g)(1), and (c) the recorded notice of restrictions shall be included as a note on

1 the final subdivision map or parcel map. Prior to approval of a final subdivision map or parcel
2 map, the applicant(s) shall certify under penalty of perjury to the Department that he, she, or
3 they have complied with the terms of this Subsection as it applies to a building. Failure to
4 provide this certification from every current owner of a building shall result in disapproval of
5 the map. The content of the notices and certifications required by this Subsection shall
6 comply with the instructions and procedures developed by the Department.

7 *(h) In recognition of the rental requirements of Section (g), the fee for each unit in which a*
8 *non-purchasing tenant resides at the time specified in Section (g) who is offered a life time lease*
9 *and is unrelated by blood, marriage, or domestic partnership to any owner of the building shall*
10 *be refunded to the subdivider under the following formula:*

11 *(1) One unit, 10% fee reduction for such unit;*

12 *(2) Two units, 20% fee reduction for each unit;*

13 *(3) Three units, 30% fee reduction for each unit.*

14 *(i) Upon confirmation of compliance with the rental requirement, DPW or the City*
15 *department in possession of the fee revenue shall refund the amount specified in Section (h) to the*
16 *subdivider and have all remaining fee revenues transferred, in the following percentage allocations:*
17 *25% to the Citywide Affordable Housing Fund Mayor's Office Home Ownership Assistance*
18 *Loan Fund City's Housing Stabilization Mayor's Office of Housing's program for small site*
19 *acquisition to purchase market rate housing and convert it to affordable housing and 75% to*
20 *the Citywide Affordable Housing Fund for the purpose of creating or preserving expanding*
21 *affordable housing opportunities for affordable to low or moderate income households in San*
22 *Francisco, including, but not limited to, expanding public housing opportunities.*

23 *(j) Waiver or reduction of fee based on absence of reasonable relationship or deferred*
24 *payment based upon limited means.*

1 (1) A project applicant of any project subject to the requirements in this Section may appeal to
2 the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the
3 absence of any reasonable relationship or nexus between the impact of development and the amount of
4 the fee charged or for the reasons set forth in Subsection (2) below, a project applicant may request a
5 waiver from the Board of Supervisors.

6 (2) Any appeal of ~~waiver~~ requests under this clause shall be made in writing and filed with the
7 Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid to
8 the Treasurer the fee as required in this Section. The appeal shall set forth in detail the factual and
9 legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider
10 the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the
11 burden of presenting substantial evidence to support the appeal, including comparable technical
12 information to support appellant's position. If a reduction, adjustment, or waiver is granted, any
13 change of use or scope of the project shall invalidate the waiver, adjustment or reduction of the fee. If
14 the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the
15 nature and extent of the reduction, adjustment or waiver to the Treasurer and Department of Public
16 Works.

17 (3) A project applicant may apply to the Department of Public Works for a deferral of
18 payment of the fee described in Subsection (e) for the period that the Department completes
19 its review and until the application for expedited conversion is approved, provided that the
20 applicant satisfies each of the following requirements: (i) the applicant resided in his or her
21 unit in the subject property as his or her principle place of residence for not less than three
22 years and (ii) that for the twelve months prior to the application, the applicant resided in his or
23 her unit in the subject property as his or her principle place of residence and the applicant's
24 household income was less than 120% of median income of the City and County of San
25 Francisco as determined by the Mayor's office of Housing.

1 ~~(k) Any building that participates in the fee program set forth herein shall automatically~~
2 ~~be ineligible to participate in the 2014 condominium conversion lottery. DPW The City shall~~
3 ~~refund to the applicant any fees paid to participate in the 2014 lottery and shall remove any~~
4 ~~lottery tickets associated with the subject building from the lottery drawing.~~

5 ~~(l) Buildings that convert pursuant to this Section shall have no effect on the terms and~~
6 ~~conditions of Section 1341A, 1385A, or 1396 of this Code.~~

7 **SEC. 1396.5. SUSPENSION OF THE LOTTERY PENDING PRODUCTION OF**
8 **REPLACEMENT UNITS FOR EXPEDITED CONVERSION UNITS.**

9 (a) Within twelve months after issuing tentative or tentative parcel map approval for the
10 last conversion under Section 1396.4 or December 29, 2023, whichever is earlier, the
11 Department shall publish a report stating the total number of units converted under the
12 Expedited Conversion program and every twelve months thereafter until the Expedited
13 Conversion program is completed.

14 (b) No later than April 15 of each year until the termination of the suspension period,
15 the Mayor's Office of Housing shall publish a report stating the total number of permanently
16 affordable rental housing produced in San Francisco and the "Conversion Replacement Units"
17 produced in the previous calendar year and a cumulative total of such housing produced in
18 preceding years during the tracking period. For purposes of this Subsection, the Mayor's
19 Office of Housing shall have the authority to determine what type and form of housing
20 constitutes permanently affordable rental housing that has been produced.

21 (c) The Department shall not accept an application for the conversion of residential
22 units under Section 1396 nor conduct a lottery under this Article prior to January 1, 2024.
23 Thereafter, the lottery shall resume upon the earlier of the following: (1) until the first February
24 following the Mayor's Office of Housing report pursuant to Subsection (b) showing that the
25 total number of Conversion Replacement Units produced in the City of San Francisco

1 exceeds the total number of units converted as identified in the Department's report
2 prepared pursuant to Subsection (a); under Section 1396.4(b)(1)-(6) and in no event shall it
3 conduct a lottery prior to January 1, 2024; provided however, that the total period of
4 suspension of the lottery shall not exceed (2) completion of the "Maximum Suspension
5 Period" as defined below.

6 (d) "Conversion Replacement Units" in any year shall be determined by subtracting
7 300 from the total number of permanently affordable rental units that the City produced in that
8 year starting on January 1, 2014.

9 (e) The "Maximum Suspension Period" shall be the number of years calculated by
10 dividing the total number of units approved for conversion under Section 1396.4(b)(1)-(6)(7)
11 (the Expedited Conversion program) divided by 200 and rounded to the nearest whole
12 number with the year 2014 as the starting point. For example, if 2400 units have been
13 converted under Section 1396.4(b)(1)-(6)(7), then the maximum suspension period would be
14 12 years and run until 2026 expire on December 31, 2025.

15 Section 3. The San Francisco Subdivision Code is hereby amended by amending
16 Section 1396, to read as follows:

17 **SEC. 1396. ANNUAL CONVERSION LIMITATION.**

18 (a) This Section governing annual limitation shall apply only to conversation of
19 residential units. This Section also is subject to the limitations established by Section
20 1396.5's suspension of the lottery.

21 (b) Applications for conversion of residential units, whether vacant or occupied, shall
22 not be accepted by the Department of Public Works, except that a maximum of 200 units as
23 selected yearly by lottery by the Department of Public Works from all eligible applicants, may
24 be approved for conversion per year for the following categories of buildings:

1 (a) (1) Buildings consisting of four units or less in which one at least three of the units
2 has have been occupied continuously by one of the applicant owners of record as their
3 principle place of residence for three years prior to the date of registration for the lottery as
4 selected by the Director;

5 (2) Buildings consisting of three units in which at least two of the units have been
6 occupied continuously by the applicant owners of record as their principle place of residence
7 for three years prior to the date of registration for the lottery as selected by the Director;

8 (3) Buildings consisting of two units in which at least one unit has been occupied
9 continuously by the applicant owner of record as his or her principle place of residence for
10 three years prior to the date of registration for the lottery as selected by the Director; or

11 ~~(b) Buildings consisting of six units or less in which 50 percent or more of the units~~
12 ~~have been occupied continuously by the applicant owners of record for three years prior to the~~
13 ~~date of registration for the lottery as selected by the Director; or~~

14 ~~(c) (4) Buildings consisting of five or six units that were subject to the requirements of~~
15 ~~Section 1396.2(f) on or before April 15, 2013 where (A) no further evictions as set forth in~~
16 ~~Section 1396.2 have occurred in the building after April 15, 2013, (B) the building and all~~
17 ~~applicants first satisfied all the requirements for conversion under Section 1396.2(f) after~~
18 ~~January 24, 2020 and before resumption of the lottery under in accordance with the terms of~~
19 ~~Section 1396.5; and (C) 50 percent or more of the units have been occupied continuously by~~
20 ~~owners of record as their principle place of residence for ten years prior to the date of~~
21 ~~registration for the lottery as selected by the Director. Applicants for such buildings must~~
22 ~~apply for the lottery within five years of the resumption of the lottery under Section 1396.5(c)~~
23 ~~and remain eligible until selected;~~

24 (5) If the Expedited Conversion program under Section 1396.4 has been suspended
25 until 2024 as a result of a successful lawsuit against the City and County of San Francisco

1 challenging Section 1396.4(g) or 1396.5: (A) buildings consisting of five or six units that
2 participated in but were not selected for the 2012 or 2013 condominium conversion lottery in
3 which 50 percent or more of the units have been occupied continuously by the applicant
4 owners of record for no less than six years prior to the date of registration for the lottery as
5 selected by the Director or (B) buildings consisting of five or six units in which: (i) 50 percent
6 or more of the units have been occupied continuously by the applicant owners of record for no
7 less than six years prior to the date of registration for the lottery as selected by the Director
8 and (ii) the eligible applicant owners of record have a fully executed written agreement as of
9 April 15, 2013 in which the owners each have an exclusive right of occupancy to individual
10 units in the building to the exclusion of the owners of the other units. Applicants for buildings
11 identified in this Subsection must first apply for the lottery within five years of the resumption
12 of the lottery under Section 1396.5(c) and remain eligible until selected; or

13 ~~(5)~~(6) Community apartments as defined in Section 1308 of this Code, which, on or
14 before December 31, 1982, met the criteria for community apartments in Section 1308 of this
15 Code and which were approved as a subdivision by the Department of Public Works on or
16 before December 31, 1982, and where 75 percent of the units have been occupied
17 continuously by the applicant owners of record for three years prior to the date of registration
18 for the lottery as selected by the Director.

19 (c) The conversion of a stock cooperative as defined in Section 1308 of this Code to
20 condominiums shall be exempt from the annual limitation imposed on the number of
21 conversions in this Section and from the requirement to be selected by lottery where 75
22 percent of the units have been occupied for the lottery as selected by the Director.

23 (d) No application for conversion of a residential building submitted by a registrant
24 shall be approved by the Department of Public Works to fill the unused portion of the 200-unit
25 annual limitation for the previous year.

1 (e)(f) (1) Any applicant application for a condominium conversion submitted after being
2 selected in the lottery must meet the following requirements applicable to Subdivision Code
3 Article 9, Conversions: Sections 1381, 1382, 1383, 1386, 1387, 1388, 1389, 1390, 1391(a)
4 and (b), 1392, 1393, 1394, and 1395.

5 (2) Any building subject to Section 1396.2 shall have all applicant(s) satisfy all the
6 requirements for conversion under Section 1396.2(f) in order be eligible to convert pursuant to
7 this Section 1396; provided, however, that any building subject to the prohibition on
8 conversion under Section 1396.2, in particular a property with the eviction(s) set forth in
9 Section 1396.2(b), is ineligible for conversion.

10 (3)(A) In addition, the applicant(s) must shall certify that to the extent any tenant
11 vacated his or her unit after March 31, 2013 within the seven years prior to the date of
12 selection in registration for the lottery as selected by the Director and before recordation of the
13 final parcel or subdivision map, such tenant did so voluntarily or if an eviction or eviction
14 notice occurred it was not pursuant to Administrative Code Sections 37.9(a)(8)-(14) unless
15 such eviction or eviction notice complied with the requirements of Subsections (B)-(D) below.

16 (B) If an eviction has taken placed the evicting owner(s) recovered possession
17 of the unit under Administrative Code Sections 37.9(a)(11) or 37.9(a)(14), then the
18 applicant(s) shall certify that the original tenant reoccupied or was given an opportunity to
19 reoccupy the unit after the temporary eviction.

20 (C) If the evicting owner(s) recovered possession of the unit under
21 Administrative Code Section 37.9(a)(10), then the applicant(s) shall certify that the
22 Department of Building Inspection required the unit be demolished or permanently removed
23 from housing use pursuant to a Notice of Violation or Emergency Order or similar notice,
24 order, or act; all the necessary permits for demolition or removal were obtained; that the
25 evicting owner(s) complied in full with Administrative Code Section 37.9(a)(10) and (c); and

1 that an additional unit or replacement unit was not constructed in the building after the
2 demolition or removal of the unit previously occupied by the evicted tenant.

3 (D) If the evicting owner(s) recovered possession of a unit under Administrative
4 Code Section 37.9(a)(8), then the applicants shall certify that: (i) only one unit in the building
5 was the subject of such eviction during the seven year period, (ii) any surviving owner or
6 relative named as the intended resident of the unit in the Section 37.9(a)(8) eviction notice
7 also is presently an owner applying for the conversion of the same unit, and (iii) the subject
8 applicant owner has occupied the unit continuously as his or her principle residence for three
9 years prior to the date of registration for the lottery as selected by the Director.

10 (f) The Department shall review all available records, including eviction notices and
11 records maintained by the Rent Board for compliance with Subsection (e). If the Department
12 finds that a violation of Subsection (e) occurred prior to recordation of the final map or final
13 parcel map, the Department shall disapprove the application or subject map. If the
14 Department finds that a violation of Subsection (e) occurred after recordation of the final map
15 or parcel map, the Department shall take such actions as are available and within its authority
16 to address the violation.

17 Section 4. Uncodified. Notwithstanding the condominium conversion lottery selection
18 provisions of Subdivision Code Section 1396 and 1396.3 or the other terms of this legislation,
19 the most senior class of buildings participating but not being selected in the 2013
20 condominium lottery may apply for a condominium conversion subdivision on or after January
21 1, 2014 but before December 31, 2014 subject to the following: (1) the buildings and
22 applicants shall satisfy all of the eligibility requirements necessary to participate in the lottery
23 as set forth in Sections 1396 and 1396.3 in effect immediately prior to the effective date of this
24 legislation and (2) the applicants shall satisfy all other applicable terms of Subdivision Code
25 Article 9 (Conversions). Any buildings that apply under the process set forth in this uncodified

1 Section are explicitly exempt from the requirements of Sections 1396.4, 1396.5, and 1396 as
2 set forth in this legislation. Any building eligible to convert to condominiums: (a) under this
3 Section 4, (b) after being selected for conversion in the 2013 condominium conversion lottery,
4 or (c) that satisfies the requirements of Section 1359, is excluded from any of the terms of
5 Section 7 below, specifically any limitation or prohibition of any kind concerning application
6 submission, review, and approval for a parcel or subdivision map.

7 Section 5. Effective Date. This ordinance shall become effective 30 days from the
8 date of passage.

9 Section 456. This section is uncoded. In enacting this Ordinance, the Board intends
10 to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
11 punctuation, charts, diagrams, or any other constituent part of the Subdivision Code that are
12 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
13 Board amendment deletions in accordance with the "Note" that appears under the official title
14 of the legislation.

15 Section 67. Suspension of this Ordinance~~Effect of Litigation.~~ (a) In the event that there
16 is a lawsuit against the City and County of San Francisco filed in any court challenging any
17 part of this legislation or the validity of any lifetime lease entered into pursuant to this
18 legislation Subsection 1396.4(g) or Section 1396.5 or any obligation on the part of any
19 property owner under Section 1396.4(g), then upon the service of such lawsuit upon the City
20 and County of San Francisco, the Expedited Conversion program described in Section 1396.4
21 will be suspended as set forth below unless and until either (1) there is a final judgment in the
22 lawsuit in all courts and the validity of this legislation in its entirety the challenged provision(s)
23 specified above is upheld or (2) the suspension of the lottery through January 1, 2024 as
24 mandated by Section 1396.5 is completed.

1 (b) Legal Challenge to Section 1396.5 During any such suspension of the Expedited
2 Conversion program pursuant to this Subsection based on a legal challenge to Section
3 1396.5, any the Department, upon service of the lawsuit, shall not accept or approve any
4 application for conversion under the program. After 180 days following service of the lawsuit,
5 the Department shall not issue any tentative parcel map or tentative map approval for
6 conversion and shall deny any application that has not obtained such approval. If an owner(s)
7 obtained a final and effective tentative parcel map or tentative map approval on or prior to the
8 180th day following service of the lawsuit, then that applicant may proceed to final parcel map
9 or final subdivision map approval and recordation of the subdivision map. At any time during
10 a suspension of the Expedited Conversion program, any applicant may seek a refund of the
11 condominium conversion application and condominium conversion impact fees and the
12 provisions of Section 1396 in effect on April 15, 2015 shall be operative. Upon a request for
13 an application fee refund, the reviewing City Departments shall deduct incurred costs based
14 on time and materials expended and shall refund any remaining portion of the application
15 fee(s).

16 (c) Legal Challenge to Section 1396.4(g)'s Property Owner Obligations. During a
17 suspension of the Expedited Conversion program pursuant to this Subsection based on a
18 legal challenge to any obligation on the part of any property owner under Section 1396.4(g),
19 the Department, upon service of the lawsuit, shall not accept or approve any application for
20 conversion under the program for a building with a unit occupied by a non-owning tenant(s). If
21 an owner(s) obtained a final and effective tentative parcel map or tentative map approval on
22 or prior to the service of the lawsuit, then that applicant may proceed to final parcel map or
23 final subdivision map approval and recordation of the subdivision map. Notwithstanding the
24 effects of a suspension of the Expedited Conversion program pursuant to this Subsection
25 described above and the terms of Subsection (e), the Department shall continue to accept,

1 tentatively approve, and finally approve any application for a conversion pursuant to the
2 requirements of the Expedited Conversion program for any building that has no units occupied
3 by a non-owning tenant(s). At any time during a suspension of the Expedited Conversion
4 program, any applicant may seek a refund of the condominium conversion application and
5 condominium conversion impact fees and the provisions of Section 1396 in effect on April 15,
6 2015 shall be operative. Upon a request for an application fee refund, the reviewing City
7 Departments shall deduct incurred costs based on time and materials expended and shall
8 refund any remaining portion of the application fee(s).

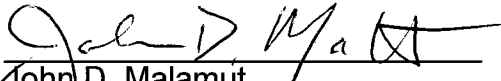
9 (d) Legal Challenge to both Section 1396.5 and Section 1396.4(g)'s Property Owner
10 Obligations. During a suspension of the Expedited Conversion program pursuant to this
11 Subsection based on a legal challenge as identified in both Subsection (b) and (c), the
12 Department, upon service of the lawsuit, shall not accept or approve any application for
13 conversion under the program. If an owner(s) obtained a final and effective tentative parcel
14 map or tentative map approval on or prior to service of the lawsuit, then that applicant may
15 proceed to final parcel map or final subdivision map approval and recordation of the
16 subdivision map. At any time during a suspension of the Expedited Conversion program, any
17 applicant may seek a refund of the condominium conversion application and condominium
18 conversion fees. Upon a request for an application fee refund, the reviewing City
19 Departments shall deduct incurred costs based on time and materials expended and shall
20 refund any remaining portion of the application fee(s).

21 (e) Upon the completion of the suspension of the Expedited Conversion period the
22 suspended Expedited Conversion program described in Section 1396.4 shall resume as if no
23 suspension had occurred. Applicants with suspended applications may resubmit their
24 applications along with all required fees and shall be considered in the same position as they
25 had at the time of the suspension. The Department shall treat the time periods described in

1 Section 1396.4(b)(1)-(7) as having been tolled during the time of suspension of the Expedited
2 Conversion program.

3 (f) Effect of Successful Lawsuit against the City, Board of Supervisors hearing. If there
4 is a final judgment in the lawsuit in all courts and the challenged provision(s) specified in this
5 Section are deemed invalid in whole or in part, the Expedited Conversion program set forth in
6 Section 1396.4 shall terminate except for those particular buildings authorized to convert
7 pursuant to Subsection (b), (c), or (d) and the condominium conversion lottery shall be
8 suspended in its entirety until its resumption after January 1, 2024. Upon a court's final
9 judgment in the lawsuit in all courts that the challenged provision(s) specified in this Section
10 are deemed invalid in whole or in part, the City Attorney shall promptly notify the Clerk of the
11 Board of Supervisors of such judgment. Upon receipt of this notice, the Clerk shall schedule a
12 public hearing(s) before the full Board or an appropriate committee of the Board, based on
13 consultation with the President of the Board of Supervisors. The purpose of such hearing(s)
14 shall be to provide a forum for public dialogue and shall address, but not be limited to,
15 consideration of revisions to the condominium conversion process consistent with the court's
16 findings, exploration of alternative condominium conversion policies that seek to balance the
17 often competing interests of the City, property owners, prospective owners, and tenants;
18 discussion of the benefits and burdens as well as the distributive impacts of a citywide
19 condominium conversion process and affordable housing production and opportunities; and
20 concepts that support and balance the goal of homeownership with protection of rental
21 properties and their tenants.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: 
4 John D. Malamut
5 Deputy City Attorney
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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120669

Date Passed: June 18, 2013

Ordinance amending the Subdivision Code, by adding Section 1396.4, to adopt a condominium conversion fee applicable to certain buildings that would be permitted to convert during a seven year period, and subject to specified requirements, including lifetime leases for non-purchasing tenants; adding Section 1396.5, to suspend the annual condominium conversion lottery until 2024 and resume said lottery under specified circumstances tied to permanently affordable rental housing production; amending Section 1396, to restrict future condominium lotteries to buildings of no more than four units with a specified number of owner occupied units for three years prior to the lottery and provide an exception for certain five- and six-unit buildings to participate in the lottery; and adopting environmental findings.

January 28, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

January 28, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

February 25, 2013 Land Use and Economic Development Committee - CONTINUED

March 11, 2013 Land Use and Economic Development Committee - CONTINUED

March 25, 2013 Land Use and Economic Development Committee - CONTINUED

April 15, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

April 15, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

April 22, 2013 Land Use and Economic Development Committee - RECOMMENDED

May 07, 2013 Board of Supervisors - RE-REFERRED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 13, 2013 Land Use and Economic Development Committee - CONTINUED

May 20, 2013 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

May 20, 2013 Land Use and Economic Development Committee - DUPLICATED AS AMENDED

May 20, 2013 Land Use and Economic Development Committee - CONTINUED AS AMENDED

June 03, 2013 Land Use and Economic Development Committee - RECOMMENDED

June 11, 2013 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

Ayes: 8 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar and Yee

Noes: 3 - Farrell, Tang and Wiener

June 11, 2013 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 8 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar and Yee

Noes: 3 - Farrell, Tang and Wiener

June 18, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar and Yee

Noes: 3 - Farrell, Tang and Wiener

File No. 120669

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/18/2013 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board

Unsigned

Mayor

June 28, 2013

Date Approved

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.


Angela Calvillo
Clerk of the Board