



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: **July 10, 2008** REPORT NO: **08-106**  
ATTENTION: **Committee on Land Use and Housing**  
SUBJECT: **Condominium Conversions – Forestalling Final Map Improvements**  
REFERENCES: **CMR-06-043, CMR05-163, and CMR 05-060**

REQUESTED ACTION:

This is an information item, no action is required.

STAFF RECOMMENDATIONS:

Staff recommends the following:

- Final maps for condominium conversion continue to be approved only when all required conditions of conversion have been completed to the satisfaction of the City Engineer and
- Require condominium converters to process Extensions of Time consistent with the regulations, which allow up to five additional years before final map approval is required.

SUMMARY:

Since the June 2006 adoption of the Condominium Conversion Regulations a number of applicants have appealed their Planning Commission decision to the City Council requesting that final map be approved prior to making conditioned improvements. This report to the Land use and Housing Committee addresses those appeals that were filed to request final map approval prior to satisfying conditions of the tentative map (forestall improvements). The applicants requesting to forestall improvements propose to make required improvements prior to the physical conversion of rental units to for-sale units. The requests to forestall improvements have been open ended in that they do not include a deadline for converting from rental to for-sale.

Background

In January and again in June 2006 the City Council adopted amendments to the condominium conversion regulations. The amendments generally address the following:

- Health and Safety;
- Tenant noticing and relocation;
- Consumer protection;
- Onsite affordable housing; and
- Community based improvements.

### *Health and Safety*

The majority of units approved for conversion do not comply with current building codes. Recognizing this, the condominium conversion regulations require specific improvements be made to make the units safe. Specifically, condominium conversions must include the following minimum upgrades:

- Electrical system and equipment grounding;
- Electrical receptacle protection to include ground fault circuit interrupter (GFCI) protection;
- Each sleeping room below the fourth floor and basements are required to have at least one operable window or door approved for emergency escape or rescue consistent with prevailing code; and
- Smoke alarms to be installed consistent with prevailing codes and in sleeping rooms smoke alarms must include a visual notification device to notify the hearing impaired.

### *Consumer Protections*

A Building Conditions Report, prepared by a licensed professional, is required to be submitted with all applications for reviewed and accepted by staff. The report is intended to inform prospective buyers of the overall physical condition of the project when it receives Tentative Map approval. A copy of the Building Conditions Report is required to be provided to prospective buyers prior to the opening of escrow. The report must include the following:

- A discussion of project compliance with current health, safety, & construction codes;
- Identification of integral building components with a remaining life of 5 years or less;
- Actions taken to assure systems are safe & efficient prior to sale;
- A discussion of level of compliance with current energy efficiency standards;
- A description of the current and proposed level of compliance with accessibility standards;
- Scaled elevations of the proposed project; and
- A list of improvements intended to be made prior to sale.

### *Tenant Noticing and Relocation*

- The noticing requirements were modified to simplify the notices for tenants, add predictability, and increase accessibility of information to affected tenants. Three new notices were created.
- All households displaced by a condominium conversion receive three months rent, based on the San Diego “fair market rent,” as established every year by the U. S. Department of Housing and Urban Development. Payment occurs no later than the date the applicant receives the Notice to Terminate Tenancy.

### *Onsite Affordable Housing*

Condominium conversions of 20 or more units are required to satisfy their inclusionary housing requirement onsite for every whole number of units required under the Inclusionary Affordable Housing Regulations with the option for payment of the in-lieu fee for fractions of units required.

### *Community Based Improvements*

The regulations address community concerns related to community character. Landscape must be provided in required front yards in compliance with the citywide landscape requirements. Projects that have parking in required front yards and cannot otherwise comply with new minimum parking requirements cannot convert. These projects will eventually redevelop consistent with the community character policies of the General Plan and the applicable community plan.

### Forestalling Improvements

Housing sales and sales of condominium conversions especially have significantly declined in the past year. Condominium converters contend that the requirement to satisfy conditions of tentative map approval prior to final map will compel them to evict tenants in order to make improvements to structures they are not yet planning to offer for sale (convert) due to current market conditions. The condominium converters state that once the improvements are made the units will be rented out at higher rents until the market for condominium sales improve. They request the ability to receive final map approval, continue to rent the units, and forestall required improvements until the actual conversion from rental to for-sale housing. They propose that compliance with the conditions of approval could be assured through specific mechanisms, such as deed restrictions and bonding for required improvements.

**The decision of whether or not to allow condominium converters to forestall improvements will apply to the approximately 9,900 dwelling units within approximately 250 condominium projects that have not yet received final map, as well as future applications for condominium conversions.**

It is important to know that once approved; a tentative map has three years in which to receive final map approval. If at the end of three years a final map is not approved then the applicant may request extensions of time for up to five additional years. Extensions of time can not be denied or conditioned unless the decision maker can make one of the following findings in Section 125.0461(a)(3) of the Municipal Code:

- (A) The failure to conditionally approve or deny the request would place the residents of the subdivision or the immediate community in a condition dangerous to their health or safety; or
- (B) The condition or denial is required to comply with state or federal law.

The extensions currently within the Municipal Code provide applicants with a total of eight years from tentative map approval to final map approval. Most of the applicants requesting forestalling of improvements have not requested extensions of time and therefore have not exhausted the administrative means for extending their timeline.

It should be noted that due to the current building slump and strained credit market, California lawmakers are considering four bills, one introduced in the Senate (SB 1185-Lowenthal) and the three others in the Assembly (AB 1777-Houston, AB 2520-Walters, and SB 1587 Maldonado), to extend the expiration date of tentative maps. The extension, if passed and signed into law, would be in addition to other extensions available under local ordinance and/or the Subdivision

Map Act. The legislature took similar action in 1993 and 1996 during the last downturn in the housing market. SB 1185 is an active urgency bill and has moved into the Assembly for consideration. If adopted the initial expiration date of tentative maps would be extended from three years to five years. This would provide condominium converters a total of ten years in which to receive final map approval.

Standard practice is to require all improvements prior to final map approval, except that public improvements may be forestalled provided the applicant obtains permits and posts bonds for the improvements. This standard practice guarantees, to the city's satisfaction, that all improvements necessary to serve the legal lot are made prior to final city approval of the final map. Allowing final map approval prior to completion of conditioned, private improvements (such as replacement of roofing, heating and air systems, and installation of front yard landscape) based on current market problems would be an exception to how the city guarantees that required improvements are made.

If forestalling of improvements is allowed and applicants are allowed to bond and enter into deed restrictions, there will be future staff responsibilities associated with verification of required improvements, releasing bonds, and clearing deed restrictions. A fee system could be needed to recoup costs from the applicants. Additionally, the City would be involved in enforcement if projects are somehow sold without making the required improvements. If bonds need to be called, the City would be responsible for guaranteeing the private improvements. These costs would need to be absorbed or recouped.

Allowing condominium converters to receive final map approval while forestalling improvements to an unknown future time will change the outcomes that the condominium conversion regulations were intended to achieve. The following identifies potential consequences of approving final map while forestalling improvements and requiring improvements prior to final map and then renting the units until converting to for-sale at a future time.

#### *Health and Safety*

- If final map improvements are forestalled, then compliance with existing codes for upgraded electrical safety features, emergency ingress and egress from bedroom windows, and smoke alarms will not be made until the project is converted from rental to for-sale at an unknown future date. These health and safety improvements would not be provided to the current tenants.
- If improvements are required prior to final map and the units are rented and not converted to for-sale until a future time, then health and safety improvements would be made and the resulting improvements would be available to future renters.

#### *Tenant Noticing and Relocation*

- If final map improvements are forestalled, the tenant noticing and relocation requirements would be implemented consistent with the regulations.
- If improvements are required prior to final map and the units are rented and not converted to for-sale until a future time then, existing tenants would not be required to receive the noticing and/or relocation payments required for conversion of units. The noticing and relocation would be provided to those tenants living in the improved units at the time of

the future conversion from rental to for-sale. It should be noted that tenant relocation is not always required for improvements to be made. This is especially true for the conversion of recently constructed large scale apartment complexes.

#### *Consumer Protections*

- If final maps improvements are forestalled, then the consumer protection value of the Building Conditions Report will diminish with every year that passes. Building components that at time of tentative map approval had a useful life of more than 5 years would continue to age and eventually need replacement. Such components would not be identified in the report and would not be required to be replaced at time of actual conversion from rental to for-sale.
- If improvements are required prior to final map approval and the units are rented and not converted to for-sale until a future time, then, as with forestalling improvements, the consumer protection value of the Building Conditions Report will diminish with every year that passes.

#### *Onsite Affordable Housing*

- If final map improvements are forestalled, then:
  - Approximately 1,230 affordable units could also be indefinitely forestalled; and
  - Inclusionary housing fees for the approximately 8,820 condominium units that are not providing onsite affordable housing units would be provided either at the time of final map approval at the prevailing rate or at some future time when the units are converted from rental to for-sale at the rate prevailing at time of conversion, but not less than the rate at time of final map.
- If improvements are required prior to final map approval and the units were then rented, then:
  - The required affordable units would be provided when units are converted from rental to for-sale according to a deed of trust and agreements entered into with the San Diego Housing Commission at the time of final map approval; and
  - The payment of inclusionary fees would be the same as with forestalling improvements.

#### *Community Based Improvements*

- If final map improvements are forestalled, then community character improvements for front yard landscape could be forestalled indefinitely.
- If improvements are required prior to final map and the units are then rented, the required front yard landscape would be in place upon final map approval and assist in meeting General Plan and applicable community plan policies related to community character.

#### Other Jurisdictions

Staff has researched how other jurisdictions regulate improvements for condominium conversions. The jurisdictions researched are broken into two categories; those jurisdiction with populations at least one-quarter that of the City of San Diego and other jurisdictions within San Diego County. Attachment 1 provides some generalized information.

Of the eight jurisdictions with populations ranging from 346,823 to 4,045,873 the practice of four jurisdictions are not applicable to this issue since the jurisdictions do not require private improvements as conditions of final map. Of the four remaining jurisdictions the process is as follows: San Francisco, which allows only 200 units a year to convert, allows forestalling of private improvements with adequate escrow or bonding; Long Beach does not allow forestalling of private improvements; Sacramento, which also requires a special permit for condominium conversions, allows forestalling of private improvements with a performance bond; and Fresno allows forestalling of private improvements subject to a secured agreement as approved by the City Attorney.

Three local jurisdictions that provided information were Chula Vista, El Cajon, and Imperial Beach. Each City treats maps for condominium conversions differently. The City of Chula Vista regulates condominium conversion maps similar to San Diego; it requires tentative map conditions to be completed prior to final map approval (no forestalling). The City of El Cajon which requires a planned unit development permit in addition to a tentative map, does allow agreements to be recorded (several a year) to allow improvements to be made after final map approval. Imperial Beach requires only a tentative map for condominium conversions and it requires a Lien and Covenant Not to Convey.

### Conclusion

The San Diego Municipal Code provides extensions of time for applicants that are either unable to, or choose not to attain final map approval within the first three years following tentative map approval. Applicants should be directed to follow this procedure. Allowing applicants to receive final map prior to making required improvements will result in the following:

- Condominium converters will receive final map approval, without making improvements, and many will sell the unimproved product to individuals that may be unaware of, or ignore, the requirements for improvements, tenant relocation, and noticing. The result will be similar to the problems that arose with the off-the-shelf conversions created by the previous market turndown.
- Allowing final map prior to improvements will encourage converters to continue to process future conversions since a converter could add value to the property through creation of a map without providing improvements. Again creating more off-the-shelf conversions in the future.
- The consumer protections provided by the building conditions report would have little to no value depending on the amount of time that passes prior to conversion.
- The neighborhood improvements resulting from facade and front yard (landscape) improvements anticipated by the communities would be deferred to an unknown future date.
- A fee system would likely be required to provide additional future inspections and or reviews of updated materials.

- The City would be responsible for guaranteeing private improvements to buildings if bonds need to be called.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

City Council adopted regulations for condominium conversions in January and June 2006.

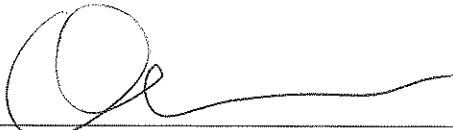
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

This is an information item. If direction is provided to amend regulations then the proposed amendments would be subject to the standard public outreach and noticing requirements.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

There are many stakeholders representing the wide spectrum of concerns regarding increasing the regulations for condominium conversions. They include, but are not limited to, condominium converters, existing tenants, prospective buyers, advocates for affordable housing, the Building Industry Association.

Respectfully submitted,



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Broughton/DPJ

Attachment:

How Other Jurisdictions Address Final map Improvements

## ATTACHMENT

City	Forestalling Permitted	Notes	Codified	Est. 2008 Pop.
<b><i>Jurisdictions at least one-quarter the population of San Diego</i></b>				
Los Angeles	N/A	Private improvements not required as part of Map.	N/A	4,045,873
San Diego	---	---	---	1,336,865
San Jose	N/A	A CUP is required in addition to a Map. Private improvements not required as part of Map.	N/A	989,496
San Francisco	Yes	<ul style="list-style-type: none"> <li>▪ The sub-divider must demonstrate that all applicable provisions of the City's Housing, Building and City Planning Codes have been met and any violations have been corrected or, upon the approval of the Director, and prior to recordation of the Final Map or Parcel Map, funds have been adequately escrowed or bonded to assure completion of such corrective work prior to the closing of escrow of any unit in the project.</li> <li>▪ Only 200 Conversions are allowed per year.</li> </ul>	Yes	824,525
Long Beach	No	Repairs to heating, plumbing, and roof that have a useful life of 5 or fewer years shall be provided prior to approval of the final map.	N/A	496,642
Sacramento	Yes	Special Permit required in addition to Map. If the project does not comply with requirements relating to utilities, sound attenuation, and building code compliance, the Special Permit shall require the developer to furnish a performance bond to bring the project into compliance and make all necessary repairs. Such bond shall run in favor of individual purchasers and the association. The bond shall provide for reasonable attorney's fees in the event of default by the principal.	Yes	475,743
Fresno	Yes	All Code requirements and map conditions must be satisfied, and violations corrected prior to the approval of the final map; provided, however, that the final map may be approved subject to an agreement between the sub-divider and the City guaranteeing the performance of the requirements and conditions. The agreement shall be approved by the Director and shall be in a form approved by the City Attorney and shall be secured by adequate security as approved by the City Attorney to assure that the requirements shall be satisfied prior to the closing of escrow of any unit in the project.	Yes	486,116
Santa Ana	N/A	Private improvements not required as part of TM	N/A	353,184
Anaheim	N/A	A CUP is required in addition to Map. Private improvements not required as part of Map	N/A	346,823
<b><i>Local Jurisdictions</i></b>				
Chula Vista	No	TM conditions to be completed prior to final map.	N/A	227,863
El Cajon	Yes	<ul style="list-style-type: none"> <li>▪ A Planned Unit Development Permit required in addition to Map</li> <li>▪ Record several agreements a year.</li> </ul>	No	97,934
Imperial Beach	Yes	Lien and Covenant Not to Convey required.	Yes	28,200