

LEGAL AND PLANNING PERSPECTIVES
OF CONDOMINIUM CONVERSION

by

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A.B., University of California, Berkeley
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Submitted to the Department of Urban Studies
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and


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ABSTRACT

This thesis examines the current controversy of condominium conversion, a process entailing the conversion of rental apartment buildings to singly-owned units of property. Critics of conversion contend there are a number of abuses occurring in the process such as tenant harassment, fraud on purchasers, inflation of the housing market due to quick turnover and speculation in condominiums, depletion of the rental housing stock, and disproportionate displacement of the elderly, poor and minority households. On the other hand, supporters of condominium conversion claim that it provides numerous benefits, including an increase in the community's tax base, improvement of and better maintenance of property, providing greater control and management of property through collective ownership associations, and accrual of favorable tax treatment to owners that are not provided to renters. Because of the myriad issues and potential solutions surrounding the conversion process, this thesis limits its focus to two problems, depletion of the rental housing stock and tenant dislocation, analyzing them from both legal and planning perspectives, and working from two basic premises: 1) rental housing serves the needs of certain segments of the population and provides a certain fluidity in the housing market that warrants its protection from extinction; and 2) the complexity of this issue seems to necessitate a more comprehensive approach than that provided by the adversarial process of case-by-case litigation in courts.

Thus, the thesis is organized into four subparts. Part I, the Introduction, briefly describes the focus and areas to be covered by the thesis. Part II, "The Taking Issue," examines the legal question of whether ordinances passed by local governments to restrict conversion violate the Fifth Amendment to the Constitution, which prohibits the taking of private property for public use without just compensation. Part III takes a more comprehensive planning approach to the

problem, examining how housing, economics, social and tax policies have created an environment conducive to conversion, and how the policies in the same area might be shaped to deal with the problems of tenant dislocation and depletion of the rental housing market. Part IV examines the ordinances of four localities -- New York, New York; Brookline, Massachusetts; San Francisco, California; and Washington, D.C. -- in light of the analysis of the previous subparts.

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I. INTRODUCTION

"The converter notifies her that the building is going condo in 60 days. The apartment where she's lived for 30 years will be \$90,000. That is 20 percent down, or \$18,000, plus \$2,000 in settlement and closing fees -- \$20,000 in cash. Assuming she can take \$20,000 from savings -- . . . she's still got a \$70,000 mortgage.

How many 65-year-olds have the income to pay nearly \$700 a month for what used to be \$500 in rent? But wait. She's got a \$450-a-year maintenance fee to pay, too, plus taxes. So she ends up having to pay maybe \$1,000 a month.

It's really a calamity." 1/

"I think on balance it is a benefit to the society and to the communities in which it occurs." 2/

"The condo movement is probably inevitable, and probably should be applauded. The issue is how to safeguard the process so you don't kick up too much of a political fuss and provide a measure of protection for people being displaced." 3/

The "it" that is being described above as either a "benefit" or a "calamity", depending on your point of view, is the growing trend of "condominium conversion", the conversion of rental apartment units to singly-owned units of property, similar in tenure to newly-constructed condominiums or co-operatives. While there is sharp disagreement over whether the conversion phenomenon is a "good" or "bad" development in the housing market, and over its causes, and while exact figures on the number of units converted nation-wide are not available, both pro-conversion enthusiasts and anti-conversion advocates agree that the rate of condominium conversions in major cities of the United States in the last five or ten years has been tremendous. For instance, estimates of the number of already-converted units nationwide range from

100,000 to 145,000 per year, with projections for future conversion ranging from 130,000 to 250,000 in the next year.^{4/}

Several factors are frequently cited to explain the rapid, recent development of "condomania." Some demographers and planners note that the "baby boom" generation, which has previously caused dislocation in the education and employment sectors, has now reached the stage of their life-cycle when they are setting up their own households and buying property, thus wreaking havoc now in the housing market.^{5/} The dislocation caused by the sudden surge on the demand side is further exacerbated by shortfalls on the supply side. New housing construction of both single-family dwellings and rental apartments have declined throughout the decade of the '70's, and the latest Labor Department figures indicate that housing starts for the month of February, 1980 are "far below their levels of early last year."^{6/} Furthermore, the high rate of inflation and concomitant tightening of mortgage credit have put single-family homes beyond the reach of most first-time homebuyers, thus causing them to turn to condos and co-ops (both new and converted) as affordable substitutes.^{7/} Additionally, what might be termed "life-style" changes have increased pressure on the tight housing market in many inner cities. For instance, government figures indicate an increase in the number of households, adults living alone or child-less couples. The decision of many couples to forego or postpone childbearing has changed the type of housing demanded -- i.e. the reasons for purchasing a single-family home in the suburbs (more

living space and open-space, better public education systems and recreational facilities for children) no longer exist.^{8/} Indeed, in the latter sense, condominium conversion can be seen as just one part of the larger "gentrification" movement, which has already been so ably documented.^{9/} The characteristics and patterns of resettlers and those who have been displaced by them, either through "neighborhood revitalization" or condominium conversion, have been remarkably similar.^{10/} That is, those purchasing condominiums or deteriorated housing in run-down neighborhoods to renovate, have usually been young, upper-middle or upper-class, professional singles or couples. The persons they have displaced include a high number of lower-class, poor, minorities, and elderly.^{11/}

While the preceding discussion indicates the myriad number of possible causes for the increase in condominium conversion, the consequences of the conversion process, both actual and feared, are not only as numerous, but are also further complicated by their two-sidedness. The reason that there is so much debate and controversy surrounding the process of condominium conversion is that the arguments on both sides of the issue are sharply drawn, and fairly evenly balanced. Pro-conversion enthusiasts argue that condo conversion: 1) increases the community's tax base, since each unit is subject to property tax, not just the one apartment building; 2) provides residents of such units with the preferential tax treatment of owners of property as compared with mere renters; 3) promotes population stability because people who own property are less likely to

move than those who rent; 4) contributes to the improvement and upkeep of property, both because owners of property are assumed to have a greater interest than renters in maintaining the value of property, and because the resources available from all the owners through the assessment of maintenance fees is much greater than the resources of the single landlord; and finally, that it 5) gives residents greater control over the management of the property, and perhaps creates a greater sense of community as a result of shared responsibility. Anti-conversion advocates counter with arguments that conversion: 1) encourages a stultifying homogeneity of population type (i.e. mostly upper-middle or upper class, young, professional couples or singles buying the property); 2) creates an inflated property market particularly vulnerable to quick-money speculators; 3) is just as likely to promote instability in the population/residency patterns due to quick turn-over in ownership by speculator-purchasers; 4) increases the likelihood of fraud on purchasers who are unaware of latent defects in older apartment buildings which are not as suitable for condominium ownership as newly-constructed condominiums and co-operatives; 5) overwhelms groups who, either because of necessity or preference, live in rental apartments (i.e. the elderly, poor, "transients" like students or people whose careers require flexibility of movement); and 6) it is a mechanism for circumventing rent control, which in many instances was passed to protect vulnerable groups like the elderly or low-income people.

In response to many of the arguments made by anti-conversionists, and alarmed by the extent to which the rapid rate of condo conversion is permanently diminishing the supply of rental housing,^{12/} many cities have passed ordinances which are designed to slow or restrict condo conversion either by imposing a temporary "freeze" or moratorium on conversions when the vacancy rate of apartments in the community falls below a certain percentage,^{13/} or by requiring a certain percentage of the tenants of the building (e.g. 35%) to approve the conversion before a permit can be issued.^{14/} One question which has not previously been discussed in the literature dealing with condo conversion and the restrictive ordinances, and which has only recently begun to be raised in courts^{15/} is that of whether such ordinances are constitutional, avoiding running afoul of the Fifth Amendment prohibition against taking private property for public use without paying just compensation. At first glance, it seems fairly obvious that an ordinance which gives tenants possible veto power over conversion is a clear infringement of the landlord's right to use his property as he sees fit. On the other hand, the property-owner's use and enjoyment of his property has been restricted in a number of ways (e.g. zoning regulations restricting types of use, density, height or set-back requirements; or environmental regulations, etc.) by government regulation, that have been upheld by the courts.^{16/} While the taking issue is one that will be examined at greater length in this paper, I mention it now because it serves as a specific example of some larger

issues that have led to my interest in the problem of condominium conversion, and which influence the focus of this paper.

As one trained as both a lawyer and a planner, I initially found it rather baffling that these two professions which have so much influence in the urban development process seem so often to be on opposite sides, and/or to display little understanding of the other's perspective.^{17/} For instance, regarding the problem of condominium conversion, my instinctive legal reaction was a concern with the "taking" argument, a view which emphasizes the landlord's property rights, to the exclusion of other interests, such as those of the tenants. Perhaps this legal reaction is explained by the fact that property law is still heavily influenced by its feudal antecedents, which traditionally favored the land"lord" over his tenant.^{18/} However, as a planner, I realized that if the "taking" argument was carried out to the fullest extent, such that any ordinance which restricted condominium conversion would be struck down as an unconstitutional infringement upon the property-owner's rights, one possible consequence would be the extinction of the rental housing market, and the concomitant economic and social dislocations that would result from that extinction. In short, (and perhaps rather simplistically), the issue of condominium conversion reveals the tendency of the legal response to be one focused on the individual's rights (to the exclusion of larger social issues), while, in contrast, the tendency of the planning

response is to be more comprehensive and concerned with the generalized societal good (sometimes to the exclusion of adequately protecting the individual's rights).

Thus, what this paper seeks to do, is to chart a middle course, analyzing the problem of condominium conversion by drawing on both perspectives, but limited somewhat by the two following biases or premises:^{19/}

- (1) Although American housing and tax policies have traditionally favored homeownership, the rental form of housing clearly meets the needs of large segments of the housing market (i.e. the poor or fixed- or limited-income, the elderly, transients, etc.) such that it warrants protection from extinction.
- (2) The complexity of the issue of condominium conversion (involving housing, economics, social policy, etc.), the virtually equal justifications of landlords and tenants -- all tend to convince me that this is a situation calling for well-drafted legislation that is the product of accommodation and compromise, rather than for case-by-case battles in courts.

Thus, Section II, dealing with the "taking" issue, and Section III, dealing with the rental housing market, are reflective of premise (1); while Sections III and IV, which analyze various restrictive ordinances (New York, New York; Brookline, Massachusetts; San Francisco, California; and Washington, D.C.^{20/}), are reflective of premise (2). It should also be noted that as a result of this focus, several other interesting questions relating to condominium conversion, such as the protection of purchasers from fraudulent conveyances, or the actual steps taken (or "nuts and bolts") of the conversion process, will not be covered.

FOOTNOTES

- 1 Allen J. Beckman, lawyer for tenants in Philadelphia's Park Towne Place, quoted in the New York Times, October 21, 1979, p. 18.
- 2 Anthony Downs, Brookings Institution, quoted in "Legislating to restrain co-ops and condos.", Business Week, February 18, 1980, p. 95.
- 3 George Sternlieb, Center for Urban Policy Research, Rutgers University; *ibid.*
- 4 See, e.g. the estimates of Detroit's Advance Mortgage Corp. cited in Business Week, *ibid.*; and estimates of Representative Benjamin S. Rosenthal, (Dem.-N.Y.) cited in the New York Times, September 2, 1979, sec. VIII, p. 4.
- 5 New York Times, April 15, 1979, p. 20. See also, U.S. Department of Housing and Urban Development, HUD Condominium/Cooperative Study (Washington, D.C.: U.S. Government Printing Office, 3 volumes, 1975) Vol. I, p. iv-9; hereinafter referred to as HUD Condo/Coop Study.
- 6 Regarding new housing construction, *ibid.*; for the exact quote and Labor Department figures, The Washington Post, April 6, 1980, p. G1.
- 7 Business Week, *ibid.*, pp. 95-96; HUD Condo/Coop Study, Vol. I, p. iv-9.
- 8 *Ibid.*, and New York Times, April 15, 1979, p. 20; HUD Condo/Coop Study, Vol. I, p. iv-8 - iv-9.
- 9 See, e.g. Dennis E. Gale, "Middle class resettlement in older urban neighborhoods," in American Planning Association Journal, July 1979, pp. 293-304, and articles cited therein, especially, Phillip L. Clay, Neighborhood revitalization: issues, trends, and strategies. Cambridge, Mass.: Massachusetts Institute of Technology, Department of Urban Studies and Planning, 1978. See also, Michael A. Stegman, "Trouble for Multifamily Housing: Its Effects on Conserving Older Neighborhoods," in Occasional Papers in Housing and Community Affairs, Vol. 2, U.S. Dept. of Housing and Urban Development, Office of Policy, Development and Research, 1978.
- 10 *Ibid.*
- 11 See Stegman, *ibid.*

- 12 See, New York Times, April 15, 1979, p. 20.
- 13 Washington, D.C. ordinance.
- 14 New York General Business Law, section 352-eee 1 (b), (c).
- 15 See Chan v. Town of Brookline, Civil Action No. 800-0020-Mc. (D. Mass.), action filed, December 31, 1979.
- 16 See, e.g. Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926).
- 17 See, e.g. Golden v. Planning Board, 30 N.Y. 2d 359, 285 N.E. 2d 291, 334 N.Y.S. 138 (1972), appeal dismissed, 409 U.S. 1003 (1972); Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151, 336 A. 2d 713, appeal dismissed, 423 U.S. 808 (1975), or Fred P. French Inv. Co. v. City of New York, 39 N.Y. 2d 587, 350 N.E. 2d 381, 385 N.Y.S. 2d 5 (1976), appeal dismissed, 429 U.S. 990 (1976).
- 18 See text accompanying notes 31-32, infra, and sources cited therein.
- 19 Usually, thesis writers posit potential biases and then disclaim them. In this case, given the complexity of the issue involved and the competing interests at stake, it would be both disingenuous and counterproductive to disclaim bias. If we are ever to attempt answers or propose solutions to the problem of condominium conversion, some type of structured debate must be set up. Such a debate, of necessity involves a certain amount of bias.
- 20 These particular geographic areas were chosen for the following reasons: 1) New York, N.Y. -- because it is a city that has had condominiums and condominium conversion for quite a number of years, and therefore has both case law and expertise build up in this area; 2) Brookline, Ma. -- because of the fact that there is ongoing litigation which utilizes the "taking" argument (i.e. Chan, n. 15, supra) and because of local interest; 3) San Francisco, Ca. -- for geographic balance (i.e. there might be different types of concerns in the West), and the writer's personal interest; and 4) Washington D.C. -- because it has one of the highest rates of conversion in the country, which has prompted the passage of a restrictive ordinance within the last year, "freezing" or banning conversion.

II. THE "TAKING" ISSUE

Somewhat surprisingly, the issue of whether ordinances restricting condominium conversion are unconstitutional "takings" of property in violation of the Fifth Amendment to the U.S. Constitution,^{21/} has only recently begun to emerge.^{22/} In most lawsuits challenging such ordinances, the plaintiffs have relied instead on state statutes or the due process or equal protection clauses of the U.S. Constitution. For instance, in Massachusetts, in two recent cases challenging the actions of local governments in restricting condominium conversion, Goldman v. Town of Dennis^{23/} and Grace v. Town of Brookline,^{24/} the plaintiffs in each case based their claims upon sections of the Massachusetts General Laws, and upon due process and equal protection claims.^{25/} But since plaintiffs have not been very successful in overturning regulations on the basis of due process or equal protection claims,^{26/} there will probably be an increasing number of plaintiffs like those in the ongoing case of Chan v. Town of Brookline^{27/} who will premise their claims upon "taking" grounds rather than due process or equal protection grounds. For this reason, this section of the paper will encompass the development of the concept of "taking" in American property law, and how it might or might not be used in the area of condominium conversion. Additionally, although this paper in no way intends to be a detailed examination of the development of the concept of "taking", some discussion of the historical development and background of the concept provides some interesting and useful implica-

tions for future tenant-landlord relations, especially in the area of condominium conversion.

A. What is a "taking"?

The Fifth Amendment to the United States Constitution provides, in part, that:

No person shall be . . . deprived of . . . property without due process of law; nor shall private property be taken for public use without just compensation. 28/

What this Constitutional provision has come to mean, and how it has been both correctly and incorrectly interpreted by both laymen and courts alike is the next area of discussion in this paper. The conflicting opinions of commentators and the inconsistent holdings of various courts only serve to underscore the potential problems for its application to the area of condominium conversion. Indeed, as Fred Bosselman, David Callies and John Banta note in a study on the taking issue that they prepared for U.S. Council of Environmental Quality in 1973:

Our strongest impression from this survey is that the fear of the taking issue is stronger than the taking clause itself. It is an American fable or myth that a man can use his land any way he pleases regardless of his neighbors. The myth survives, indeed thrives, even though unsupported by the pattern of court decisions. Thus, attempts to resolve land use controversies must deal not only with the law, but with the myth as well. 29/

and that

Many more people recognize the validity of land use regulation in general, but believe that it may never be used to reduce the value of a man's land to the point where he can't make a profit on it. After all, what good is land if you can't make a profit on it. . . .

The right to make money buying and selling land is a cherished American folkway, and one that cannot be lightly ignored. But in an increasingly crowded and polluted environment can we afford to continue circulating the myth that tells us that the taking clause protects this right of unrestricted use regardless of its impact on society? Obviously not, yet we must not let concern for the environment blind us to the fact that regulations have real economic impact on real people, and we must search for solutions that will take their interests into account. 30/

1. English Common Law and Early American development of the "Taking" Concept.

Some commentators have traced the origins of the "taking" clause to the English Magna Carta of 1215.^{31/} In feudal England, since all land was considered to belong to the Crown, and lords held title as vassals by swearing fealty to the king as overlord, the king was free to levy charges on the land in order to raise revenue or to literally "seize" the land of those lords who did not comply.^{32/} As these charges became more numerous and more onerous during the reign of King John, the English lords gathered together, and at Runymede forced the King to sign the now-famous charter, which contained a Chapter 39 which stated in part:

No freeman shall be arrested, or detained in prison, or deprived of his freehold, . . . unless by the lawful judgment of his peers and by the law of the land. 33/

Since, as Bosselman et al. note, English lords technically did not "own" land, but rather "held" it through vassalage,^{34/} it is somewhat ironic that a clause which in modern American property law has become so strongly identified with landlords and propertied classes, can be traced to a kind of early

"tenant" tax revolt.

Although the Magna Carta was forced on an unwilling monarch, later English kings and queens reaffirmed sections of the charter. But, as Bosselman et al. note, this did not mean that later monarchs stopped regulating or restricting the use of land. For instance, in Chapter 5 of their book, The Taking Issue, they describe the Elizabethan equivalents of density, height, and setback requirements; building codes; health and safety codes; and aesthetic regulations.^{35/} English common law also recognized land use restrictions based on the notions of nuisance and public necessity. Thus, it appeared that the English common law safeguards were designed to protect against unjust physical seizure of land, or appropriation by the sovereign for his personal use. However, the taking of an individual's property or restrictions upon his property rights in some way in order to achieve some type of public benefit were recognized by English law.^{36/}

As long as these regulations were designed to promote the public benefit, rather than the personal benefit of the King, justice was not offended. 37/

If the previous discussion seems somewhat interesting, but otherwise tangential, it is important to remember that many of these English common law notions were carried over and accepted in the American colonies, and provided the historical background for many of the Constitutional provisions enacted by the Founding Fathers.

The colonists also inherited, however, a concept of property which permitted extensive regulation of the use of that property for the public benefit -- regulation that could even go so far as to deny all productive use of the property to the owner if, as Coke himself stated, the regulation "extends to the public benefit . . . for this is for the public, and every one hath benefit by it." 38/

The early history of land use regulation in the American colonies followed much along the same lines as in England. Early examples of the police power can be perceived in regulations preventing colonists from depleting the fertility of the soil by continuously planting a cash crop such as tobacco, or affirmative regulations such as the Virginia House of Burgesses' requirement that each adult white male over the age of sixteen grow two acres of corn or be subject to forfeiture of his entire tobacco crop.^{39/} There were also regulations similar to those in Elizabethan England requiring dwellings to be constructed of certain materials, or restricting noxious activities (such as slaughtering of animals) to particular areas of cities or prohibiting them outright.^{40/} Thus, restrictions upon the property-owner's right to use his property as he wished have existed in the United States since its inception.

2. Origins of the concept of "Just Compensation".

Bosselman, et al. note that Madison's first draft of the Bill of Rights, including the Fifth Amendment, closely followed the language of the Virginia Declaration of Rights, which in its section relating to the taking of property made no mention of compensation, but rather, stated that:

men . . . cannot be taxed or deprived of their property for public uses without their own consent, or that of their representatives . . .

and that

no man be deprived of his liberty except by the law of the land, or the judgment of his peers. 41/

When Madison's draft was presented to the first session of Congress in 1789, it was only then that the idea of "just compensation" to the property-owner was introduced. Surprisingly, the records of the debates in state ratifying conventions or debates in Congress provide no explanation as to why Madison introduced this innovation; and while commentators have noted this absence of legislative history, they have also provided some possible rationales.^{42/} The important point that emerges from this historical examination is that the concept of "just compensation" was not one that was firmly enshrined in Anglo-American tradition, but rather, was an innovation. In fact, what was firmly enshrined in the Anglo-American legal tradition already, was that government had the power to take private property or restrict its use when public necessity so required, and that the private property-owner's rights must, in some instances, bow to the public good.

3. When does governmental action constitute a taking? -- the early interpretation of the taking clause and Pennsylvania Coal Co. v. Mahon.

Early decisions by both state and federal courts interpreted the taking clause to mean that compensation would be required only in instances of actual physical appropriation of, or divestiture of title to, property by government.^{43/}

For instance, in Pumpelly v. Green Bay Co.^{44/} the Supreme Court of the United States held that where a state statute authorizing the construction of a dam had resulted in the flooding of the plaintiff's land, the property-owner was entitled to compensation since the governmental action had resulted in a total physical invasion.

These courts also made it clear that where the property-owner incurred indirect or consequential damages, and even where the owner was deprived of all feasible use of the land, compensation was not required absent such physical invasion or divestiture.^{45/} For example, in Brick Presbyterian Church v. City of New York,^{46/} the city of New York had initially granted land to a church to be used for the church building and cemetery. When later regulations prohibited the use as a cemetery, the Court of Appeals upheld the regulation as justified for health reasons, and compensation was denied even though there was no other feasible use for the land. Similarly, the Supreme Court, in a case involving claims for damages for the erosion of land along the banks of the Mississippi River caused by government-built embankments designed to improve the navigability of the river, Bedford v. United States,^{47/} distinguished Pumpelly and another intervening case^{48/} by noting that those two cases involved actual physical invasion of the land, whereas Bedford was a case of merely consequential damage. And in Transportation Co. v. Chicago,^{49/} the Court noted:

Acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking within the meaning of the constitutional provision. 50/

The zenith of this approach to the taking clause was probably reached in a case called Mugler v. Kansas,^{51/} in which the Court held that the plaintiff, who owned a brewery that had been rendered worthless by a Kansas state statute prohibiting the manufacture and sale of liquor, was not entitled to compensation. In a similar case the next year, Powell v. Pennsylvania,^{52/} the Court upheld a Pennsylvania statute outlawing the sale of oleomargarine, and dismissed the "taking" claim that factories that manufactured the margarine had been thus rendered worthless, as "without merit."^{53/} Mugler and Powell thus stand for the proposition that it is within the government's power to prohibit an activity that had previously been permissible, without paying compensation, should the public health, safety, or general welfare so require. What this suggests in the area of condominium conversion, is that a locality could restrict or prohibit conversion without paying compensation, even if it had previously permitted such conversion, if it could establish that such a prohibition was necessary to safeguard the public health, safety or welfare. Obviously, it is this last point that will be subject to dispute, but I believe that the data that is presented in the next section of this paper dealing with the diminishing supply of rental housing and the groups who are disproportionately adversely affected by such conversions, could arguably justify

such regulation. And given the deference that courts are inclined to give to local governments regarding regulation of local activities, as evidenced by Mugler and Powell, it is at least equally likely that such an ordinance would be upheld.

A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the state that its use by anyone, for certain forbidden purposes, is prejudicial to the public interests. 54/

Mugler also discusses very aptly the distinction between governmental action pursuant to what is known as the "police power", and governmental action pursuant to its "eminent domain" power. That is, when government takes private property acting from some necessity to safeguard the public health, safety, morals, or general welfare -- then it is acting pursuant to its police power, and no compensation is required. But when government takes property merely to secure some type of benefit -- then it is acting pursuant to its eminent domain power, and the payment of just compensation is required. 55/

This distinction between the two types of takings, which, in theory, as just expressed, seems so obviously clear-cut; is, in actual practice, much more difficult to determine. The most diverse types of governmental actions have been sustained under the police power, 56/ and what to many has seemed to be clearly governmental action designed merely to achieve a benefit, rather than prompted by real necessity, has not always

been held so.^{57/} And the viewpoint put forward by Justice Harlan in Mugler that the difference between the two types of takings is a difference in kind,

The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner. ^{58/}

has been undermined by an opposing viewpoint, as expressed by Justice Holmes in Pennsylvania Coal Co. v. Mahon,^{59/} that the difference is only one of degree.

Pennsylvania Coal Co. v. Mahon, a case decided in 1922 by the Supreme Court, involved a challenge to Pennsylvania's Kohler Act, which had been passed in response to the problem of "mine subsidence". The problem basically arose because improved methods for mining anthracite coal in the early twentieth century enabled mining companies to excavate and mine to a much greater extent than previously possible. The mining companies held mineral or mining rights in areas that had become quite populous because no danger of subsidence had previously been posed because of the limited technology available at the time. As the mining companies began to take advantage of the improved technology, digging out the coal and leaving the ground underneath hollow, the surface land was no longer sufficiently supported, and would collapse. Homes, farms, sewer and water lines, whole areas of cities and towns were swallowed up by such subsidence.^{60/} Consequently, in

1921, the Pennsylvania legislature passed the Kohler Act, which prohibited the mining of coal in such a way as to cause subsidence of dwellings, public buildings, roads, cemeteries, etc.

In the specific case before the Court, the Pennsylvania Coal Company, which held mineral rights to the land under Mr. Mahon's house, sent him a notice to inform him that mining in his area would quite likely cause subsidence. Mahon, a lawyer, sued for injunctive relief under the Kohler Act, to prevent the company from proceeding. The case reached the Supreme Court, and Justice Holmes took the opportunity to announce a new "rule" that has since become the standard in land use law.^{61/} While first noting the dangers inherent in a situation where government would be required to always pay compensation, ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."^{62/}), he nonetheless held that the Kohler Act was unconstitutional because Pennsylvania had attempted to achieve an eminent domain purpose under the guise of "regulation" under the police power, and thus not paying just compensation. He then went on to state the now-famous "rule":

The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. ^{63/}

which quite clearly viewed the difference between the two types of taking as being one of degree, rather than kind.

The problem with Holmes's approach, besides being wrong

as far as the facts of the actual case go,^{64/} is that it is essentially meaningless, and thus fails to provide any degree of certainty in this area. That is, just as "reasonable minds may differ" as to when government action is designed to achieve a public benefit or a public necessity, they are just as likely, or even more likely, to differ as to when and where along a continuum police power regulation suddenly becomes a taking requiring payment of compensation. The fact that, generally, the Court has avoided dealing with the police power/ eminent domain distinction, and left such decisions to the lower courts across the country, only serves to underscore the uncertainty and lack of utility of the Holmes' rule. In terms of condominium conversion, what this means is that the argument of "taking" could always be raised by a landlord or converter whose conversion is slowed or prevented by a restrictive ordinance, but whether he will actually prevail with such an argument is another matter. Depending on a number of other factors, different courts in different localities may disagree, as indeed they already have.^{65/}

However, whether one takes the difference-in-kind approach of Justice Harlan, or the difference-in-degree approach of Justice Holmes, an inherent weakness of both is that taking an "all-or-nothing" approach to the question of compensation probably causes courts to be swayed by such factors as the importance of the government program involved, the amount of money at stake, etc. in deciding the taking issue, thus exacerbating the problem of lack of uniformity and certainty.

While such an "all-or-nothing" approach may have been necessary or justifiable during the time of Justice Harlan or Justice Holmes, today when land use problems are a complex mix of economic, social and political issues and interests, such an approach is no longer viable. Many modern commentators, responding to this complexity, have argued for less severe alternatives to the taking problem.^{66/} One such commentator, John Costonis, recognizing that there is "a class of regulatory measures that fits neither into the traditional police nor eminent domain power niches and that escapes the confiscation objection only by affording burdened landowners fair compensation in the form of appropriate economic trade-offs,"^{67/} argues for a kind of sliding-scale or multi-tiered approach to the compensation question, which he terms "accommodation power."

Offered here is a compromise position: private litigants should not be permitted to compel government to compensate for overbroad regulatory measures; but to deal fairly with landowners and to enhance the prospect for effective regulation, government should resort to the accommodation power whenever it recognizes beforehand that restrictions it imposes may not be defensible under the police power. ^{68/}

This alternative seems much better designed to deal with a situation like condominium conversion, where we would like to protect the rights of vulnerable groups like elderly or poor tenants, yet do not believe that government alone or private citizens (like landlords or developers) alone should have to bear that cost.

On the other hand, another commentator, Joseph Sax, in

applying economics concepts such as "externalities", "optimal resource allocation", etc. to the taking issue,^{69/} asserts that the real dilemma in modern land-use decisionmaking is to decide: 1) which of two (or more) equally possible or desirable, but conflicting, uses the property in question should be put; and 2) who should bear the opportunity cost of that choice. Thus, in terms of condominium conversion, should the building be retained as rental apartments to serve the needs of certain segments of the population, such as low-income or elderly tenants, who cannot or prefer not to buy property? Or is it better "resource allocation" to convert the building to condominiums, thus enabling new owners and the local government to gain certain tax advantages that accrue through homeownership, and landlords to get out of a business they no longer want to be involved with? Sax argues that in deciding the questions of which of two competing uses is optimal resource allocation, and of who should bear the opportunity cost, we should not be too quick to let government shoulder the burden.

Furthermore, a system which compels compensation in the event of severe diminution in value ignores the possible incentive function of leaving costs on private resource users. . . . To bring under the takings clause governmental restrictions designed to mediate between conflicting interests is to introduce a doctrinal rigidity inconsistent with the kind of planning essential to optimal resource allocation. 70/

(More specific examples of how such theories can be applied in designing alternative solutions to the issue of taking in the situation of condominium conversion will be discussed in the next section, dealing with the rental housing market.)

Justice Holmes's muddying of the waters of the police power-eminent domain distinction is not the only court decision that will affect the outcome of whether ordinances restricting condominium conversion will pass constitutional muster. Various Supreme Court decisions -- some dealing directly with the just compensation question, others not -- have produced a framework within which the arguments both for and against the constitutionality of restrictive ordinances must fit.

In 1926, in Village of Euclid v. Ambler Realty Co.,^{71/} the Supreme Court upheld the zoning power of municipalities, which imposed restrictions on use, height, or density as part of a comprehensive plan. Later decisions, upholding other restrictions like set-back or minimum-lot size requirements,^{72/} reinforced this power of localities in determining the shape and character of their communities. Frequently, these restrictions were upheld although they, as is inevitable in any situation of line drawing, treated similarly situated landholders differently.^{73/} Thus, the argument could be made that ordinances that restrict condominium conversion are merely another type of zoning ordinance restricting the use of property. Ordinances which impose a moratorium or freeze on conversions when the locality's rental housing vacancy rate drops below a certain percentage, are no more arbitrary or irrational than zoning ordinances which permit mixed use on one side of a zoning boundary, and residential use only on the other side of the boundary.

In fact, the argument that restrictive ordinances are merely another type of zoning restriction has already been raised in two lower courts, that have, of course, held contrarily on the same issue. The question which was raised was whether such an ordinance was truly a restriction on use of the property, or whether it was, in actuality, a prohibition of a type of ownership or tenancy. In Goldman v. Town of Dennis,^{74/} the Supreme Judicial Court of Massachusetts held, first, that regulation of condominiums was encompassed within a locality's zoning power; and secondly, that the prohibition of conversion of a "cottage colony" to condominiums was authorized by the zoning by-law relating to "change of use."

Section 2 of c. 40A authorized the regulation of the use of buildings, structures and land. . . . Section 5, . . . made zoning by-laws and amendments inapplicable to "existing buildings or structures" and to "the existing use . . ." . . . but the by-law or amendment was to apply "to any change of use."

The legislative body of the town could reasonably believe that conversion of a cottage colony to single family use under condominium type ownership would encourage expansion of use beyond the short summer season. . . . Here the by-law is explicit in its limitation of the expansion of a nonconforming use. Although the limitation is phrased in terms of the type of ownership, we think it is valid as a regulation of "change of use." ^{75/}

The SJC also dismissed the plaintiff's equal protection claim by noting that: "Equal protection does not prohibit differences in treatment where there is a rational basis for those differences reasonably related to the purposes which the regulation seeks to accomplish."^{76/}

However, the appellate court of New Jersey in Bridge

Park Co. v. Highland Park,^{77/} a case involving a suit by an owner of some "garden apartments" in New Jersey challenging a local ordinance which prohibited their conversion to condominiums, held that such a prohibition was not within the zoning power of the municipality because it was an attempt to prohibit the type of ownership or tenancy, not the use of the land. The court noted that whether the buildings were apartments or condominiums, their use -- as dwellings -- would nonetheless be the same.

A quick reading of this section discloses no power granted to a municipality to regulate the ownership of buildings or the types of tenancies permitted. It is obvious that each phrase in the statute refers either to the type of construction or the use permitted on real property within the confines of a municipality.

Defendant attempts to characterize condominium ownership as a "use" of land -- i.e., since the property in question is to be "used" as a condominium, the municipality may regulate or prohibit such "use." It is apparent, however, that after change of ownership as planned, the same buildings will be on the premises in question and the use to which they are put will also remain the same. We conclude that the word "use," as contained in the statute above, does not refer to ownership but to physical use of lands and buildings. A building is not "used" as a condominium for purposes of zoning. ^{78/}

Although the differing results in the two cases can probably be explained by differences in the state statutes involved, or the particular fact situations, what these cases indicate is that looking to the courts for a definitive answer is not a very promising approach. Additionally, there are other court decisions that might affect the outcome of a condominium conversion lawsuit. For instance, in 1954, the

Supreme Court, in Berman v. Parker^{79/} held that "aesthetic objectives" were a goal for which localities could properly exercise their police or eminent domain powers. Besides some dicta in the opinion that could be applicable to a condominium conversion lawsuit,^{80/} the majority opinion, authored by Justice Douglas, is notable for the broad scope of authority recognized by the Court for local officials to achieve comprehensive planning goals.

We deal, in other words, with what has traditionally been known as the police power. . . . Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. . . .

. . . The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. . . .

If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrated plans for redevelopment would suffer greatly. The argument pressed on us is, indeed, a plea to substitute the landowner's standard of the public need for the standard prescribed by Congress. 81/

Indeed, Justice Douglas specifically noted the limits on the courts' power in this area, in deference to the legislative power.

It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular

tract to complete the integrated plan rests in the discretion of the legislative branch. 82/

The Berman decision is also noteworthy in that after recognizing the validity of what some would characterize as "mere" aesthetic objectives, it would seem to be difficult for the Court to invalidate ordinances whose goals (e.g. retention of housing stock for low and moderate income groups, including the elderly; planned development and growth; curbing of speculation; etc.) are at least as legitimate as aesthetic objectives.

In the 1970's, the Supreme Court decided several cases which recognized the legitimacy of localities' attempts to preserve the "character of the community." In Village of Belle Terre v. Boraas,^{83/} the Court upheld a zoning ordinance of the village of Belle Terre, New York, which prohibited more than two unrelated persons from living together in single-family dwellings. This prohibition, the village's exclusion of "lodging houses, boarding houses, fraternity houses, or multiple dwelling houses,"^{84/} and the village's close proximity to the State University of New York at Stony Brook, all made it clear that the town's intent was to prevent a large influx of students into the population, and to preserve the character of the village as a suburban family community.^{85/} In a majority opinion again authored by Justice Douglas, the Court sanctioned these motives as permissible and within the scope of its previous decision in Berman v. Parker.

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. This goal is a permissible within Berman v. Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion, and clean air make the area a sanctuary for people. 86/

Two years later, in Village of Arlington Heights v. Metropolitan Housing Development Corporation,^{87/} the Court held that a locality had properly acted within its discretion in denying a zoning variance to a development group that wished to construct multi-family structures for low and moderate income groups on a lot that had been designated for single-family dwellings. The Court upheld the village's action even though there was evidence in the record of the case to indicate that the zoning decision had been influenced by racial considerations, and despite the fact that the effect of the decision was the continuance of a rather stark pattern of racial segregation in this suburb of Chicago.^{88/} Thus, if the Court has upheld the right of communities to preserve their existing character -- often to the detriment of groups such as the poor and racial minorities -- then why would it not be equally within a community's discretion to decide that it wanted to preserve its existing character (including significant proportions of elderly, poor, and racial or ethnic minority

groups) by prohibiting or restricting condominium conversion in much the same fashion as the village of Belle Terre prohibited boarding houses and lodging houses?^{89/}

One final point that needs to be examined in terms of Fifth Amendment application to the situation of condominium conversion is the question of how "just compensation" is to be determined. In a recent Fifth Amendment compensation case, Almota Farmers Elevator & Warehouse Co. v. United States,^{90/} the Court outlined the rules developed in previous cases for the determination of what constitutes "just compensation":

And "just compensation" means the full monetary equivalent of the property taken. The owner is to be put in the same position monetarily as he would have occupied if his property had not been taken. . . . To determine such monetary equivalence, the Court early established the concept of "market value": the owner is entitled to the fair market value of his property at the time of the taking. . . . And this value is normally to be ascertained from "what a willing buyer would pay in cash to a willing seller." . . . ^{91/}

However, in the situation of condominium conversion, even if the determination is made that the landlord or other titleholder is entitled to compensation, there would be the additional complication of trying to determine whether he was entitled to the fair market value of the building if it sold as an apartment, or the arguably inflated value of the property if it sold as individual condominiums. Clearly, a converter will not be satisfied with what he perceives as reduced value, but on the other hand, Sax's position^{92/} that government should not be too quick to assume all the burdens of the private market is equally compelling.

PART II. -- The "Taking" Issue

- 21 U.S. Const. amend. V.
- 22 See Chan v. Town of Brookline, n. 15, supra.
- 23 375 N.E. 2d 1212 (1978).
- 24 1979 Mass. Adv. Sheets (SJC) 2257
- 25 Goldman, 375 N.E. 2d 1212, 1213, 1214 (1978), and Grace, 1979 Mass. Adv. Sheets (SJC) 2257, 2263 (1979).
- 26 See Goldman and Grace, supra, notes 23 and 24.
- 27 See n. 15, supra.
- 28 U.S. Const. amend. V.
- 29 Fred Bosselman, David Callies, and John Banta, The Taking Issue (Washington D.C.: U.S. Government Printing Office, 1973), pp. 318-319.
- 30 Ibid. pp. 1-2
- 31 Ibid, pp. 56-60, and sources cited therein.
- 32 Ibid, pp. 53-55; and A. James Casner and W. Barton Leach, Cases and Text on Property (Boston: Little Brown and Company, 1969) pp. 223-231.
- 33 Magna Carta, Chapter 39 (later Article 29, when revised in 1225), cited in Bosselman, et al. supra, n. 29, p. 56.
- 34 Bosselman, supra, p. 53, n. 1; and Casner, supra, p. 225.
- 35 Bosselman, supra, pp. 63-70.
- 36 Bosselman, in Chapter 5 of his work cites various examples of Elizabethan land use regulations. For instance, in 1580, Queen Elizabeth, concerned with overcrowding in London, issued a proclamation prohibiting further new housing construction:

. . . yet where there are such great multitude of people brought to inhabit in small rooms, . . . and in a sort smothered with many families of children and servants in one house or small tenement; it must needs follow, if one plague or popular sickness should, . . . enter amongst these multitudes, that the same would not only spread itself, and invade the whole city and confines, but that a great mortality would ensue
(Bosselman, p. 65)

In 1588, she issued another Proclamation decreeing the equivalent of large-lot zoning:

After the end of this session of Parliament, no person shall within this realm of England make, build, or erect, or cause to be made, builded, or erected, any manner of cottage for habitation or dwelling, nor convert or ordain any building or housing made or hereafter to be made, to be used as a cottage for habitating or dwelling, unless the same person do assign and lay to the same cottage or building four acres of ground at the least (31 Eliz. I C. 7, cited in Bosselman, p. 66)

In 1604, another Proclamation decreed that any new houses constructed within nine miles of London must have: "utter wals and windowes thereof, and the fore-front of the same, be made wholly of bricke, or bricke and stone." (Bosselman, p. 67)

And Bosselman notes, Parliament, following the great fire of 1666 that destroyed much of London, passed an act and regulations for the rebuilding of the city that provided

. . . divided all new housing in London into four classes, with separate regulations governing each. Uniform roof lines were required in many areas, and the Act required all houses on "high" streets to have front balconies, "four feet broad, with rails of iron, of equal distance from the ground," with pavements in front "of good and sufficient flat stone." The ground floor was required to be not less than six nor more than eighteen inches above street level, . . . (19 Ch. II C. 3 Paragraphs XIII and XIV, 8 Stat. at Large, pp. 233-251; cited in Bosselman, p. 68)

37 Bosselman, supra, p. 76.

38 Ibid., pp. 80-81.

39 Ibid., pp. 82-83.

40 Ibid., pp. 83-84.

41 Virginia Declaration of Rights, cited in Bosselman, supra, p. 99.

- 42 See Bosselman, supra, pp. 99-100, and Sax and Stoebuck, cited in Bosselman, p. 100.
- 43 Brick Presbyterian Church v. City of New York, 5 Cow. 538 (N.Y. 1826); Commonwealth v. Alger, 7 Cush. 53 (Mass. 1853); Pumpelly v. Green Bay Co., 80 U.S. 166 (1871) and U.S. v. Lynah, 188 U.S. 445 (1903).
- 44 80 U.S. 166 (1871).
- 45 Brick Presbyterian, n. 43, supra; Bedford v. United States, 192 U.S. 217 (1904).
- 46 5 Cow. 538 (N.Y. 1826).
- 47 Bedford v. United States, 192 U.S. 217 (1904).
- 48 U.S. v. Lynah, 188 U.S. 445 (1903).
- 49 99 U.S. 635 (1878).
- 50 Ibid., at 642.
- 51 Mugler v. Kansas, 123 U.S. 623 (1887).
- 52 127 U.S. 678 (1888).
- 53 Ibid., at 687.
- 54 Mugler, n. 51 supra, at 667-668.
- 55 See, e.g. A. H. Rathkopf, The Law of Zoning and Planning (New York, N.Y.: Clark Broadman Co., Ltd., 1956), 4 vols.; E. Freund, The Police Power (Chicago: Callaghan & Company, 1904); Pennsylvania Coal Co. v. Mahon, infra, n. 59, Brandeis, J., dissenting, at 417.
- 56 For instance, Village of Euclid v. Ambler Realty, 272 U.S. 365 (1926), (use restrictions); Gorrie v. Fox, 274 U.S. 603 (1927), (setback requirements), Berman v. Parker, 348 U.S. 26 (1954) (acquisition of large tracts of land for urban renewal); Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), (upholding ordinance that prohibited certain types of dwellings, and prohibited more than two unrelated persons from living together).
- 57 See, e.g. Berman v. Parker, 348 U.S. 26 (1954); and Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).

58 Mugler, supra, at 668-669.

59 260 U.S. 393 (1922).

60 Bosselman, supra, p. 128, quotes the Brief of the City Solicitor of the town of Scranton, Pennsylvania, before the Supreme Court in 1922:

Our once level streets are in humps and sags, our gas mains are broken, our water mains threatened to fail us in time of conflagration, our sewers spread their pestilential contents into the soil, our buildings have collapsed under their occupants or fallen into the streets, our people have been swallowed up in suddenly yawning chasms, blown up by gas explosions or asphyxiated in their sleep, our cemeteries have opened and the bodies of our dead have been torn from their casket.

61 For a discussion of the prior history of Pennsylvania Coal Co. before it reached the U.S. Supreme Court, see Bosselman, supra, pp. 129-133.

62 Pennsylvania Coal Co., n. 59, supra, at 413.

63 Ibid., at 415.

64 As the legislative history of the Kohler Act, and statements like that of the City Solicitor of Scranton (see note 60, supra) indicate, the regulation was clearly designed to deal with a real threat to the public health, safety or welfare, and could therefore be sustained as a valid exercise of the police power. Or as Justice Brandeis so cogently noted in his dissent in Pennsylvania Coal:

Coal in place is land; and the right of the owner to use his land is not absolute. He may not so use it as to create a public nuisance; and uses once harmless, may, owing to changed conditions, seriously threaten the public welfare. Whenever they do, the legislature has power to prohibit such uses without paying compensation; and the power to prohibit extends alike to the manner, the character and the purpose of the use. . . .

Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgement by the state of

rights in property without making compensation. But restriction imposed to protect the public health, safety or morals from dangers threatened is not a taking. The restriction here in question is merely the prohibition of a noxious use. (at 417)

- 65 See, e.g. Goldman v. Town of Dennis, Mass., 375 N.E. 2d 1212 (1978), upholding a condominium conversion ordinance; and Bridge Park Co. v. Highland Park, 113 N.J. Super. 219, 273 A. 2d 397 (1971), striking down a condominium conversion ordinance.
- 66 John Costonis, "Fair Compensation and Accommodation Power," in 75 Columbia L. Rev. 1021 (1975); Joseph Sax, "Takings, Private Property and Public Rights," in 81 Yale L.J. 149 (1971); and Bosselman, et al., The Taking Issue, supra, n. 29.
- 67 Costonis, supra, at 1058.
- 68 Ibid., at 1073.
- 69 Sax, supra, n. 66.
- 70 Ibid., at 160-61.
- 71 272 U.S. 365 (1926).
- 72 See, e.g. Gorieb v. Fox, 274 U.S. 603 (1927) (setback); Welch v. Swasey, 193 Mass. 364, 79 N.E. 2d 745 (1907, aff'd., 214 U.S. 91 (1909), (height); and Flora Realty & Inv. Co. v. City of Ladue, 362 Mo. 1025, 246 S.W. 2d 771, appeal dismissed, 344 U.S. 802 (1952) (lot-size).
- 73 See Euclid, n. 71, supra; but note however, that the Court has prohibited so-called "spot-zoning" where a locality prohibits a certain use of property, when in fact, such use would not sufficiently disturb the character of the community or its comprehensive plan, so as to justify the burden imposed on the property-owner. E.g. Nectow v. City of Cambridge, 277 U.S. 183 (1928).
- 74 ____ Mass. ____, 375 N.E. 2d 1212 (1978).
- 75 Ibid., at 1213-1214.
- 76 Ibid., at 1214.
- 77 113 N.J. Super. 219, 273 A. 2d 397 (1971).

78 Ibid., (A. 2d) at 398-399.

79 348 U.S. 26 (1954).

80 For example,

The public end may be as well or better served through an agency of private enterprise than through a department of government -- We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects. (at 33-34)

and,

But we have said enough to indicate that it is the need of the area as a whole which Congress and its agencies are evaluating. (at 35)

81 Ibid., at 32, 33, and 35.

82 Ibid., at 35-36 (citations omitted).

83 416 U.S. 1 (1974).

84 Ibid., at 2.

85 Ibid., at 2.

86 Ibid., at 9.

87 429 U.S. 252 (1976).

88 The majority opinion noted that although Arlington Heights is situated only 26 miles northwest of the Downtown Loop area of Chicago (a city with a large Black population), its Black population numbered only 27 out of a total population of 64,000. (429 U.S. 252, 255 (1976)). And, the Court noted (at 257-258, and 269), at the public hearings held before the town's planning board and city council, some speakers objected to the MHDC project because it would mean an increase of low-income and minority residents in Arlington Heights.

89 Indeed, some lower courts have already recognized this type of "affirmative action" approach to housing in other contexts. In Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151, 336 A. 2d 713, appeal dismissed, 423 U.S. 808 (1975), the New Jersey

Supreme Court struck down a local suburban ordinance designed to exclude groups that it thought would require greater expenditures on social services. The court held that the ordinance was unconstitutionally exclusionary, reinforcing certain patterns of economic and racial segregation. The court also endorsed a "fair-share", "regionalism" approach between cities and suburbs.

In Taxpayers Association v. Weymouth Township, 71 N.J. 249, 364 A.2d 1016 (1976), appeal dismissed, 430 U.S. 977 (1977); the New Jersey Supreme Court (again), upheld a local ordinance which permitted land to be used for mobile homes (which had previously not been permissible), but allowed only elderly people to occupy the mobile homes. After first noting the broad scope of localities' police and comprehensive planning powers, the court then justified the ordinance on the basis of the special and particularized needs of the elderly for housing, citing and discussing several reports that had documented such needs. (at 1025 to 1031)

90 409 U.S. 470 (1973).

91 Ibid., citations omitted, at 473-474.

92 See text accompanying footnote 70.

PART III. CONDOMINIUM CONVERSION: The Planning Perspective.

A.

The Introduction to this paper advanced various hypotheses as to the possible causes and effects of condominium conversion. Although, as noted, there has been sharp disagreement on the effects of conversion (or perhaps more specifically, on whether those effects are negative or positive overall), there has certainly been agreement that public policies in many areas -- economics, housing, tax, social policy -- have together created an environment in which condominium conversion became an inevitable consequence.^{93/} In this section of the paper, I intend not only to enumerate these various factors, but also to consider some alternative solutions to the problems of tenant dislocation and erosion of rental housing, in light of these factors.^{94/} If we are ever to deal with these two problems in a realistic and non-simplistic manner, we must first understand how these policies have created the problems, and then design alternative policies in response to them. Indeed, one of the failings of taking a purely legal approach to the problems associated with condominium conversion, is that it fails to take into account these larger forces, dealing instead with only the plight of an individual property-owner. In that sense, a purely legalistic approach can never "solve" the problems created by condominium conversion. Finally, this discussion of policies and alternatives provides a useful background for

analyzing how successfully the four localities studied have attempted to grapple with the problems of tenant dislocation and erosion of the rental housing stock in their conversion ordinances, which is the subject of the next and final section of the paper.

1. Housing and Economics

One factor that has clearly contributed to an environment conducive to condominium conversions is the extreme vulnerability of the housing market to swings in the U.S. economy. Since the cost of producing or purchasing a home is much higher than that of other consumer goods, both builders and buyers of homes must borrow money to finance the expenditure. Because the amount borrowed to purchase or construct a home is a greater percentage of the housing borrower's financing and the period of repayment is longer than that of other borrowers, builders and purchasers of homes are both more vulnerable to credit fluctuations and less able to compete favorably with other potential borrowers during times of tight credit.^{95/}

Because credit is prominent in the construction and purchase of new housing and in the transfer of existing units, changes in interest rates and in the availability of credit affect the price of housing services more than the price of most other capital and consumer goods. For example, an increase in interest rates from 6 percent to 9 percent raises the cost of amortizing a thirty-year loan by 34 percent. . . .

Interest rates fluctuate widely around long-run trends, rising when demand for credit is high or the supply of credit is low. These short-run fluctuations may cause large inverse swings in the rate of housing construction; rises in the price of housing services lower the amounts demanded, as a result of which demand for additions to the housing stock is greatly reduced. 96/

This vulnerability of the housing market to credit fluctuations is further exacerbated by the fact that the housing industry is used not just as an economic indicator of the state of the economy,^{97/} but is also used by the federal government as a tool to either stimulate or depress the economy when necessary. Since, as already noted, housing producers and consumers are so dependent on credit for financing, any small change in monetary policy by the government, either tightening or expanding the availability of money and credit, will result in sweeping changes by producers and consumers in response. Manipulating the housing industry in order to manage the economy is also attractive to many government policymakers because it will result in changes not only in the housing industry itself, but also in a number of related industries as well, such as the timber and lumber industries, pipe and plumbing, electrical, and the various skilled labor and trades involved in housing construction.

At the national level, housing production has often been viewed as a critical instrument in the arsenal of economic stabilization policies, since residential and other construction activities are particularly sensitive to changes in the cost of borrowing. As national economic conditions vary, policy makers try to stimulate or depress housing starts either to dampen inflationary pressures or to pump-prime a slack economy. At times, of course, the pursuit of stabilization may work against the goal of high-volume construction, but, in general, the two concerns have proved mutually reinforcing. ^{98/}

The situation in the rental housing market is even more acute since, as Michael Stegman points out in an article entitled "Trouble for Multifamily Housing: Its Effects on

Conserving Older Neighborhoods," " . . . annual variations in multifamily starts are greater and tend to accentuate the short-term building cycle more than variations in single-family starts."^{99/} This fact combined with other economic factors, has created a situation in which condominium conversion is almost inevitable. Although the federal government has created a secondary mortgage market and alternative sources of financing to the traditional banks and savings and loan associations, in order to deal with these cyclical fluctuations, through such programs and institutions as the Federal National Mortgage Association (FNMA or Fannie Mae), the Government National Mortgage Association (GNMA or Ginnie Mae), and the Federal Home Loan Bank (FHLB), these mechanisms clearly were not designed to deal with an economy in which the prime lending rate has risen to twenty percent, and home mortgage rates are above fifteen percent in most areas of the country.^{100/} Certain tax advantages and other incentives (which are discussed in greater detail below) have resulted in the continued preference of consumers for homeownership, but the tightening of credit has forced them to look for a more affordable substitute to the traditional single-family dwelling.^{101/} Condominiums, both new and converted, provide that more affordable alternative, since, according to the Department of Housing and Urban Development's 1975 study on condominiums and cooperatives, condos provide a larger percentage of units in the lower price range than either single-family dwellings or townhouses, and the median

price of condos is lower than that of either of those two forms of housing.^{102/} The tightening of credit availability for financing of any type of housing construction, the increase in land acquisition costs, or total unavailability of suitable land in older core cities, have all prevented the supply of condominiums from keeping pace with demand.^{103/}

These same factors have also prevented the necessary increase in the supply of multifamily rental housing. But there is an additional factor dampening new construction of rental housing. Added to the increased costs of construction, various sources have confirmed that over the last ten years, operating and maintenance costs have more than doubled, causing many developers and builders to view rental housing as a risky proposition for the capital outlay involved.^{104/}

A major contributor to this staggering rate of inflation was a 151 percent climb in the cost of fuel and coal, a 78 percent increase in the cost of electricity, a 67 percent rise in property taxes and an 89 percent increase in residential water and sewer charges. With respect to maintenance, the cost of furnace repairs more than doubled since 1967 as did the price of reshingling an asphalt roof. . . . The BLS study indicated that operating expenses climbed by a staggering 104 percent in the past 10 years, with the largest 12-month jump occurring between 1973-1974, when costs rose by 20 percent. ^{105/}

These increases in operating and maintenance costs, coupled with the fact that rents have not kept pace with increases and the loss of certain tax advantages, have also dampened landlords' enthusiasm. They have been caught in what Stegman describes as a "cost-revenue squeeze,"^{106/} and for them, condominium conversion is a miraculous way out of a

troublesome business.

The interplay of these economic forces alone have created an environment in which condominium conversion would appear to be a likely consequence. The development of condominium conversion as a response to these factors is even more understandable in light of developments in tax, housing, and social policies affecting housing (and rental housing in particular). A discussion of these developments follows.

2. Condominium Conversion and Tax Policies

In terms of condominium conversion, recent tax policies are relevant in basically two ways: (1) deductions allowed to homeowners for property tax mortgage interest paid, and the failure to tax "imputed rent" have provided incentives to own rather than rent housing; and (2) recent reforms in depreciation, "tax shelters" provisions and accounting provisions have created disincentives for landlords to stay in the rental housing business.

Much has been written already about the various ways in which the Internal Revenue Code has been used to encourage homeownership.^{107/} Briefly, by allowing deductions to a homeowner for property tax and mortgage interest paid, which can be of considerable value to taxpayers of certain income brackets,^{108/} the government favors homeowners as a group over renters as a group, since renters are allowed no similar deduction (even though arguably, their rent pays part or most of that property tax.)^{109/} The gain or benefit that the homeowner receives from such a system is realized in several ways.

First of all, if he were to take the same amount of money that he puts into the purchase of a home and invest it in any other asset, he would have to pay taxes on any profit or gain "realized" during that year.^{110/} But because the tax system holds that the profit a property-holder/taxpayer gets from holding property is not realized until he sells that property, the homeowner receives the following advantages 1) the immediate benefit of a deduction for property taxes and mortgage interest paid, as an offset against his other forms of income; 2) a deferral of taxation of benefits derived from holding the property (i.e. appreciation in value, building up of his equity interest, and of course, the shelter benefit) until the time of sale, and 3) the more favorable "capital gains" treatment at the time of the sale.^{111/} Thus, such advantages may work to alter the preferences of a consumer in his choice of shelter for reasons unrelated to real needs. And finally, one must remember that the homeowner accrues all of these advantages when very little of his own money has in fact been paid out or is "at risk." since most home purchases are made with borrowed capital. And as Professor Stanley Surrey of Harvard Law School, a former Assistant Secretary for Tax Policy, has pointed out in his textbook on federal income taxation,^{112/} such advantages are of greater value to taxpayers in higher income brackets, and the "deferral" of the tax until the time of sale of the property is often equivalent to an outright exemption to such taxpayers.

Thus, one method of communication may be to compare the benefit of deferral with an equivalent subsidy made directly by the Government in the form of a grant or a loan. It can then be shown that the better off the investor is the higher is his tax bracket, then the more he would receive as a grant and the larger the loan. . . . if the cost of the investment is expensed then the result is that (1) the higher the taxpayer's bracket the less is his share of the investment and the greater the leverage accorded him by the government, that is, the less is the amount of his money at risk; and (2) the interest-free leverage enables the after-tax rate of profit on his investment to equal the before-tax rate. . . .

. . . Essentially, looking at the dollars invested, deferral of tax considerably lowers the effective rate of tax on the income from the investment -- and thus increases the after-tax rate of return. . . . But that same deferral mechanism can be applied to borrowed dollars, since the benefits of the tax shelter are equally operative for the investor whether the money invested is the investor's own funds or represents borrowed money. 113/

The failure to tax the homeowner's "imputed rent" is another tax policy that encourages homeownership over rental of housing. To understand what is meant by "imputed rent" one need only consider the example of two taxpayers with equal incomes and equal amounts of capital to invest. Taxpayer A invests all of his capital in non-real estate investments, and rents his shelter. Taxpayer B invests some of his capital in non-real estate investments, but uses some of the money towards purchase of a home. At the end of the year, taxpayer A must pay taxes on profits received from all of his investments, whereas taxpayer B pays tax on only gross income received from his non-real estate investments.

The personal income tax encourages taxpayers to buy rather than rent housing by making the tax bill of homeowners smaller than that of renters

who invest in other assets. . . . All assets of the renter yield taxable income. The homeowner holds \$15,000* of his assets as equity in his home. He receives no cash income from his home, but he could have invested in other assets and earned \$600, or he could have rented the house for \$3,750, netting \$600, after he had paid \$3,150 in housing expenses. Actually, the homeowner is playing two separable roles; he is a tenant who pays "imputed" rent to the landlord, and he is a real estate investor who receives "imputed" rental income from his "tenant." Since the same person plays both roles, no cash changes hands. . . .

A neutral tax system would levy the same tax on the owner and renter. . . . If the homeowner were taxed like other investors, he would have to report as gross income the rent he could have obtained in his house. 114/

Recent reforms in the areas of depreciation, tax shelter provisions and accounting provisions of the Internal Revenue Code have also influenced the development of condominium conversion. Although these changes in the Code, enacted as parts of the Tax Reform Acts of 1969 and 1976, instituted some necessary reforms, they have also had the unfortunate effect of discouraging landlords from staying in the rental housing business. After 1969, with some limited exceptions for projects begun before 1969, section 236 or section 8 housing, and historical property, owners of property were limited to using either the straight-line method of depreciation, or the declining-balance method so long as it did not have an annual

(* All of the figures in this quotation are based on a hypothetical example posed by Aaron, comparing "the tax liabilities of a renter and an owner, each of whom earns \$15,000 per year, occupies housing with a market value of \$3,750 per year, and has \$37,500 in assets." 115/)

depreciation rate exceeding 125 percent.^{116/} This provision, as well as provisions relating to changes in accounting reporting methods for tax purposes,^{117/} were designed to prevent abuses by high-income taxpayers who would either invest in new construction products as part of "equity-syndication schemes" or purchase existing rental property in order to take advantage of accelerated depreciation as an offset to their ordinary income.^{118/} While such reforms were clearly necessary to prevent further urban decay as a result of absentee landlords whose only interest in inner-city dwellings was for the tax write-off they provided,^{119/} they have also had the unfortunate effect of giving other already hard-pressed landlords another reason to get out of the rental housing business. Such landlords are caught in a "cost-revenue squeeze" in which operating and maintenance costs have risen dramatically while rents have not kept pace; and the situation is further exacerbated by the institution of rent control in some cities, and by the loss of such tax advantages.

Prior to that time, it was the practice of apartment owners to trade properties among themselves after the benefits of taking double declining balance depreciation on the property had expired for the original owners. The new owner could purchase the property and establish a new depreciation schedule based on the purchase price and enjoy the maximum benefits. The reforms eliminated this practice by allowing the purchaser of a used property to take only 125% declining balance depreciation. This reform severely limited the advantage of purchasing property and had the effect of reducing the market value for holders of such property. As it became difficult to sell such property to investors, the opportunities for

selling it to converters became attractive since demands for condominium units in urbanized areas were growing. 120/

On the other hand, lest too much blame be placed upon the tax reformers for the landlords' plight, it should be noted that the reforms do not totally wipe out the tax incentives of ownership.

It is important to note that even "straight-line" depreciation (2.5 percent annually over a presumed forty-year life of a new building) benefits landlords enormously, since most buildings last longer than forty years and tend actually to appreciate in value over time because of inflation and the housing shortage. Value depends on income-producing capacity, and as long as a housing shortage exists even poorly maintained housing will usually produce considerable amounts of income. 121/

Furthermore, one might also argue that landlords can hardly be justified in complaining about the denial of a benefit which was incorrectly, or at least improvidently, granted in the first place. The receipt of the benefit in the past does not entitle them to perpetual benefit. Or as Joseph Sax noted in the context of his discussion of governmental regulation through police power or eminent domain:

Furthermore, the question of expectations must be evaluated in light of the nature of the governmental regulation. When the government has vindicated public rights and in doing so has caused an individual economic injury, the government action follows from a situation in which the property owner has been imposing costs on others without compensation. . . . the disadvantaged owner is yielding something which obviously was not his to begin with. 122/

It should also be apparent by now that the pressure towards conversion is not the result of the operation of a

single tax provision, nor even of all of the recent tax reforms. Rather, it is the combination of the factors of tax provisions which make ownership of housing more advantageous than rental of housing, the failure of new construction of housing to keep pace with the demand for housing, economic factors which have priced many new homebuyers out of the market, and the loss of certain tax advantages for the operation of rental housing, which have created an environment conducive to condominium conversion. Additionally, some other factors such as housing policies and social characteristics of renters must be examined before we turn to a discussion of some possible solutions for the problems posed.

3. Housing Policies, Rent Control, and Condominium Conversion

The previous discussion has shown how tax provisions have encouraged consumers to own rather than rent their housing, but it has not explained why ownership has been preferred over rental. The concept of physical determinism and the belief that one's living environment could influence future development and behavior patterns, led to the expressed commitment in the 1949 Housing Act of "a decent home and a suitable living environment for every American family."^{123/} Although the characteristics of households and their housing preferences have changed markedly since then,^{124/} many of the assumptions which underlay the policies encouraging homeownership in the 1950's are being used as arguments for individual ownership through condominium conversion as opposed to rental of housing. For example, in a recent study

conducted by the Community Development Department of the city of Cambridge, Massachusetts, of former tenants and new owners of rental units converted to condominiums, the new owners were asked how long they had lived in Cambridge prior to the time of purchase, how long they intended to stay in Cambridge, and what improvements or renovations had been made by the converter, the new owner individually, or by the new owner along with other owners (perhaps as part of an owners' association.)^{125/} These questions indicate some tentative hypotheses that owners may have a greater commitment to the community (i.e. less transient) than renters, and that they may have greater interest in improvement and maintenance of the property. In an article entitled "Selling a Condominium Conversion to Tenants" prepared by David B. Wolfe, the president of the Community Management Corporation of Reston, Virginia, for an American Law Institute-American Bar Association course on condominium conversions, Wolfe describes as an integral part of the marketing strategy of a 1600-unit conversion project the emphasis on "ownership benefits, economies over alternative products, continued freedom from maintenance responsibilities, location, and, finally, environment."; ". . . total environments that enable free people to choose from a multitude of opportunities just how they will express themselves and shape the lifestyles that best suit them."; or "The association; how it protects each person's investment and how it operates democratically; each person has a vote; the owners have their own 'company' to operate the community,

whose board of directors are the owners themselves."^{126/}

The HUD Condominium/Cooperative Study also noted that new owners cited "convenience" and "pride of ownership" as additional motivation for purchasing a condominium.^{127/} Thus it would appear that the traditional arguments for homeownership -- i.e. better maintenance of property, and the intangible value of "pride of ownership" and a concomitant sense of commitment to the community -- are being used to justify condominium conversion. Therefore, it becomes important to examine whether such representations or arguments are in fact borne out. Regarding the argument that conversion contributes to improvement and better maintenance of property, the previously-cited Cambridge "Condominium Conversion Study" indicates "thirty percent of the condominium developers made no improvements, thirty percent made four or fewer improvements, and thirty percent made five or more different improvements."; that many of the improvements made by the developers were mostly the "cosmetic" ones of "painting, . . . windows, bathrooms, kitchens, and refinishing of floors and walls"; and that the substantial improvements such as "roofing, exterior painting, heating or insulation improvements" were carried out by the owners through the ownership association after purchase.^{128/} Although one report of this type is certainly not conclusive, the implications that such findings have for low-income and elderly residents who will often not have the financial wherewithal to make such improvements, are relevant. There are also indications that the

democratic operation of the condominium community and the "opportunities to express themselves and shape the lifestyles that best suit them,"^{129/} are not completely accurate, as the following excerpts from an article in the Miami Herald^{130/} indicate:

Condominium residents once spent a good part of their energies fighting developers. Now some spend a good deal of time fighting each other -- in shouting matches at meetings, fist fights in the recreation rooms and with expensive lawyers in court. . . .

Consider the evidence:

Incidents of verbal and physical abuse at meetings, once rare enough to raise eyebrows, have become routine.

One Dade County attorney who attends hundreds of condo meetings each year no longer counts the number of fights. Now he only keeps track of the number of heart attacks during stormy debates.

His record to date: three heart attacks at one meeting. . . .

Hundreds of thousands of dollars in legal fees are being spent on lawsuits involving petty disputes:

A Miami Beach man went to court when he was fined \$25 by his condo association for violating safety rules in the parking garage.

He hired attorneys to sue the association. Since he is a member of the association as well, he also had to pay for the attorneys who defended the group he was suing.

At another Miami Beach condo, the association sued an owner when his dog gave birth to pups and he decided to keep one, violating a condo rule that only pets registered by a certain date would be permitted on the grounds.

That owner won in court and kept the dog. Other condo owners have lost on pet rules, . . .

At last year's annual meeting in the condo, the stormy session got underway at 8 p.m. and was still going strong nine hours later.

The association officers had their attorney and four assistants and groups of condo owners were flanked by their legal counsels.

Finally, at 5:30 a.m., the meeting was postponed so exhausted combatants could get some sleep or plan strategy, and the meeting resumed at 1 p.m.

Another often repeated assumption is that a major contributing factor to the phenomenon of condominium conversion is the institution of rent control in many major cities.^{131/} Housing experts, landlords and developers are all quick to point out that rent control boards have been unwilling to authorize increases that have kept pace with the rapid rise in operating and maintenance costs. If the landlord, caught in this "cost-revenue" squeeze, has also already taken the majority or all of his depreciation allowance on the building, he may feel that the only way out of a losing proposition is to sell out to a converter, or to put the units for sale on the market and continue to manage the property for the new owners' association.^{132/} Although it is impossible within the confines of this study to embark upon a detailed examination of the efficacy and efficiency of rent control, or whether it is a cause of an effect of condominium conversion,^{133/} all of the sources confirm that it is a major factor in the conversion phenomenon.^{134/} However such a conclusion is not meant to imply that the solution to the conversion problem is to merely repeal rent control ordinances, for as an article

in Business Week notes:

The chief culprit for declining rental housing, say housing experts, is inflation, . . . Costs rise faster than rents, yet real estate operators admit that trying to set rents at the levels justified by today's construction and operating costs is squeezing middle-class groups as well as the poor and fueling the drive toward rent control and other regulation. 135/

Furthermore, part of the reason that rent control boards have been loath to increase rents to levels desired by landlords, and indeed, part of the reason for the institution of rent control, was the realization in many localities that renters were paying an increasing percentage of their income for rent, and even middle-income residents were fast approaching a crisis point. 136/ Thus, just as landlords are caught in a "cost-revenue" squeeze, Michael A. Stegman also describes the "rent-income" squeeze.

. . . more and more core city families are finding it increasingly difficult to afford the economic rents of central-city housing Thus, there is both a rent-income squeeze on the demand side and a cost-revenue squeeze from the supplier's perspective. . . .

The median housing expense-to-income ratio increased for all renters between 1970 and 1975 to 23 percent, and to 25 percent for both Hispanic and black renter households. Today, more than one-quarter of all renters and nearly 30 percent of Hispanic and black households pay more than 35 percent of their incomes for housing.

In central cities the problem of heavy housing expense burdens is particularly acute, especially for minorities. Overall, 18 percent of all central-city residents occupying unsubsidized housing spend at least one-half of their incomes for rent. Almost 40 percent of all unsubsidized black central-city renters pay at least 35 percent of their incomes for housing, including 22 percent whose housing costs consume one-half or more of their monthly incomes. 137/

Thus it appears fairly clear that a removal of rent control to ease the landlords' cost-revenue squeeze would only further exacerbate the tenants' rent-income squeeze, and probably cause an increase in the number of households seeking assistance in federal rental subsidy programs. Nor is it clear that the removal of rent control would ease the landlords' burden enough to deter them from conversion anyway.

4. Socioeconomic Characteristics of Renters

One other matter that should be discussed before proceeding to an examination of various public policy alternatives for dealing with the condominium conversion problem, is the delineation of the groups who are most likely to be adversely affected by condominium conversion, and for whom assistance policies should be targeted. In the introduction to this paper, the statement was made that low-income, minority, and elderly households were likely to be displaced by higher-income, white, young professional singles and couples as a result of the conversion process. This conclusion was based on the fact that it is the latter group who is in the market to purchase housing for the tax and equity benefits, and it is the former groups who are disproportionately represented in the rental housing market. As Michael A. Stegman noted in a study of the rental housing market that he conducted for the Department of Housing and Urban Development:

Despite a national policy of supporting homeownership, minority populations continue to rely disproportionately upon the rental sector for shelter. While only around 35 percent of

all non-Hispanic whites were renters in 1975, 57 percent of all households of Hispanic origin and 56 percent of all black households occupied rental housing. 138/

And as could be expected, he found that more low-income households rented housing rather than owning it.

Lower-income households in general are more likely to rent than to own. . . . Also, while around one-half of all households in the nation with incomes below \$7,000 were renters, 67 percent of all blacks and 72 percent of all Hispanic households with similar incomes rented their housing. 139/

Finally, he also found a higher percentage of elderly in the rental housing population.

In 1976, 51 percent of all households contained no more than two persons, which reflects a fundamental change in household composition within the American population and the increasing reliance of the independent elderly on the rental sector to meet their housing needs. In 1975, 17 percent of all renter households were headed by elderly individuals, 11 percent of whom were living alone. 140/

Although there are some "converters (who) argue that buildings where most tenants are poor are usually not candidates for conversion,"141/ most of the evidence indicates that these are the groups who are most detrimentally affected and for whom assistance policies should be shaped, for the following reasons. First of all, although it may be true that buildings where the poorest people live are probably not in high demand for conversion, conversion is removing some moderate and low-priced housing from the rental housing market, which, coupled with the failure to build replacement housing, increases the competition amongst low-income households for the remaining low-cost housing. Secondly, the removal of such

housing from the market and the accompanying competition for remaining housing tends to vitiate any progress made through Federal government assistance programs, such as Community Development Block Grants, or Section 236 rental subsidies, in improving the lot of these groups.^{142/} Finally, these groups, particularly the elderly, very rarely have the resources to absorb the shock of such a sudden change in circumstances.

Lower-income families are affected first, however. And according to a report nearing completion by the National Council of Senior Citizens, the elderly have been "disproportionately" uprooted because many live in the old, substantial, centrally located buildings that have been the prime targets for conversion.^{143/}

Having enumerated the various factors which have created the problems of tenant dislocation and erosion of the rental housing market, which are associated with the condominium conversion phenomenon, and identified the groups who are most likely to experience these problems, we can now turn to an examination of public policy alternatives designed to deal with these problems.

B. Public Policy Alternatives

The public policy alternatives designed to deal with the problems of condominium conversion can be grouped in roughly two categories. Certain policies, such as tax incentives or purchase assistance, are designed to alter somewhat the existing framework of the condominium conversion process and the housing market. Other policies, such as relocation as-

sistance or temporary moratoriums, reveal a certain level of acceptance of some of the dislocations caused by conversion. The conclusion as to which category is preferable or more feasible, is left to the reader. Also, since many of the alternatives reveal characteristics of both categories, there will be no attempt to distinguish them any further; rather they will be discussed seriatim.

1. Tax Policies -- Disincentives and Incentives

Since tax policies have been a major contributing factor in creating an environment conducive to conversion,^{144/} perhaps they could be used to curb the drive towards conversion. Tax policies could be used to accomplish this objective in two ways -- either by creating disincentives to convert, or by creating incentives for landlords to stay in the rental housing business and for tenants to remain renters.

Disincentives to convert could be created by removing favorable tax treatment accorded homeowners, or by instituting differential tax treatment on the sale of apartments converted to condominiums -- both of which are politically difficult. One type of disincentive would be to place a higher tax rate on the sale of apartments converted to condominiums as compared to that imposed on either single-family homes or multi-family dwellings that remain apartments. Such a policy would probably provoke a challenge on equal protection grounds, but since the tax code is replete with examples of differential treatment, such an approach might withstand attack.

A closely related tax disincentive would be to subject the sale of condominium conversions to tax at the ordinary income rate rather than the more favorable capital gains rate. It should be noted that this is a suggestion that has been made by many conversion critics, most notably, Representative Benjamin Rosenthal of New York.^{145/} This suggestion would probably be more difficult to sustain in the face of an equal protection challenge than the previously mentioned disincentive, as well as being politically unpopular. Finally, one could attempt to curb conversions by removing the favorable tax treatment accorded homeowners -- i.e. repeal the existing deductions, and/or tax the imputed rent of homeowners. The problem with this approach is that besides being obviously politically unpopular, it is also a very indirect method of dealing with the problems associated with condominium conversion.

Given the probable political unpopularity of the tax disincentives, a more acceptable approach might be to utilize tax incentives instead. Such incentives would accrue to both landlords and tenants. For instance, tax credits could be given to landlords as an offset for rising maintenance and operating costs. However, one criticism of such a suggestion would be that existing tax advantages (i.e. depreciation and deductions) were designed to accomplish exactly that purpose, and that further tax relief should not be granted. Secondly, there would be the difficulty of establishing that landlords were in fact incurring the increased costs to justify the allowance

of a tax credit. Of course, the rebuttal to these criticisms would be that if existing tax advantages were designed to accord landlords such relief, they are obviously not functioning adequately; and secondly, the difficulties of proof and justification are true of all tax relief mechanisms.

Tax credits could also be granted to landlords for housing a certain percentage of the target groups such as low-income or elderly renters. Again, the criticism would be that existing tax and housing policies (e.g. Section 236 rental subsidies) already extend such benefits. But perhaps larger tax credits or allowances should be considered in an attempt to curb "condomania."

Finally, tax relief might be afforded to tenants by granting deductions that would be equivalent in value to those accorded homeowners. This would again be an indirect method of dealing with the problems posed by conversion because it is premised upon the belief that by doing away with certain tax advantages of homeownership, you would curb one of the major incentives to own, and therefore decrease the pressure to convert. Secondly, besides being vulnerable to the criticism that it is not designed to deal directly enough with the problem, the likelihood that such reform will be instituted is not very high.

. . . David Marlin, director of the National Council of Senior Citizens' legal research office, who testified recently before Senator Williams's housing subcommittee . . . like many experts, believes that new Federal tax policies are required to meet the pressures in the marketplace that encourage conversions.

. . .

"The political sex appeal of such tax reforms is very low." Mr. Marlin noted ruefully.

2. Relocation Assistance

Another possible policy alternative would be to provide relocation assistance to the target groups like low-income or elderly tenants who experience greater difficulty in relocating after a conversion. Such relocation assistance could be provided either by the landlord or converter, as some restrictive ordinances already require,^{147/} or by government (federal, state or local). The criticisms of such a solution are numerous. In addition to the equity argument that landlords should not be required to shoulder this public policy burden or governmental function, experience with relocation payments, both as a result of landlord payments in the situation of conversion, and payments by the federal government after urban renewal displacement, indicates that such payments are usually inadequate in amount and inefficient in operation.^{148/} Secondly, many would object that such a solution implies that low-income, minority, and elderly groups are lower on society's priority list, and can be "pushed out" in favor of other groups at any time. Finally, relocation assistance may provide some short-run relief to the problem of tenant dislocation, but in the long-run, it is not an adequate solution if the failure to construct more low-income housing results in a situation where target groups are unable to find replacement housing no matter how much in relocation payments are made.^{149/}

3. Purchase Assistance

If one views the primary evil of tenant dislocation caused by condominium conversion as being one of displacement of target groups such as minorities and the elderly, and believes that a public policy solution to such a problem should be designed to retain such groups in their existing housing and neighborhoods, then perhaps purchase assistance rather than relocation assistance should be provided to such groups. Purchase assistance could be provided through several mechanisms. One way would be to expand existing housing programs -- such as Section 235 housing assistance, or "sweat equity" programs -- to include tenants in danger of displacement by conversion. Problems with such an expansion might be that appropriations for additional housing assistance are not likely to be forthcoming in today's tight economy; and secondly, "sweat equity" or exchange of maintenance services for lower purchase price would clearly not be feasible for elderly tenants, and possibly not for some low-income tenants as well.

Another method of purchase assistance would be the requirement that the converter set aside a certain number of units for low-income groups at a lower purchase price, or contribute to a fund for the construction of low-income replacement housing, or even prohibit conversion of low-income housing -- all of which San Francisco provides in its condominium conversion ordinance.^{150/} Although such alternatives appear extremely promising, only time and examination of San Francisco's experience with such provisions will indicate

whether they are in fact workable.

A final form of purchase/relocation assistance specifically targeted for the elderly would be the provision of a "life-tenancy" to elderly tenants of a certain age. Some developers already offer such options irrespective of any governmental requirement, and many cities require it in their conversion ordinances.^{151/} It might also be noted that in terms of equity, such an allowance of a life-tenancy would be an equivalent benefit to elderly tenants that elderly homeowners already have through the mechanism of special tax treatment accorded to elderly persons selling their principal place of residence.^{152/} Secondly, the option of "life-tenancy" would deal with the objections of many elderly residents that they have neither the reason or the inclination to own property at this stage in their life.

4. Temporary Moratoriums on Conversion Couples with a "Vested Right" Savings Clause

Since Part IV of this paper focuses specifically on restrictive ordinances in various localities, some of which have utilized the "moratorium" or "freeze" approach to the problem of condominium conversion, I mention such an alternative now as part of a more unique approach. That is, localities might consider the institution of a truly temporary freeze on conversions until either the vacancy rate of rental housing rises again above a certain rate (e.g. 5%), or until the passage of a certain amount of time (e.g. six months), whichever comes first, and with converters getting the go-ahead on a kind of filing priority basis, and justified by analogizing

to the "vested rights" concept. Such an approach would eliminate converters' criticisms or fears that a "temporary" moratorium is, in fact, a permanent one in disguise.

Finally, it might be noted that all of these alternatives are available to the decision maker either singly or in combination. Indeed, combination of several options might deal with the problems associated with condominium conversion in the most satisfactory and equitable fashion.

- 93 HUD Condo/Coop Study. See also, Daniel Lauber, "Condominium Conversions -- The Number Prompts Controls to Protect the Poor and Elderly" in Journal of Housing, April, 1980.
- 94 As noted before, this paper intends to focus only on the problems of tenant dislocation and erosion of rental housing stock in major cities of the United States. Other alleged abuses such as misrepresentations in advertising and purchase and sales agreements, fraud on purchasers, or management company operating problems, etc. will not be examined due to the desire to focus on a few issues intensively rather than on all the issues superficially.
- 95 Henry J. Aaron, Shelter and Subsidies: Who Benefits from Federal Housing Policies? (Washington, D.C.: The Brookings Institution, 1972); Chester W. Hartman, Housing and Social Policy (Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1975); Commission on Mortgage Interest Rates, "Mortgage Market Developments in the Postwar Period," and "Fiscal and Monetary Policy," in Housing Urban America. ed. Jon Pynoos, Robert Schafer and Chester W. Hartman, (Chicago, Illinois: Aldine Publishing Company, 1973).
- 96 Aaron, *ibid.*, emphasis on the original, p. 19.
- 97 Various government agencies, such as the Department of Labor, the Treasury Department, the Department of Housing and Urban Development, and the Census Bureau, compile statistics on housing starts as well as other indicators like unemployment rates, commodities prices, etc. both to assess the present state of the economy and to predict further trends. See, e.g. "Gathering Evidence that a Recession is Finally Under Way," in The Washington Post, April 6, 1980, p. G1.
- 98 Arthur P. Solomon, Housing the Urban Poor (Cambridge: M.I.T. Press, 1974) p. 4. See also, Aaron, Shelter and Subsidies, *supra*, n. 95, pp. 26-27; and Commission on Mortgage Interest Rates, "Mortgate Market Developments . . ." *supra*, n. 95, pp. 307-308.
- 99 Michael A. Stegman, "Trouble for Multifamily Housing: Its Effects on Conserving Older Neighborhoods," in Occasional Papers in Housing and Community Affairs, Volume 2, 1978 (Washington, D.C.: U.S. Dept. of Housing and Urban Development, Office of Policy Development and Research, 1978), p. 236.

- 100 The Washington Post, April 6, 1980, p. G1
- 101 "Legislating to Restrain Co-ops and Condos,"
Business Week, February 18, 1980, pp. 90-91.
- 102 ". . . it is noted that condominiums are available at lower purchase prices than the traditional single-family home (both detached homes and town-houses). The median price of condominiums is lower than that of both of these forms of housing, and the price distribution of these units is more toward the lower end of the spectrum." HUD Condo/Coop Study, supra, n. 5, Vol. I, p. IV-5
- and:
- "The increase in land values and in construction costs has increased the price of single-family homes beyond the reach of many would-be buyers. Some of these buyers have turned to condominiums because of the lower purchase price."
- ibid., p. IV-9.
- 103 Ibid., pp. IV-9 - IV-13.
- 104 Business Week, supra, n. 101, p. 95; and Stegman, supra, n. 99, p. 242.
- 105 Stegman, ibid., p. 242.
- 106 Ibid.
- 107 Aaron, supra, n. 95; Hartman, Housing and Social Policy, supra, n. 95.
- 108 "The subsidy is very large for high bracket households whose maintenance and depreciation costs are low. For example, a homeowner in the 50 percent bracket whose imputed rent, mortgage interest, and property taxes equal his maintenance and depreciation costs receives a tax benefit worth one-fourth of his housing costs."
- Aaron, supra, n. 95, p. 60. Generally, see Aaron, ibid., pp. 53-73 and Stanley S. Surrey, William C. Warren, Paul R. McDaniel and Hugh J. Ault, Federal Income Taxation, Cases and Materials (Mineola, New York: The Foundation Press, Inc. 1972) pp. 413-425; and the 1977 Supplement to the basic text; and Hartman, supra, n. 95, pp. 108-110 and pp. 145-151.

109 "Proposition 13 slashed property taxes in California an average of almost 60 percent. After the election last June 6, leaders of several organized groups of landlords appealed to apartment owners to pass on a portion of their tax savings to tenants. But, while some did so, many tenants complained that, instead of being reduced after the election, their rents were raised. The failure of more landlords to share their tax savings had been cited by Mr. Hayden and others as the major impetus for the explosion of interest in rent controls in this state."

The New York Times, April 15, 1980, p. 20.

110 It should be noted that the terms "realized" or "realization" are terms-of-art in tax law, but for purposes of this analysis, the reader can assume it means a gross profit on income and investments before tax credits and deductions are applied.

111 Surrey, et al. supra, n. 108; Aaron, supra, n. 95; and Hartman, supra, n. 108.

112 Surrey, ibid., n. 108.

113 Surrey, ibid., pp. 419-420.

114 Aaron, supra, n. 95, pp. 53-54.

115 Ibid., p. 53.

116 Internal Revenue Code § 167, and § 1250, and Income Tax Regulations, § 1.167(j)-6. See also, Hartman, supra, n. 95, pp. 145-147; Aaron, supra, n. 95, p. 66, footnote 20.

117 IRC, sections 453 and 461. See also, HUD Condo/Coop Study, supra, n. 5, pp. IV-18 to IV-19.

118 Hartman, supra, n. 95, pp. 146-147.

119 Ibid., pp. 145-147.

120 HUD Condo/Coop Study, supra, n. 5, p. IV-18.

121 Hartman, supra, n. 95, p. 145.

122 Joseph Sax, "Takings, Private Property, and Public Rights," in 81 Yale L.J. 149, 180-181, footnote 64. Emphasis added.

- 123 42 U.S. Code § 1441.
- 124 See text accompanying notes 7 through 11.
- 125 "Condominium Conversion in Cambridge, A Profile of New Owners and Former Tenants," (Cambridge, Ma.; Cambridge Community Development Department, December 1978). Pp. 6-7, and pp. 15-18.
- 126 David B. Wolfe, "Selling a Condominium Conversion to Tenants," American Law Institute-American Bar Association Journal (Vol. 3 No. 3, December 1978), pp. 88, 89, 90.
- 127 HUD Condo/Coop Study, supra, n. 5, Vol. I, p. IV-28.
- 128 "Condominium Conversion in Cambridge . . ." supra, n. 125, p. 16, p. 15, and p. 18.
- 129 See note 126, supra.
- 130 Wayne Markham, "Close Encounters of the Condo Kind," Miami Herald, October 21, 1979, p. H-1.
- 131 HUD Condo/Coop Study, Vol. I, p. I-11 and p. IV-18; The New York Times, April 15, 1979, p. 20; ibid., October 21, 1979, p. 18; Business Week, February 18, 1980, p. 90; Stegman, supra, n. 99, p. 243.
- 132 Ibid.
- 133 A recent New York Times article on the growing movement for rent control cites condominium conversion as one of the tenants' major grievances. "Rent Controls Gain in the Nation as a Cause Pressed by the Young," New York Times, April 15, 1979, p. 20. On the other hand, the HUD Condo-Coop Study, and other sources cite rent control as another cause for condominium conversion, not vice versa. See HUD Condo/Coop Study, supra, n. 131; Business Week, supra, n. 131.
- 134 See sources cited in notes 131 and 133, supra.
- 135 Business Week, supra, n. 131, p. 95.
- 136 Ibid., and Stegman, supra, n. 99, pp. 242-243.
- 137 Stegman, supra, n. 99, pp. 242-243. Emphasis added.

- 138 Stegman, supra, n. 99, pp. 238-239.
- 139 Ibid., p. 239.
- 140 Ibid., emphasis added. See also, The New York Times, October 21, 1979, p. 18.
- 141 Business Week, February 18, 1980, p. 95.
- 142 "According to Daniel Lauber, a Chicago area planner, 'communities are receiving millions of Federal dollars to preserve local moderate-income housing, and yet they are permitting condominium conversions to remove units from the rental housing stock faster than any Federal subsidies could ever replace them.'"
- The New York Times, October 21, 1979, p. 18.
- 143 Ibid. See also, the Cambridge condominium conversion study, supra, n. 125, which notes that although displaced tenants and new owners of condos in Cambridge are remarkably similar in socioeconomic characteristics such as age, education, profession, income level, etc. (which might be attributable to the rather anomalous character of Cambridge because it's a college town); the data indicated that elderly tenants experienced more difficulty in relocating, took longer to find replacement housing, and were the purchasers who most frequently cited as reasons for buying either the ties they felt for the community, or fear that they wouldn't find anything else.
- 144 See text, Section III.A. 2. "Condominium Conversion and Tax Policies," supra.
- 145 "Bill Seeking to Stay Spate of Conversions," The New York Times, September 2, 1979, Section VIII, p. 4.
- 146 The New York Times, October 21, 1979, p. 18.
- 147 See Lauber, "Condominium Conversions . . ." n. 93, supra, p. 209.
- 148 See Lauber, ibid., pp. 208-209; Lois Bacon, "Relocation Assistance -- Is It Fair and Equitable?" 1979 Institute on Planning, Zoning and Eminent Domain (Southwestern Legal Foundation) 289; and Chester Hartman, Yerba Buena: Land Grab and Community Resistance in San Francisco (San Francisco: Glide Publications, 1974).

- 149 See note 142, supra.
- 150 See Section IV, infra.
- 151 See Wolfe, "Selling a Condominium Conversion . . . ", supra, n. 126, pp. 83-84; and Lauber, supra, n. 93, pp. 208-209.
- 152 Internal Revenue Code, section 121.
- 153 On vested rights, see, e.g. R. B. Cunningham, "Vested rights, estoppel and the land development process," 29 Hastings Law Journal 623 (March 1978).

IV. An Analysis of Existing Ordinances on Condominium Conversion*

As noted in the Introduction, this fourth and final part of the paper presents an analysis of existing ordinances dealing with condominium conversion in four localities across the country. The four localities are: 1) New York City, New York; 2) Brookline, Massachusetts; 3) San Francisco, California; and 4) Washington, D.C. Each of the ordinances will be examined according to the following criteria:

1. What TYPE of ordinance is it? -- i.e. is it an absolute prohibition for a limited period of time (moratorium), or is the type of ordinance that seeks to cut down the number of conversions by placing a number of procedural obstacles in the way of the developer in order to discourage conversions.
2. Which of the various CONCERNS or problems posed by condominium conversion does it primarily address? -- e.g. fraud on purchasers, harassment of tenants, relocation assistance.
3. What are the STRENGTHS of the particular approach taken? -- i.e. workable, acceptable, sufficiently clear, sufficiently detailed, provides for different possibilities, etc.
4. What are the WEAKNESSES of the particular approach taken? -- i.e. too extreme, leaves too much discretion to appointed officials, is not the optimal choice in view of the concerns addressed, doesn't provide for all the eventualities, etc.

A. The New York Ordinance

In order to understand the New York City condominium conversion ordinance, it is necessary first to examine the ordi-

* See the appendices for copies of the actual ordinances involved.

nance in effect in the surrounding counties of Nassau, Westchester, and Rockland, since the New York City ordinance incorporates most of the provisions of the county ordinances, and merely refines in further detail some of the other provisions.^{154/} The New York ordinance is not of the absolute moratorium-type; rather, it requires the converter to file a "prospectus" of the plan to convert with the attorney general of the state,^{155/} in which he opts to proceed under either a "non-eviction plan," fifteen percent of the tenants in the building must have consented to purchase a unit,^{158/} and the converter is prohibited from evicting so-called "non-purchasing tenant(s)" from the premises for failure to purchase.^{159/} In order to regain possession of the premises for sale, under the non-eviction plan the converter must wait until the non-purchasing tenants' leases expire.^{160/} If the converter proceeds under an "eviction plan" he is required to get the agreement of thirty-five percent of the tenants to purchase, and he is allowed to evict non-purchasing tenants in order to regain possession of the premises, but only after the expiration of two years (counting from the time of the approval of the plan by the attorney-general).^{161/} Both the counties' ordinance and the New York city ordinance grant non-purchasing tenants aged sixty-two or older, and their spouses, the right to remain in their unit under a life tenancy, although the city ordinance defines the eligible senior citizens more restrictively.^{162/}

The primary focus of the New York statute appears to be the protection of tenants from coercion to buy or to move out. Thus, various provisions of the ordinance ensure that non-purchasing tenants (both senior citizens or otherwise) are to receive the same services as purchasing tenants, are not to be subjected to "unconscionable" increases in rent, and have a right of action against any person who forces him to vacate by interfering with his right to "quiet enjoyment."^{163/} The prevailing attitude or assumption of the New York statute therefore appears to be one of acceptance of the phenomenon of conversion, and merely attempts to protect non-purchasing tenants and the elderly from harassment and coercion. The statute makes no attempt, as the San Francisco ordinance does,^{164/} to counteract the long-run effect of depletion of the rental housing stock. Nor does it make any provision for relocation assistance, seemingly assuming that non-purchasing tenants relocation problems can be solved by allowing a lengthy amount of time for relocation (i.e. two years or expiration of tenant's lease). Finally, the New York statute is concerned only about protecting the target group of the elderly, making no provision for low-income or minority groups.

B. The Brookline Ordinance

The Brookline, Massachusetts ordinance imposes an absolute moratorium on condominium conversion by prohibiting eviction of any tenant in a rent-controlled building unless the eviction is for the recognized instances of tenant misconduct (e.g. non-payment of rent, violations of agreement of

tenancy, causing a nuisance, using the premises for illegal purposes, etc.),^{165/} or the landlord is attempting to regain possession of the premises for use and occupancy by himself or his relatives,^{166/} or the landlord intends to demolish the structure.^{167/} The ordinance was justified as an exercise of the town's police power, a response to a perceived threat to the "public health safety, and welfare of its citizens, particularly families of low and moderate incomes and elderly persons on fixed incomes"; in the form of a "substantial and increasing shortage of rental housing accommodations," which is exacerbated by "a rapid and increasing rate of conversion of rental housing to condominium ownership . . .".^{168/} Although there is language in the ordinance that indicates it is intended to be a temporary moratorium on conversions while the phenomenon is subjected to more intensive study,^{169/} the failure to provide some date at which the ordinance would have to be reconsidered and/or reaffirmed might fuel fears that an ordinance designed to be temporary would become permanent in effect. Such an apprehension is even more compelling in light of the fact that the ordinance is not drawn with sufficient forethought and specificity to prevent certain abuses if it became semi-permanent in operation. For instance, the fact that the landlord can only evict a tenant for breaches of the lease agreement or equivalent misconduct; coupled with the fact that, unlike the New York ordinance, there are no provisions to prohibit harassment or coercion of tenants, a landlord might be tempted to induce breach by the tenant through

harassing conduct, or to utilize some minor violation as grounds for eviction, in order to regain possession. Or the landlord might attempt to evict, claiming that the premises are going to be used by various relatives, when that was not in fact the case. Of course, the requirement of "good faith"^{170/} or proof of the contrary at a summary process action would probably eventually prevent such abuse, but the time and resources that would be expended in establishing that fact could be tremendous. More careful and comprehensive drafting, similar to that of the San Francisco ordinance (a discussion of which follows), could easily prevent such abuses.

C. The San Francisco Ordinance

As can be determined by even a cursory examination of the ordinance,^{171/} the San Francisco ordinance is by far the most detailed and comprehensive of any of the four localities' condominium conversion ordinances. Although there are a number of provisions of the San Francisco subdivision code (such as the requirement of soil and geological surveys and environmental impact studies)^{172/} which may be attributable to a kind of geographic uniqueness which is readily distinguishable from the other three localities studies -- perhaps the most striking provision of the San Francisco ordinance is the requirement that the developer either 1) set aside 10% of the units for "low and moderate income occupancy," or 2) agree to construct an equivalent number of units within "eighteen (18) months after filing of the final or parcel map, . . ." or 3) pay "an amount equal to ten percent (10%) of the difference

between the aggregate total of the proposed market rate sales prices, . . . and the aggregate total of the sales prices if the units were to be sold at moderate income sales prices, . . ." into the city's "Housing Development Fund."^{173/} This is the first instance in which a locality has addressed the problem of condominium conversion's depletion of the rental housing stock in an affirmative fashion, rather than in a prohibitory or restrictive fashion. It is the only ordinance that attempts to deal with the long-run problem of severe depletion or extinction of the rental housing stock, and the options provided to the converter/developer are sufficiently flexible to promote compliance. A second unique feature of the San Francisco ordinance are the sections requiring the converter to provide relocation services and moving expenses to displaced tenants:

(g) If one or more of the units in the project are occupied by tenants of low or moderate income . . . the subdivider shall contract with the Central Relocation Service to provide permanent relocation services for such tenant or tenants, and the subdivider shall bear the cost of that service and the actual moving expenses of such tenant or tenants to the extent approved by the Central Relocation Service. ^{174/}

and

(a) The subdivider shall bear the cost of moving expenses of any tenant who relocates from the building to be converted. The tenant, at his or her option, shall be reimbursed either for the actual moving expenses up to a maximum of one thousand dollars (\$1,000), or for the fixed amount allowed by the moving expense schedule of the Central Relocation Services agency. ^{175/}

Section 1309(e) and (f) of the Subdivision Code define "low-income" and "moderate" income, respectively, in accordance with a percentage of the median household income for the San Francisco standard metropolitan statistical area as set by the Census Bureau and HUD. Despite the specificity of these provisions, the code surprisingly makes no suggestion as to how the converter shall determine such information in a manner that would not offend the tenants' sense of privacy. Nor does the code seem to envision or prevent the possibilities of collusion or misrepresentation.

In addition to providing for relocation assistance to low-income and moderate-income tenants, the code in section 1385(f), also targets such assistance to the elderly, the handicapped, and "any tenant with more than one minor child living with that tenant." Finally, in addition to providing extremely detailed requirements regarding deadlines and fees for filing of plans and documents,^{176/} for notice, public hearings, and agency review,^{177/} -- the San Francisco ordinance is unique in requiring that a conversion, like any other subdivision, must be consistent with the city's Master Plan,^{178/} and that "The sales program shall promote affirmative action in housing."^{179/} With a few exceptions,^{180/} the San Francisco ordinance is laudable both for its comprehensiveness and the unique and innovative approaches taken to such problems as relocation assistance and replacement of rental housing stock depleted by conversion.

D. The Washington, D.C. Ordinance

As one can readily perceive by an examination of the District of Columbia's "Condominium and Cooperative Conversion Stabilization Act,"^{181/} like the Brookline ordinance, it was designed to be a temporary moratorium on conversions of rental apartments to condominiums or cooperatives, which explains its brevity. The one aspect of this ordinance which is notable is the provision of a kind of "vested rights" approach or savings clause provided to projects which had already been purchased or substantially planned as of a certain date.^{182/}

The biggest problem with the D.C. ordinance, is that although it was originally planned to be in effect for only one hundred eighty days,^{183/} in actual practice this absolute freeze has been in effect for over two years. Each time the 180-day period has expired, it has been re-enacted. Of course, in addition to being subject to the criticism that it is shortsighted and poor planning technique, this approach has also provoked several lawsuits which allege violations of due process, or that the action is arbitrary and capricious.^{184/} If the city intends to blunt such criticisms and overcome such court challenges, it will have to issue detailed findings or studies justifying such action, and enact a more comprehensive ordinance.

FOOTNOTES

IV. An Analysis of Existing Ordinances

- 154 See Appendix 1.
- 155 New York General Business Law, §352-eee2; and §352-eeee2.
- 156 Ibid., §352-eeel(b).
- 157 Ibid., §352-eeel(c).
- 158 Ibid., §352-eeel(b).
- 159 For definitions of non-purchasing tenant, see §352-eeel. (e) and §352-eeel.(c). Regarding the prohibition of eviction for failure to purchase, see §352-eee2.(c)(i).
- 160 The landlord can, however, regain possession for the recognized reasons of tenant misconduct (e.g. non-payment of rent, illegal use or occupancy, etc.), see §352-eee2.(c)(i) and §352-eee2.(a).
- 161 See §352-eeel.(c) for tenant consent under an eviction plan. Regarding the two year requirement, see §352-eee2.(d)(i). Note that there does not appear to be a similar two-year waiting period in the New York city ordinance, nor does the city ordinance provide for the option of a non-eviction process.
- 162 See §352-eee2.(d)(i) and §352-eeee2.(a). Section 362-eeel.(c) defines the eligible senior citizens as
- "Non-purchasing tenants who are sixty-two years of age or older . . . and the spouses . . . who have resided in the building . . . as their primary residence for at least two years prior . . . who have an annual income of less than thirty thousand dollars and who have elected within ninety days . . . to become non-purchasing tenants."
- 163 See, re provision of services, §352-eee3. and §352-eeee4. Re increases in rent, see §352-eee2.(c)(ii) and §352-eeee2.(a). Re interference with quiet enjoyment, see §352-eee4. and §352-eeee5.
- 164 See discussion of San Francisco ordinance, infra.
- 165 See Appendix 2, Brookline ordinance, "Section 9. Evictions" (a) (1), (2), (3) or (4).
- 166 Ibid., §9(a)(8).

- 167 Ibid., §9(a)(9).
- 168 Ibid., preamble to Amendment to Brookline By-Laws.
- 169 Ibid., e.g. preamble:
"WHEREAS the Town, after preliminary investigation of the issues, has appropriated a sum of money for an outside professional study of the effects of condominium conversion; . . .
. . . for the purpose of obtaining relief from the aforesaid condition so that there is time for the community to study and consider long-term solutions for this housing problem . . ."
- 170 Ibid., §9(a)(8).
- 171 See, Appendix 3, San Francisco Subdivision Code and accompanying materials.
- 172 See e.g. §1323(b), (c).
- 173 San Francisco Subdivision Code §1341; and amendments, §1341(f), and (g).
- 174 Ibid., §1384(g).
- 175 Amendments to S.F. Subdivision Code, §1392(a).
- 176 See, e.g. §1315(a), §1321, §1322, §1323.
- 177 See, e.g. §1313(a), (b); §1326; §1328; §1384 and amendments to §1384.
- 178 §1332.
- 179 §1342.
- 180 For instance, §1385(f) provides non-purchasing tenants with only thirty days or until the expiration of their lease, whichever is longer, for permanent relocation.
- 181 See Appendix 4.
- 182 See "Condominium and Cooperative Conversion Stabilization Act of 1979," Section 4(a)(1), (2), (3), and (4).
- 183 Ibid., section 6.
- 184 The New York Times, October 21, 1979, p. 18.

CONCLUSION

This thesis has examined the very broad issue of the condominium conversion controversy in a very specific framework. That is, although there are numerous issues, problems, and allegations revolving around this recent development in housing, this thesis has focused particularly on how the legal system and the planning process have, through various policies, created an environment conducive to condominium conversion. It has also delineated how both those professions have already responded to some of the dislocations caused by conversion, and how they might still respond.

Regarding the two basic premises with which this thesis began -- 1) that the rental housing market meets the needs of certain segments of the housing market (i.e. the elderly, minorities, and low-income) and therefore needs to be protected from extinction; and 2) that the problems posed by condominium conversion are of such complexity that they necessitate a well thought-out and developed response like well-drafted legislation rather than case-by-case adjudication in the courts -- a few concluding remarks need to be made.

Regarding the first premise, it should be noted that it is not my intention to suggest that because the elderly, low-income, and minorities are disproportionately sheltered by rental housing, either that such should always be the case, or that they are adequately served thus. Nor is it my intention to imply that the only or primary value of rental housing lies in its servicing of these groups. Rather, the premise was a starting point for the

analysis that these are the groups who are most likely to be detrimentally affected by conversion, are often the least able to cope with the problems and dislocations caused by conversion, and therefore are the ones for whom assistance policies should be shaped.

As for the second premise, during the examination of the many factors that have created an environment conducive to conversion, it has become clear that perhaps even well-drafted legislation is not the answer. Condominium conversion involves both short-run and long-run problems and solutions. What response a locality chooses to make depends on which problems it chooses to address and which tools it has available. The examination of the four localities' ordinances displayed such a difference in priorities and methodology. The examination of the existing ordinances also revealed a tendency to focus on only one or two of the problems posed by the conversion process. However, if a locality wished to address the problems of conversion in a more comprehensive fashion, it would seem that a multi-level or multi-phase approach needs to be taken. For instance, when the rental vacancy level drops below a certain point, a locality might impose a temporary moratorium, while at the same time providing relocation assistance to those already displaced, and lobbying for changes in tax and housing policies at the federal level which create incentives for homeownership and conversion.

Finally, the contrast drawn in the Introduction between the response of lawyers and planners to the problem of condominium conversion also needs to be modified somewhat. In posing

that contrast I did not mean to imply that all or even most lawyers would have a view more sympathetic to landlords or developers, and that planners would always have a view more sympathetic to displaced tenants. Clearly, there will be lawyers who will be representing displaced tenants or defending local governments' restrictive ordinances in court. Similarly, there are planners who applaud the benefits of increased tax revenue or improvement of housing stock that conversion sometimes brings. However what that contrast was meant to introduce was the issue or conclusion that the analysis of the taking issue demonstrated -- that is, that the legal process can address only very narrow or specific issues. A lawyer in court, whether representing a tenant or a landlord, can only be concerned with his client's problems and the remedy available to that particular person or in that particular situation. He cannot and will not be concerned with issues of tenant dislocation or depletion of the rental housing stock in the aggregate or larger issues of housing, tax or social policies. It is those issues which are of concern to a planner, and which demand his expertise. Thus each profession has a role to play in easing or preventing the dislocations caused by the conversion process.

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APPENDIX 1 -- New York Ordinance

THE NEW YORK STATUTE
General Business Law

§ 352¹—*see*. Conversions to cooperative or condominium ownership

1. As used in this section, the following words and terms shall have the following meanings:

(a) "Plan". Every plan submitted to the department of law for the conversion of a building or group of buildings or development from rental status to cooperative or condominium ownership, other than a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(b) "Non-eviction plan". A plan which may not be declared effective until at least fifteen percent of those tenants in occupancy of all dwelling units in the building or group of buildings or development shall have consented to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreement or other discriminatory inducement.

(c) "Eviction plan". A plan which may not be declared effective until at least thirty-five percent of those tenants in occupancy of all dwelling units in the building or group of buildings or development shall have consented to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreement or other discriminatory inducement.

(d) "Purchaser under the plan". A person who owns the shares allocated to only one dwelling unit or who owns such dwelling unit itself.

(e) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date and the spouse of any such person. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

2. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this chapter has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless:

(a) The plan provides that it will be deemed abandoned, void and of no effect if it does not become effective within twelve months from the date of issue of the letter of the attorney general stating that the offering statement or prospectus has been filed and, in the event of such abandonment, no new plan for the conversion of such building or group of buildings or development shall be submitted to the attorney general for at least eighteen months after such abandonment.

(b) The plan provides either that it is an eviction plan or that it is a non-eviction plan.

(c) The plan provides, if it is a non-eviction plan, as follows:

(i) no eviction proceedings will be commenced at any time against non-purchasing tenants for failure to purchase or any other reason applicable to expiration of tenancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of access to the owner or a similar breach by the non-purchasing tenant of his obligations to the landlord;

(ii) the rentals of non-purchasing tenants who reside in dwelling units not subject to government regulations as to rentals and continued occupancy and non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued

occupancy is eliminated or becomes inapplicable after the plan has become effective shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. In determining comparability, consideration shall be given to such factors as building services, level of maintenance and operating expenses;

(iii) the plan may not be amended at any time to provide that it shall be an eviction plan

(d) The plan provides, if it is an eviction plan, as follows:

(i) no eviction proceedings will be commenced against non-purchasing tenants for a period of two years after the plan is declared effective; provided that no eviction proceedings will be commenced at any time against non-purchasing tenants who are sixty-two years of age or older on the date the plan is declared effective and that the rentals of any such non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and any such non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has become effective shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy; provided further that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of access to the owner or a similar breach by the non-purchasing tenant of his obligations to the landlord;

(ii) at any time that the plan is amended to provide that it shall be a non-eviction plan, any person who has agreed to purchase under the plan prior to such amendment shall have a period of thirty days after receiving written notice of such amendment to revoke his agreement to purchase under the plan.

(e) The plan provides that non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(f) The plan provides that the rights granted under the plan to purchasers under the plan and to non-purchasing tenants may not be abrogated or reduced regardless of any expiration of or amendment to this section.

(g) The attorney general finds that an excessive number of long-term vacancies did not exist on the date that the offering statement or prospectus was first submitted to the department of law. "Long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission. "Excessive" shall mean a vacancy rate in excess of ten percent provided that such vacancy rate is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date of such submission.

(h) The attorney general finds that each tenant in the building or group of buildings or development was provided following the submission of the proposed offering statement or prospectus to the department of law with a written notice stating that such proposed offering statement or prospectus has been submitted to the department of law. Such notice shall be accompanied by a copy of the proposed offering statement or prospectus or shall include a detailed summary thereof and a statement that the proposed offering statement or prospectus is available for inspection and copying at the office of the department of law where the submission was made and at the office of the offeror or a selling agent of the offeror. Such notice shall be sent on the date the plan is first submitted to the department of law to each tenant then in occupancy. The attorney general shall not issue a letter stating that the offering has been filed for at least fifteen days thereafter.

3. All dwelling units owned by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control of the board of directors or board of managers.

4. Any tenant who has vacated his dwelling unit or is about to vacate his dwelling unit because any person is engaged in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which substantially interferes with or disturbs the comfort, repose, peace or quiet of such tenant in his use or occupancy of his dwelling unit or the facilities related thereto may apply to the attorney general for a determination that such conduct does exist or has taken place and in such case the attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself.

5. Nothing herein shall be construed to limit the jurisdiction of any local governing body to adopt local laws or of any agency, officer or public body to prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling accommodations which are subject to regulation as to rentals and continued occupancy pursuant to the emergency tenant protection act of nineteen seventy-four¹ or the emergency housing rent control law.²

6. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

7. The provisions of this section shall only be applicable in the cities, towns and villages located in the counties of Nassau, Westchester and Rockland which by resolution adopted by the respective local legislative body of such city, town or village, elect that the provisions hereof shall be applicable therein. A certified copy of such resolution shall be filed in the office of the attorney general at Albany and shall become effective on the date of such filing.

§ 352-eeee. Conversions to cooperative or condominium ownership in the city of New York

1. As used in this section, the following words and terms shall have the following meanings:

(a) "Plan". Every plan submitted to the department of law for the conversion of a building or group of buildings or development from rental status to cooperative or condominium ownership, other than a plan for such conversion pursuant to article two, eight or eleven of the private housing finance law.

(b) "Eviction plan". A plan which, pursuant to the provisions of any law or regulation governing rentals and continuing occupancy, can result in the eviction of a non-purchasing tenant by reason of the tenant failing to purchase pursuant thereto.

(c) "Non-purchasing tenant". A person who has not purchased under the plan and who is a tenant entitled to possession at the time the plan is declared effective or a person to whom a dwelling unit is rented subsequent to the effective date. A person who sublets a dwelling unit from a purchaser under the plan shall not be deemed a non-purchasing tenant.

(d) "Annual income". The combined income from all sources of all tenants of the dwelling unit for the income tax year immediately preceding the year in which the plan is accepted for filing by the attorney general. Income tax year shall mean the twelve month period for which the tenant or tenants filed a federal personal income tax return or, if no such return is filed, the calendar year.

(e) "Eligible senior citizens". Non-purchasing tenants who are sixty-two years of age or older on the date the attorney general has accepted the plan for filing and the spouses of any such tenants, on such date, who have resided in the building or group of buildings or development as their primary residence for at least two years prior to the date the attorney general has accepted the plan for filing, who have an annual income of less than thirty thousand dollars and who have elected, within ninety days of the date the attorney general has accepted the plan for filing, on forms promulgated by the attorney general and presented to such tenants by the offeror, to become non-purchasing tenants under the provisions of this section; provided that such election shall not preclude any such tenant from subsequently becoming a purchaser.

2. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this article has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to an eviction plan, unless:

(a) The plan provides that no eviction proceedings will be commenced at any time against eligible senior citizens and that the rentals of eligible senior citizens who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes in-

applicable after the plan has become effective shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy; provided that such proceedings may be commenced for non-payment of rent, illegal use or occupancy of the premises, refusal of access to the owner or a similar breach by the eligible senior citizen of his obligations to the landlord.

(b) The plan provides that eligible senior citizens who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(c) The plan provides that the rights granted under the plan to eligible senior citizens may not be abrogated or reduced regardless of any expiration of or amendment to this section.

3. The attorney general shall refuse to issue a letter stating that the offering statement or prospectus required in subdivision one of section three hundred fifty-two-e of this chapter has been filed whenever it appears that the offering statement or prospectus offers for sale residential cooperative apartments or condominium units pursuant to a plan unless:

(a) The attorney general finds that an excessive number of long-term vacancies did not exist on the date that the offering statement or prospectus was first submitted to the department of law. "Long-term vacancies" shall mean dwelling units not leased or occupied by bona fide tenants for more than five months prior to the date of such submission. "Excessive" shall mean a vacancy rate in excess of ten percent provided that such vacancy rate is double the normal average vacancy rate for the building or group of buildings or development for two years prior to the January preceding the date of such submission.

(b) The attorney general finds that each tenant in the building or group of buildings or development was provided following the submission of the proposed offering statement or prospectus to the department of law with a written notice stating that such proposed offering statement or prospectus has been submitted to the department of law. Such notice shall be accompanied by a copy of the proposed offering statement or prospectus or shall include a detailed summary thereof and a statement that the proposed offering statement or prospectus is available for inspection and copying at the office of the department of law where the submission was made and at the office of the offeror or a selling agent of the offeror. Such notice shall be sent on the date the plan is first submitted to the department of law to each tenant then in occupancy. The attorney general shall not issue a letter stating that the offering has been filed for at least fifteen days thereafter.

4. All dwelling units occupied by non-purchasing tenants shall be managed by the same managing agent who manages all other dwelling units in the building or group of buildings or development. Such managing agent shall provide to non-purchasing tenants all services and facilities required by law on a non-discriminatory basis. The offeror shall guarantee the obligation of the managing agent to provide all such services and facilities until such time as the offeror surrenders control of the board of directors or board of managers.

5. Any tenant who has vacated his dwelling unit or is about to vacate his dwelling unit because any person is engaged in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which substantially interferes with or disturbs the comfort, repose, peace or quiet of such tenant in his use or occupancy of his dwelling unit or the facilities related thereto may apply to the attorney general for a determination that such conduct does exist or has taken place and in such case the attorney general may apply to a court of competent jurisdiction for an order restraining such conduct and, if he deems it appropriate, an order restraining the owner from selling the shares allocated to the dwelling unit or the dwelling unit itself.

6. Nothing herein shall be construed to limit the jurisdiction of any local governing body to adopt local laws or of any agency, officer or

public body to prescribe rules and regulations with respect to the continued occupancy by tenants of dwelling units which are subject to regulation as to rentals and continued occupancy pursuant to law; provided that (i) any such local laws, rules or regulations shall provide that the minimum number of purchasers who must agree to purchase before an eviction plan may be declared effective shall be computed on the basis of tenants in occupancy on the date the plan is accepted for filing by the attorney general, (ii) eligible senior citizens residing in dwelling units subject to the rent stabilization law of nineteen hundred sixty-nine¹ shall not be included in the base for computing the minimum number of purchasers required before the plan may be declared effective and (iii) one-half of the eligible senior citizens residing in housing accommodations subject to the city rent and rehabilitation law shall not be included in the base for computing the minimum number of purchasers required before the plan may be declared effective.

7. Any provision of a lease or other rental agreement which purports to waive a tenant's rights under this section or rules and regulations promulgated pursuant hereto shall be void as contrary to public policy.

8. The provisions of this section shall only be applicable in the city of New York.

~~Added L. 1977, Ch. 149, § 2~~

APPENDIX 2 -- Brookline, Massachusetts
Ordinance

AMENDMENT TO BROOKLINE BY-LAWS
adopted May 7, 1979

WHEREAS a serious public emergency with respect to a substantial and increasing shortage of rental housing accommodations, as declared in Chapter 843 of the Acts of 1970 and in Article XXXVIII of the Brookline Bylaws, continues to confront the Town and its citizens, threatening the public health, safety, and welfare of its citizens, particularly families of low and moderate incomes and elderly persons on fixed incomes;

WHEREAS a rapid and increasing rate of conversion of rental housing to condominium ownership is exacerbating this shortage and causing severe hardship to rental housing occupants by reducing the supply of rental housing and raising the cost of housing so converted;

WHEREAS the loss of rental housing because of conversion to condominium ownership has created and will continue to aggravate the problems of housing its citizens, particularly families of low and moderate incomes and elderly persons on fixed incomes; and

WHEREAS the Town, after preliminary investigation of the issues, has appropriated a sum of money for an outside professional study of the effects of condominium conversion;

NOW, THEREFORE, Article XXXVIII of the Brookline Bylaws is hereby amended for the purpose of obtaining relief from the aforesaid conditions so that there is time for the community to study and consider long term solutions for this housing problem, as follows:

By amending paragraph (8) of Section 9(a), striking out the existing language and inserting in place thereof the following:

"(8) the landlord seeks to recover possession in good faith for use and occupancy of himself or his children, parents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law, except that no action shall be brought under this paragraph to recover possession of a condominium unit from a tenant who has occupied the unit continuously since a time prior to the recording of any master deed for the condominium;"

upon the condition that in the event this amendment is determined to be invalid, for any reason, the existing provision of paragraph (8) of said Section 9(a), which is amended hereby, shall continue in full force and effect.

Section 9. Evictions. (a) No person shall bring any action to recover possession of a controlled rental unit unless:

(1) the tenant has failed to pay the rent to which the landlord is entitled;

(2) the tenant has violated an obligation or covenant of his tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord;

(3) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the controlled rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or other occupants of the same or any adjacent accomodation;

(4) the tenant is convicted of using or permitting a controlled rental unit to be used for any illegal purposes;

(5) the tenant, who had a written lease or rental agreement which terminated on or after this by-law has taken effect in the Town of Brookline, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are non inconsistent with or violative of any provisions of this by-law;

(6) the tenant has refused the landlord reasonable access to the unit for the purpose of making necessary repairs or improvements required by the laws of the United States, the commonwealth, or any political subdivision thereof, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the rental unit to any prospective purchaser or mortgagee;

(7) the person holding at the end of a lease term is a sub-tenant not approved by the landlord;

(8) the landlord seeks to recover possession in good faith for use and occupancy of himself or his children, parents, brother, sister, father-in-law, mother-in-law, son-in-law or daughter-in-law, except that if the unit is a condominium unit occupied by a tenant who was in possession thereof at the time the landlord acquired ownership, then the board shall not issue a certificate of eviction hereunder for a period of six months from the date when the board determines that the facts attested to in the landlord's petition are valid and in compliance herewith; and if the board determines that a hardship exists, then the board may extend the period between the determination of validity and compliance hereunder and the date for issuance of the certificate for an additional period of up to six months;

(9) the landlord seeks to recover possession to demolish or otherwise remove the unit from housing use; and

(10) the landlord seeks to recover possession for any other just cause, provided that his purpose is not in conflict with the provisions and purposes of the rent control by-law; and provided that the recording of a master deed for a condominium in conformance with the provisions of Chapter 183A of the General Laws, the sale or offering for sale of any unit therein, or any condition incidental to such recording, sale, or offering for sale shall not be deemed just cause hereunder.

APPENDIX 3 -- San Francisco, California
Ordinance



SUMMARY OF THE SUBDIVISION PROCESS,
AS RELATED TO DEPARTMENT OF CITY PLANNING*

A. Introduction

The Subdivision Code, enacted in May 1975, was amended by the San Francisco Board of Supervisors under Ordinance No. 337-79, effective July 6, 1979. (Copies of the Code and amendments are available in Room 351, City Hall, for \$3.00 and \$1.00, respectively, and should be consulted for more complete information.) The Code regulates subdivisions of land (creating new lots), condominium subdivisions (involving new buildings), and condominium or cooperative conversion subdivisions (involving existing rental buildings), carrying out requirements of the Subdivision Map Act of California.

The Department of Public Works (DPW) is given the principal responsibility under the Code to administer the process (George Woo and Ray Wong, Room 352, City Hall, 558-4972). The Department of City Planning (DCP) and the City Planning Commission (CPC), as part of the process, are required to make various findings related to the Subdivision Code and the Master Plan, and to ensure compliance with the City Planning Code. (Alec Bash, Jim Miller and Joe Fitzpatrick for condominiums and for five or more lots, and Franz Von Uckermann for four or fewer lots, 100 Larkin Street, 558-3055.) When a subdivision is found to be not consistent with the Master Plan, it must be disapproved by the Director of Public Works. The action of the Director of Public Works may be appealed to the Board of Supervisors.

B. Summary of Requirements

Subdivisions involving fewer than five units or lots are generally processed as "Parcel Maps" with limited substantive review. Subdivisions involving five or more lots or units require a "Tentative Map", which involves substantive review and a public hearing by the CPC (however, new condominiums of fewer than 50 units generally require such a hearing only on request by an owner of abutting property). All subdivisions require an affirmative action sales program and landscaping (typically, installation and maintenance of street trees and landscaping in open areas). Subdivisions of land previously subdivided, but requiring resubdivision because of common ownership of the parcels, may be handled expeditiously through a "Parcel Map Waiver" process. In projects involving 50 or more lots or newly-constructed condominium units, the subdivider must make available 10% of the units for low and moderate income occupancy, provided that governmental subsidies for such occupancy are available (mortgage subsidies may be available through the California Housing Finance Agency).

Subdivisions of land generally require a lot area of 2500 square feet and a minimum width of 25 feet. Exceptions include (1) properties within an RH-1(D) (House, One-Family Detached Dwelling) district, which require a lot area of 4,000 square feet and a minimum width of 33 feet, and (2) properties within 125 feet of a typical street intersection, which may have an area of 1,750 square feet. The Residence Element of the Master Plan, in its policies for New Residential Development, calls for such items as a lot pattern which relates to surrounding properties and avoidance of disruptive intrusions into well-defined interior block open space. Subdivisions of five or more lots require submittal of an environmental evaluation form to DCP before they can be processed.

Condominium subdivisions are new buildings, and their construction is subject to Residence Element New Residential Development policies. These include ensuring that new housing relates well to the character and scale of surrounding buildings, encouraging construction of a variety of unit types suited to the needs of households of all sizes, and promoting development of well-designed housing. A Housing Opportunities policy of that Element calls for economic integration, which might be accomplished by including units of different prices and quality within one development.

Condominium and cooperative conversion subdivisions generally involve a change in tenure of a residential building from rental apartments to ownership dwelling units. The Planning Code does not distinguish between apartments and condominiums; consequently, a legal rental apartment building does not require any modifications, such as additional parking, to be a legal condominium building (although it does require public approval as a subdivision and must be brought up to code standards for a building of its age). If existing parking is at a less than "one-for-one" ratio to dwelling units, the parking must be kept as "Common Area" in order not to

* Additional requirements or procedures may be in effect at other public agencies involved in the process.

reduce the fractional share of a parking space that each unit theoretically possesses.

The Subdivision Code requires that the City Planning Commission review a conversion for consistency with the Master Plan. The Code requires that the City Planning Commission disapprove for cause any project where vacancies have been increased, elderly or disabled tenants displaced or discriminated against, or evictions have occurred for purposes of preparing the building for conversion, or where rents have been increased excessively over the preceding 18 months (except for rent increases related to code-required capital improvements). The Code also requires that the Commission determine whether any units to be converted are part of the City's low or moderate income housing stock, and, if so, that such units sell for a low or moderate income sales price (for more explanation on this point, see "Low and Moderate Income Housing and the Condominium").

The recent amendments to the Code provide various benefits to tenants and allow for more tenant involvement in decisions to convert rental buildings. An application for conversion may not be filed unless 40 percent of the tenants have either signed intent to purchase forms or indicated eligibility for and interest in a lifetime lease. Tenants aged 62 or older, or permanently disabled, are guaranteed a lifetime lease, and other tenants are given the option of a one-year lease after the final City approval. The subdivider must reimburse all tenants for up to \$1,000 in moving expenses, and provide assistance in finding relocation housing. Tenants must be given most of the application materials within 5 days after the application is filed, get a copy of the approval conditions, and have their rent frozen at pre-application levels while the application is pending. Following conversion, tenants have a non-transferable contract right to purchase their occupied unit, at the sales price submitted with the application, and the offering for their units must occur within one year of State approval of the conversion.

In addition to the 40 percent tenant intent to purchase, two other provisions relate to the overall City housing issue. First, a subdivider must provide a 10 percent low or moderate income housing stock "setaside", either as (1) 10 percent of the units in the building to be converted (or retain the number of existing low or moderate income units, whichever is greater), (2) units in new construction totalling 10 percent of the units to be converted, or (3) an "in lieu" payment to a City Housing Development Fund equal to 10 percent of the difference between the sum total of proposed sales prices for all units in the building and the prices set for those units if they all sold for moderate income prices. Second, no more than 1,000 units may be converted in any one year (a number never reached in any previous year).

The above requirements apply to conversions of two units or more, except that two-unit buildings where both units are owner-occupied are excluded. Further, no public hearings are required, and there is no requirement for a 10 percent low or moderate income setaside, for conversions of four units or less.

Finally, the Code provides that a subdivider cannot re-apply for six months from the date of withdrawal of an application, one year from the date of denial, or 18 months from the date of denial by the City Planning Commission for cause as specified above.

C. Filing Procedure

The initial filing of maps (prepared by a Licensed Land Surveyor) and related materials (e.g., Application Packet) is made at DPW, using application forms included within their "Procedures Governing Condominium Conversion and Creation of New Condominiums" (available at Room 351, City Hall, for \$1.00). Parcel maps for four or fewer lots or units are referred to DCP for administrative action. Tentative maps for five or more lots or units are referred to DCP for a public hearing on consistency with the Master Plan, except that a public hearing is often not required for new condominiums. The CPC and DPW actions on Tentative Maps may be appealed to the Board of Supervisors.

The State Department of Real Estate (Subdivision Section, 185 Berry Street, Room 5816, San Francisco 94107, 557-0486) will issue a Preliminary Subdivision Public Report ("pink slip") following City Tentative Map approval, and a Final Subdivision Public Report ("white slip") following City recordation of the Final Map. Sales cannot begin until issuance of the Final Report.



August 1979

Low and Moderate Income Housing and the Condominium*

The Subdivision Code in Section 1385 states the following: "The City Planning Commission shall determine whether any units to be converted are part of the City's low or moderate income housing stock. If the Commission determines that any unit to be converted is part of the City's low or moderate income housing stock, then the price of the unit upon conversion shall not be such as to remove it effectively from said low or moderate income housing stock..."

The Subdivision Code in Sections 1308(l) and (m) defines low and moderate income housing stock as rental units for which the rent does not exceed 25 percent of the gross monthly income of low and moderate income households, respectively. Those Sections establish a relationship that a studio can accommodate a one-person household, a one-bedroom unit can accommodate a two-person household, a two-bedroom unit can accommodate a three-person household, and so forth. Section 1385 states that the price upon conversion of low and moderate income units shall not exceed two and one-half times the highest income level for low and moderate income households, respectively. In Sections 1309(e) and (f), the Code defines low income as not exceeding 80%, and moderate income as ranging from 80% to 120%, of the San Francisco area median household income as established by the U. S. Department of Housing and Urban Development (HUD). Low and moderate income levels for households of different sizes are currently derived from the HUD figures for "Lower Income" Income Limits for the Section 8 Housing Program, issued July 30, 1979.

The table on the reverse of this page indicates household incomes, equivalent dwelling unit types, the maximum levels of rents for the low or moderate income housing stocks of the City, and corresponding levels of purchase prices that would not remove units from that housing stock.

If a condominium conversion is found to involve low or moderate income housing stock, and it is determined that the proposed sales prices would remove it from that stock, the Department would exercise either of two options: (1) make a finding that the subdivision is not consistent with the Master Plan, or (2) establish as a condition the maximum sales price for which the condominium unit might be sold following conversion.

* This supplements "Summary of the Subdivision Process as Related to the Department of City Planning".

LOW AND MODERATE INCOME RENTAL THRESHOLDS
AND MAXIMUM SALES PRICES

	Household Size	Type of Dwelling Unit	HUD-Defined Annual Income*	Rental Threshold**	Maximum Sales Price***
LOW INCOME	1	Studio	\$11,600	\$242	\$29,000
	2	1-Bedroom	\$13,250	\$276	\$33,125
	3	2-Bedroom	\$14,900	\$310	\$37,250
	4	3-Bedroom	\$16,550	\$345	\$41,375
	5	4-Bedroom	\$17,600	\$367	\$44,000
	6	4-Bedroom	\$18,650	\$389	\$46,625
	7	5-Bedroom	\$19,650	\$409	\$49,125
	8+	5/more-Bedroom	\$20,700	\$431	\$51,750
MODERATE INCOME	1	Studio	\$17,400	\$363	\$43,500
	2	1-Bedroom	\$19,875	\$414	\$49,688
	3	2-Bedroom	\$22,350	\$466	\$55,875
	4	3-Bedroom	\$24,825	\$517	\$62,063
	5	4-Bedroom	\$26,400	\$550	\$66,000
	6	4-Bedroom	\$27,975	\$583	\$69,938
	7	5-Bedroom	\$29,475	\$614	\$73,688
	8+	5/more-Bedroom	\$31,050	\$647	\$77,625

* For Low Income, equivalent to HUD "Lower Income" Income Limits for Section 8 Housing Program of 7/30/79, which is based upon 80% of the median income figure established for 1978. For Moderate Income, extrapolated from Low Income and set at 120% of median income. (Note: These figures and, therefore, this table are subject to change approximately on an annual basis.)

** Established by Subdivision Code at 25% of HUD-defined income, taken monthly.

*** Established by Subdivision Code at 2.5 times HUD-defined annual income, may be adjusted to actual sales date by Housing Component of Consumer Price Index.

4-7-75
-3-24-75-

As amended in Board ~~3-17-75~~
ORDINANCE NO. 163-75

FILE NO. 29-74-1

SUBDIVISION CODE

1 ENACTING CHAPTER XIII OF PART II OF THE SAN FRANCISCO MUNICIPAL CODE,
2 TO BE KNOWN AS THE SUBDIVISION CODE OF THE CITY AND COUNTY OF SAN FRAN-
3 CISCO, ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE CONTROL AND
4 APPROVAL OF SUBDIVISIONS IN ACCORDANCE WITH THE STATE SUBDIVISION MAP
5 ACT, INCLUDING PROCEDURES AND REQUIREMENTS FOR CREATION OF CONDOMINIUMS,
6 COMMUNITY APARTMENTS, STOCK COOPERATIVES AND CONVERSIONS; AND REPEALING
7 CERTAIN PROVISIONS OF THE ADMINISTRATIVE CODE AND THE PUBLIC WORKS
8 CODE RELATING TO SUBDIVISIONS.

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

10 Section 1. The provisions of this ordinance shall be included
11 in and designated as Chapter XIII, Part II, of the San Francisco
12 Municipal Code and shall be known and referred to as "THE SUBDIVISION
13 CODE".

14 Section 2. Chapter 26 (Sections 26.1 through and including 26.5)
15 of the San Francisco Administrative Code and Sections 735, 736 and 737
16 of Part II, Chapter X of the San Francisco Municipal Code (Public Works
17 Code) are hereby repealed.

18 Section 3. Chapter XIII is hereby added to Part II of the
19 San Francisco Municipal Code, reading as follows:

ARTICLE I GENERAL PROVISIONS

20 SEC. 1300. Title. This Chapter shall be known as the "Sub-
21 division Code of the City and County of San Francisco".

22 SEC. 1301. Authority and Mandate.

23 (a) This Code is adopted pursuant to the Subdivision Map Act of
24 California, Title 7, Division 2 of the Government Code, commencing
25 with Section 66410 (hereinafter referred to as SMA).

26 (b) Any amendments to SMA, adopted subsequent to the effective
27 date of this Code, shall not invalidate any provisions of this Code.

1 Any amendments to SMA that may be inconsistent with this Code shall
2 govern.

3 (c) This Code shall govern in relation to all other ordinances
4 of the City and County of San Francisco and rules and regulations
5 pursuant thereto. In the event of any inconsistency or conflict
6 between the provisions of this Code and other provisions of the
7 Municipal Code, the most restrictive shall prevail.

SEC. 1302. Purposes.

8 (a) This Code is enacted to establish procedures and require-
9 ments for the control and approval of subdivision development within
10 the City and County of San Francisco in accordance with SMA.

11 (b) This Code is enacted to encourage and ensure the develop-
12 ment of subdivisions consistent with the objectives of the San Fran-
13 cisco Master Plan, particularly the following:

- 14 1. Improve the choice, quality, and number of housing units,
15 especially for low and moderate income families;
- 16 2. Promote the residential stability and diversity of the
17 community by encouraging neighborhood maintenance,
18 preventing major displacements of people, and facilitating
19 of inhabitant ownership or residential units, while at the
20 same time recognizing the need for adequate rental housing
21 in the high density urban setting.

22 (c) Recognizing that, by their unique character and requirements,
23 Conversions specifically differ from other subdivisions and apartments,
24 it is hereby found that the implementation of subsections (a) and (b)
25 of this Section requires the adoption of special requirements for
26 Conversions.

SEC. 1303. Scope.

27 (a) This Code supplements SMA, prescribing rules, regulations
28 and procedures authorized therein.

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1 (b) The necessity for Tentative Maps, Final Maps and Parcel Maps
2 shall be governed by this Section and SMA.

3 (c) For subdivisions creating five (5) or more parcels or units,
4 a Tentative Map and a Final Map or Parcel Map shall be required pursu-
5 ant to this Code and SMA.

6 1. A Tentative Map and a Final Map shall be required for all
7 such subdivisions except those coming within the exceptions
8 set forth in Section 66426 of SMA.

9 2. A Tentative Map and a Parcel Map shall be required for all
10 such subdivisions coming within the exceptions set forth
11 in Section 66426 of SMA.

12 (d) For subdivisions creating fewer than five (5) parcels or
13 units, no Tentative Map shall be required, but a Parcel Map contain-
14 ing the information specified by Section 1359 of this Code and SMA
15 shall be required. Said Parcel Map shall be filed with the City
16 Engineer and recorded according to the procedure set forth in
17 Sections 1360 through 1364 of this Code.

18 (e) No Tentative Map, Final Map or Parcel Map shall be required
19 for those specific types of subdivisions exempted by Sections 66412
20 and 66428 of SMA.

21 SEC. 1304. Enforcement.

22 (a) It is unlawful for any person, firm, corporation, partnership
23 or association to offer to sell or lease, contract to sell or lease,
24 or sell or lease any subdivision or any part thereof until a Final
25 Map or a Parcel Map thereof, in full compliance with the provisions
26 of this Code and SMA, has been duly recorded in the office of the
27 Recorder.

28 (b) All departments, officials and public employees of the City,
29 vested with the duty or authority to approve or issue permits, shall
30 conform to the provisions of this Code and shall neither approve nor

1 issue any permit or license for use, construction, or purpose in
2 conflict with the provisions of this Code. Any such permit or
3 license issued in conflict with the provisions of this Code shall be
4 null and void.

5 (c) Any subdivider, agent of a subdivider, successor in interest
6 of a subdivider, tenant, purchaser, builder, contractor or other
7 person who violates any of the provisions of this Code or any condi-
8 tions imposed pursuant to this Code shall be deemed guilty of a
9 misdemeanor and upon conviction thereof shall be fined in an amount
10 not exceeding Five Hundred Dollars (\$500) or be imprisoned for a
11 period not exceeding six (6) months or be both so fined and imprisoned.
12 Each day such violation is committed or permitted to continue shall
13 constitute a separate offense and shall be punishable as such here-
14 under.

15 (d) The Director of Public Works shall have the authority to
16 enforce this Code against violations thereof by any of the following
17 actions:

- 18 1. The Director may serve notice requiring the cessation
19 or correction of any action in violation of this Code upon
20 the subdivider, agent of the subdivider, successor in
21 interest of the subdivider, tenant, purchaser, builder,
22 contractor or other person who commits or assists in such
23 violation;
- 24 2. The Director may call upon the City Attorney to maintain
25 an action for injunction to restrain or abatement to cause
26 the correction of any such violation; and
- 27 3. The Director may call upon the District Attorney to
28 institute criminal proceedings in enforcement of this
29 Code against any such violation.
30

1 SEC. 1305. Severability.

2 (a) If any Article, Section, subsection, paragraph, sentence,
3 clause or phrase of this Code, or any part thereof, is for any reason
4 held to be unconstitutional or invalid or ineffective by any court of
5 competent jurisdiction, or other competent agency, such decision shall
6 not affect the validity or effectiveness of the remaining portions
7 of this Code or any part thereof. The Board of Supervisors hereby
8 declares that it would have passed each Article, Section, subsection,
9 paragraph, sentence, clause or phrase thereof, irrespective of the
10 fact that any one or more Articles, Sections, subsections, paragraphs,
11 sentences, clauses or phrases be declared unconstitutional or invalid
12 or ineffective.

13 (b) If the application of any provision or provisions of this
14 Code to any person, property or circumstances is found to be unconsti-
15 tutional or invalid or ineffective in whole or in part by any court
16 of competent jurisdiction, or other competent agency, the effect of
17 such decision shall be limited to the person, property or circumstances
18 immediately involved in the controversy, and the application of any
19 such provision to other persons, properties and circumstances shall
20 not be affected.

21 (c) This Section shall apply to this Code as it now exists and
22 as it may exist in the future, including all modifications thereof
23 and additions and amendments thereto.

24 ARTICLE 2
25 DEFINITIONS

26 SEC. 1306. General. Officials and agencies referred to in this
27 Code and in SFA are officials and agencies of the City and County of
28 San Francisco, unless the contrary is either stated or implied.

29 SEC. 1307. Government Agencies.

30 (a) "Advisory Agency" and "Director" mean the Director of Public

1 Works.

2 (b) "Bureau of Building Inspection" and "B2I" mean the Bureau
3 of Building Inspection of the Department of Public Works.

4 (c) "Bureau of Engineering" means the Bureau of Engineering of
5 the Department of Public Works.

6 (d) "City Planning" means the Department of City Planning.

7 (e) "Clerk" means the Clerk of the Board.

8 (f) "County", "City", "City and County", "Municipality" and
9 "Local Agency" mean the City and County of San Francisco.

10 (g) "County Surveyor", "County Engineer" and "City Engineer"
11 mean the City Engineer and his staff.

12 (h) "Governing Body", "Legislative Body" and "Board" mean the
13 Board of Supervisors.

14 SEC. 1308. Subdivisions.

15 (a) "Common areas" shall mean an entire project excepting all
16 units therein granted or reserved.

17 (b) "Community Apartment" shall mean an estate in real property
18 consisting of an undivided interest in common in a parcel of real
19 property and the improvements thereon coupled with the right of ex-
20 clusive occupancy of any apartment located therein.

21 (c) "Condominium" shall mean an estate in real property con-
22 sisting of an undivided interest in common in a portion of a parcel
23 of real property together with a separate interest in space in a
24 residential, industrial, or commercial building on such real property,
25 such as an apartment, office, or store. A Condominium may include
26 in addition a separate interest in other portions of such real
27 property. Such estate may, with respect to the duration of its
28 enjoyment, be either (1) an estate of inheritance or perpetual estate,
29 (2) an estate for life, or (3) an estate for years, such as a lease-
30 hold or subleasehold. This definition is intended to conform to

1 Section 753 of the California Civil Code and any other section of
2 California law.

3 (c) "Conversion" shall mean a proposed change in the type of
4 ownership of a parcel or parcels of land, together with the existing
5 attached structures, to that defined as a Condominium project,
6 Community Apartment project or Stock Cooperative, regardless of the
7 present or prior use of such land and structures and of whether sub-
8 stantial improvements have been made to such structures.

9 (e) "Project" shall mean the entire parcel of real property
10 divided or to be divided in any of the methods defined as a subdivi-
11 sion.

12 (f) "Stock Cooperative" shall mean a corporation formed or
13 availed of primarily for the purpose of holding title to, either in
14 fee simple or for a term of years, improved real property, if all
15 or substantially all of the shareholders of such corporation receive
16 a right of exclusive occupancy in a portion of the real property,
17 title to which is held by the corporation, which right of occupancy
18 is transferable only concurrently with the transfer of the share or
19 shares of stock in the corporation held by the person having such
20 right of occupancy.

21 (g) "Subdivider" shall mean a person, firm, corporation,
22 partnership or association who proposes to divide, divides or causes
23 to be divided real property into a subdivision for himself or for
24 others. City agencies, including the San Francisco Redevelopment
25 Agency, are exempted from this definition.

26 (h) "Subdivision" shall mean the division of any improved or
27 unimproved land, shown on the latest equalized county assessment roll
28 as a unit or as contiguous units, for the purpose of sale, lease or
29 financing, whether immediate or future. Property shall be considered
30

1 as contiguous units even if it is separated by roads, streets,
2 utility easements or railroad rights-of-way. This definition shall
3 specifically but not exclusively include Condominiums, Community
4 Apartments, Stock Cooperatives and Conversions.

5 (i) "Unit" shall mean the elements of a project which are to
6 be owned individually and not in common with the owners of other
7 elements of the project.

8 SEC. 1309. Terminology.

9 (a) "Affirmative Action in Housing" shall mean informational
10 and promotional activity for the purpose of eliminating discrimina-
11 tion in housing accommodations because of race, religion, national
12 origin, sex, or any other basis prohibited by law.

13 (b) "Application Packet" shall mean the Tentative Map together
14 with all documents, statements and other matters that are required
15 as attachments thereto.

16 (c) "Final Map" shall mean a map prepared in accordance with
17 Chapter 2, Article 2 of SMA and this Code, which map is designed to
18 be placed on record in the office of the Recorder.

19 (d) "Improvement Plan" shall mean an engineering plan or a set
20 of engineering plans showing the location and construction details
21 of improvements.

22 (e) "Low income" shall mean the income of households, as defined
23 by concept 79.1 of the 1970 U.S. Census "User's Guide", whose immediate
24 household income does not exceed eighty percent (80%) of the median
25 household income for the San Francisco Standard Metropolitan Statisti-
26 cal Area as determined by the U.S. Department of Housing and Urban
27 Development and adjusted according to the determination of that Depart-
28 ment pursuant to the Housing and Community Development Act of 1974.

29 (f) "Moderate income" shall mean the income of households, as de-
30 fined by concept 79.1 of the 1970 U.S. Census "User's Guide", whose
immediate household income is greater than eighty percent (80%) but does

1 not exceed one hundred twenty percent (120%) of the median household
2 income for the San Francisco Standard Metropolitan Statistical Area
3 as determined by the U.S. Department of Housing and Urban Development
4 and adjusted according to the determinations of that Department pur-
5 suant to the Housing and Community Development Act of 1974.

6 (g) "Parcel Map" shall mean a map prepared in accordance with
7 Chapter 2, Article 3 of SMA and this Code, which map is designed to
8 be placed on record in the office of the Recorder.

9 (h) "Soil Engineer" shall mean a registered civil engineer,
10 experienced in engineering geology, responsible for the soil engineer-
11 ing work outlined in this Code, including supervision, analysis and
12 interpretation of field investigation and laboratory tests for a
13 specific project; preparation of geological and soil engineering
14 recommendations and specifications; and supervision of grading con-
15 struction work.

16 (i) "Standard Specifications" shall mean the Standard Specifica-
17 tions of the Bureau of Engineering.

18 (j) "Subdivision Regulations" shall mean the detailed technical
19 and administrative requirements adopted by the Advisory Agency to
20 supplement this Code, including amendments thereto.

21 (k) "Tentative Map" shall mean a map made for the purpose of
22 showing the design of a proposed subdivision and the existing condi-
23 tions in and around it; such a map need not be based upon an accurate
24 or detailed final survey of the property.

25 ARTICLE 3
26 GENERAL PROCEDURAL PROVISIONS

27 SEC. 1310. Advisory Agency.

28 (a) The Director of Public Works is hereby continued as the
29 Advisory Agency.

1 (b) All maps, plans and reports required by this Code shall be
2 filed with the City Engineer.

3 SEC. 1311. Subdivision Regulations.

4 (a) The City Engineer, with the assistance of other City agencies,
5 shall prepare and publish the Subdivision Regulations, including amend-
6 ments thereto, needed to supplement this Code.

7 (b) Such Regulations, including amendments thereto, shall be
8 adopted by the Director after holding a Public Hearing. The decision
9 of the Director in adopting the Subdivision Regulations, including
10 amendments thereto, shall be final.

11 SEC. 1312. Exceptions.

12 (a) Upon application by the subdivider, the Director may author-
13 ize exceptions to any of the substantive requirements set forth in
14 this Code and in the Subdivision Regulations.

15 (b) Before granting any such exception in whole or in part, the
16 Director shall hold a Public Hearing on the requested exception.

17 Furthermore, he must find:

- 18 1. That there are unusual circumstances or conditions affect-
19 ing the property;
- 20 2. That the exception is necessary for the preservation and
21 enjoyment of a substantial property right of the applicant;
- 22 3. That the granting of the exception will not be material-
23 detrimental to the public welfare or injurious to other
24 property in the area in which said property is situated;
25 and
- 26 4. That the granting of such exception has been determined
27 by the City Planning Commission to be consistent with the
28 Master Plan, after said Commission has held a public
29 hearing.

1 (c) In granting any such exception, the Director shall designate
2 the conditions under which the exception is granted.

3 SEC. 1313. Public Hearings: Procedure.

4 (a) Whenever a Public Hearing is held by the Director or the
5 City Planning Commission pursuant to the Code, notice of the time and
6 place thereof, including a general description of the subject matter,
7 shall be given at least ten (10) days before the hearing. Such notice
8 shall be given by publication once in the Official Newspaper of the
9 City and by posting in the offices of the Director, and in public
10 places within three hundred (300) feet of the proposed subdivision,
11 with copies to the Board and any interested agencies, organizations,
12 or individuals. The cost of such notice shall be borne by the sub-
13 divider.

14 (b) When the Public Hearing deals with a subdivision, the
15 notice shall give a general description of the location of the sub-
16 division or proposed subdivision. Within the time limits set forth
17 in the preceding subsection (a), copies of said notice shall be
18 mailed to the subdivider; to each owner of property, as shown on the
19 latest city-wide assessment roll in the office of the Tax Collector,
20 located within three hundred (300) feet of the subdivision boundaries;
21 and to each resident in the subdivision or proposed subdivision. The
22 cost of such notice shall be borne by the subdivider.

23 SEC. 1314. Public Hearings: When Required.

24 (a) Public Hearing. Whenever a property to be subdivided will
25 be divided into twenty-five (25) or more lots or units, the Director
26 shall hold a Public Hearing prior to reporting on the Tentative Map
27 for said subdivision.

28 (b) Subdivision Conference. Whenever a property to be subdivided
29 will be divided into fewer than twenty-five (25) units, the City
30

1 Engineer shall hold a Subdivision Conference in lieu of the Public
2 Hearing required in subsection (a) of this Section.

3 SEC. 1315. Fees.

4 (a) Fees, payable to the Department of Public Works, shall be
5 charged for checking and processing the maps, plans and reports filed
6 under this Code. Said fees shall consist of an initial payment of
7 one hundred dollars (\$100), paid at the time of filing a Tentative Map,
8 plus any required additional sum needed to equal the actual cost of
9 checking the maps, plans and reports, together with the investigations
10 incidental thereto. All such fees shall have been paid prior to
11 approval by the Board of the Final Map and by the City Engineer of the
12 Parcel Map.

13 (b) Payment of fees charged under this Code does not waive the
14 fee requirements of other ordinances and rules and regulations pursuant
15 thereto.

16 ARTICLE 4
17 TENTATIVE MAPS

18 SEC. 1320. Pre-filing Conference. Prior to filing a Tentative
19 Map, the subdivider may elect to submit to the City Engineer prelimi-
20 nary maps, plans and other data concerning a proposed subdivision.
21 Within fourteen (14) days after the receipt of said material, the City
22 Engineer will hold a conference with the subdivider, City Planning and
23 any other interested agencies to discuss the proposed subdivision.
24 This procedure is optional and does not waive the requirements for fil-
25 ing a Tentative Map.

26 SEC. 1321. Application Packet. The initial action in connection
27 with the making of any subdivision for which a Tentative Map is required
28 shall be the preparation of the Application Packet. Sections 1322 and
29 1323 of this Code cover the preparation of the component parts of said
30

1 Application Packet.

2 SEC. 1322. Tentative Map.

3 (a) The Tentative Map shall be prepared by a registered civil
4 engineer or a registered land-surveyor.

5 (b) The Tentative Map shall contain the following data, in
6 sufficient detail to enable the Director and other agencies to evalu-
7 ate the proposed subdivision:

- 8 1. Title;
- 9 2. Explanatory Notes; and
- 10 3. Topographic Map of the proposed subdivision and adjacent
11 lands showing the existing conditions and the proposed
12 changes.

13 (c) The Tentative Map shall conform to the Subdivision Regula-
14 tions regarding detailed format and contents.

15 SEC. 1323. Tentative Map Documents.

16 (a) Statement. A written statement shall contain the following
17 information:

- 18 1. Existing use or uses of the property, including whether or
19 not there are existing tenancies and the conditions and
20 terms thereof;
- 21 2. Description of the proposed subdivision, including the
22 number of lots or units, their sizes and intended use,
23 nature of the development, and the total area of the
24 development represented by each use;
- 25 3. The improvements proposed to be constructed or installed
26 and the tentative schedule for the start and completion
27 thereof;
- 28 4. Whether the subdivider intends to file a Final Map or a
29 Parcel Map;
- 30 5. Description of variances and exceptions that are

requested; and

6. Certification that the subdivider or his agent shall not retain any right, title or interest in any common area or areas or facilities of the subdivision and its amenities, except ~~that~~ those common areas in which the subdivider retains an individual interest by virtue of his ownership of one or more of the units.

(b) Environmental Evaluation Data. Data shall be supplied on the appropriate City Planning forms for an Environmental Impact Evaluation.

(c) Soil and Geologic Reconnaissance Report. A report, prepared by a soils engineer or a registered engineering geologist and based upon a reconnaissance of the site and a study of geologic, soil and topographic maps and reports of the area, shall contain the following information:

1. General geologic and soil conditions within and immediately adjacent to the proposed subdivision;
2. The effect of the geologic and soil conditions on the design and layout of the subdivision;
3. Delineation of areas subject to existing or potential slides and geologic hazards; and
4. Recommendations on appropriate general corrective measures to be taken.

(d) Ownership Statement. A statement from a competent title company shall contain the names of the owners of record of the real property proposed for subdivision and all easements and other encumbrances and reservations of record affecting the property.

SEC. 1324. Filing.

(a) The Application Packet, together with the initial fee payment, shall be filed with the City Engineer.

(b) The date of filing shall be the date when a complete Application Packet has been accepted by the City Engineer.

(c) Upon date of filing the Applicant Packet shall become a Public Record.

SEC. 1325. Referral to Other Agencies. Within three (3) working days after the Application Packet has been filed with the City Engineer, the City Engineer shall forward copies to City Planning, the Bureau of Engineering, the Bureau of Building Inspection, the Human Rights Commission and other appropriate government agencies for their review.

SEC. 1326. Time Limit for Agency Review.

(a) The time limit for agency review shall be thirty (30) days from the date of receipt by said agency of a copy of the Application Packet.

(b) The time limit for agency review may be extended by mutual consent of the subdivider and the City Engineer.

SEC. 1327. Agency Report. Each reviewing agency shall report, in writing, to the City Engineer, with a copy to the subdivider, its findings on and recommendations for approval, conditional approval or denial of an Application Packet. City Planning's report shall include a finding on consistency with the Master Plan. The Bureau of Building Inspection's report shall include a finding on the necessity of a Preliminary Soil Report.

SEC. 1328. Subdivision Conference. Within six (6) days after all agency reports have been received or after expiration of the review time limits, and if a Public Hearing is not required by this Code, the City Engineer shall hold a Subdivision Conference to discuss the reports submitted. Written notice of such Conference shall be sent to the subdivider, to all agencies who have submitted a report, and to other persons and organizations who had expressed

an interest in the proposed subdivision.

SEC. 1329. City Engineer's Consolidated Report.

(a) Whenever a Subdivision Conference is required, the City Engineer shall submit to the Director a written report on the findings and recommendations discussed in the conference, attaching thereto copies of the reports from other agencies. A copy of said report shall be sent to each participant in the Subdivision Conference. Said report shall be submitted to the Director within four (4) days after the Subdivision Conference.

(b) Whenever a Public Hearing is required, the City Engineer shall submit to the Director, with a copy to the subdivider, a written report on the findings and recommendations received from the reviewing agencies, attaching thereto copies of the reports from said agencies. Said report shall be submitted within five (5) days after expiration of the review time limits.

SEC. 1330. Public Hearing. When a Public Hearing is required by this Code, said hearing shall be held within seventeen (17) days after the expiration of the review time limits.

SEC. 1331. Advisory Agency's Report.

(a) Within fifty (50) days after the filing of the Tentative Map, unless the time has been extended by mutual consent of the subdivider and the Director, the Director shall report in writing on said Map to the subdivider. Said report shall approve, conditionally approve or disapprove the Tentative Map. If the Map is disapproved, the report shall also state the reasons for disapproval.

(b) Copies of the Director's report shall be sent to all agencies that submitted a report and to the Board.

SEC. 1332. Consistency with Master Plan.

(a) Whenever a property is to be subdivided, the City Planning Commission shall hold a public hearing on the question of consistency

of the subdivision with the Master Plan. Notice of said hearing shall be given pursuant to Section 1313.

(b) The Director shall disapprove the proposed subdivision when City Planning finds that the proposed subdivision is not consistent with the Master Plan.

(c) When City Planning finds that a proposed subdivision will be consistent with the Master Plan only after certain proposed conditions are complied with, the Director shall incorporate said conditions in his conditional approval of the proposed subdivision.

SEC. 1333. Appeal.

(a) The subdivider may appeal to the Board from any action of the Director conditionally approving or disapproving the Tentative Map as set forth in SMA.

(b) At least twenty percent (20%) of the tenants and property owners within three hundred (300) feet of the subdivision may appeal to the Board from any action of the Director approving or conditionally approving the Tentative Map. If any property located within three hundred (300) feet of said subdivision is owned by the City and County of San Francisco, the State of California or the United States Government, or any department or agency thereof, such property shall be excluded in determining the property affected unless such owner shall itself be a subscriber of the appeal.

(c) All appeals under this Section shall be heard and acted upon by the Board according to provisions of SMA and this Code.

ARTICLE 5
SUBDIVISION REQUIREMENTS

SEC. 1335. Public Facilities.

(a) General. Public facilities listed in this Section shall meet the design and construction standards in the Subdivision Regulations.

1 (b) Streets.

2 1. Dedicated Public Streets. A subdivision shall have direct
3 access to a dedicated public street. Title to a new or
4 widened dedicated public street shall be conveyed to the
5 City by proper deed prior to approval of the Final Map.

6 2. Private Streets. Easements for government facilities in
7 private streets shall meet the requirements of Section
8 1339 of this Code also.

9 (c) Pedestrian Ways. A pedestrian way through a block shall be
10 required when the length of that block exceeds the criteria in the
11 Subdivision Regulations.

12 (d) Sanitary and Drainage Facilities. The subdivider shall
13 provide sewerage and drainage facilities, connected to City facilities,
14 to serve adequately all lots, dedicated areas and all other areas com-
15 prising the subdivision.

16 (e) Fire Protection. The subdivider shall provide for the
17 installation of fire hydrants, gated connections and other appurten-
18 ances and facilities needed for adequate fire protection, including
19 a street fire alarm box system.

20 (f) Street Lighting. The subdivider shall provide street light-
21 ing facilities along all streets, alleys and pedestrian ways for the
22 purposes of traffic safety and crime deterrence.

23 SEC. 1336. Utilities. The subdivider shall provide a domestic
24 water system, connected to the San Francisco Water Department's water
25 distribution system. He shall also provide electric, gas and communi-
26 cation services connected to the appropriate public utility's distri-
27 bution system.

28 SEC. 1337. Beautification.

29 (a) Undergrounding of Utilities. All new utility lines shall be
30 undergrounded as specified in Article 18 of the Public Works Code.

1 (b) Street Trees and Landscaping. Trees planted along a public
2 street, within the right-of-way, and all landscaping within said
3 right-of-way shall conform to the requirements of Article 16 of the
4 Public Works Code. In the case of all newly constructed subdivisions,
5 the subdivider shall provide street trees and landscaping conforming to
6 the policies of the Master Plan. Maintenance of said trees and land-
7 scaping shall be the responsibility of the abutting property owners.

8 (c) Open Areas. Where required pursuant to the Master Plan, the
9 subdivider shall provide for the landscaping of open areas and the
10 maintenance thereof. Such open areas shall be restricted to such use
11 by recorded covenants which run with the land in favor of the future
12 owners of the property within the subdivision. No such covenant shall
13 be terminated without the consent of the Board.

14 SEC. 1338. Recreation Facilities. Recreation facilities provided
15 in the subdivision for use by the residents shall be restricted to
16 recreational use by recorded covenants as described in Section 1337(c)
17 of this Code. Provisions shall be included in said covenants for
18 maintenance of said facilities.

19 SEC. 1339. Easements. Easements for sanitary and drainage
20 facilities, fire protection facilities and City-owned street lighting
21 facilities shall be for the exclusive use of such governmental facilities,
22 with the right of immediate access to the facilities by the City.

23 SEC. 1340. Monuments.

24 (a) The location and installation of survey monuments shall
25 conform to the standards in the Subdivision Regulations. When such mon-
26 uments are "tied" to the City or State monuments, for which coordinates
27 of the California Coordinate System are available, the corresponding
28 coordinates for such monuments shall be determined and recorded.

29 (b) All survey monuments shall be installed prior to filing of
30 the Final Map or Parcel Map with the City Engineer, in lieu thereof

1 a monument bond shall be filed at that time.

2 2. SEC. 1341. Low and Moderate Income Occupancy. In projects with
3 fifty (50) or more units the subdivider shall make available ten
4 percent (10%) of the units for low and moderate income occupancy
5 provided that the City Planning Commission finds that governmental
6 subsidies for such occupancy are available to the subdivider. This
7 requirement shall not limit the authority of the City otherwise to
8 encourage the provision of low and moderate income housing, or of the
9 subdivider to make available additional low and moderate income housing.

10 3. SEC. 1342. Sales Program. The sales program shall promote
11 affirmative action in housing. The following aspects shall be included
12 in the sales program:

13 (a) All sales and sales-related personnel for the project shall
14 be trained in affirmative action sales policy and fair housing laws.

15 (b) An adequate part of the sales program shall be advertising
16 designed to attract qualified minority buyers.

17 (c) If a waiting list is used, there shall be a public written
18 statement of procedure as to how it is used.

19 (d) The sales program and sales procedures shall not have the
20 effect of excluding or discriminating against any person on the basis
21 of race, religion, national origin, sex or any other basis prohibited
22 by law.

23 (e) Adequate records shall be maintained by the subdivider and
24 made available to the Director of the Human Rights Commission during
25 the period the subdivision is controlled by the subdivider, in order
26 to show that such an affirmative action sales program is being carried
27 out. Said reports shall be made in accordance with the Subdivision
28 Regulations.

1 ARTICLE 6
2 IMPROVEMENT REQUIREMENTS

3 SEC. 1345. General.

4 (a) The subdivider shall provide for the construction and
5 installation of all improvements in the subdivision.

6 (b) The subdivider shall file an improvement bond whenever all
7 such work has not been completed prior to the filing of the Final
8 Map.

9 SEC. 1346. Improvement Plans.

10 (a) Prior to filing of the Final Map, the subdivider's engineer
11 shall submit any required improvement plans to the City Engineer for
12 approval.

13 (b) Improvement plans shall be prepared under the direction of a
14 registered civil engineer.

15 (c) Improvement plans shall conform to the Subdivision Regulations
16 regarding format, size and contents.

17 (d) Any specifications supplementing the Standard Specifications
18 shall be considered a part of the improvement plans.

19 (e) Within fourteen (14) days after submittal by the subdivider's
20 engineer the City Engineer shall return to the subdivider's engineer a
21 set of the submittal improvement plans noting thereon his approval,
22 disapproval or conditional approval of said plans. This time limit

may be extended by mutual agreement.

SEC. 1347. Construction.

(a) No construction shall commence until the improvement plans have been submitted to the City Engineer and have been approved by him.

(b) Construction of improvements which are to be accepted by the City for maintenance shall be subject to inspection by the City Engineer.

(c) Any work done by the subdivider prior to approval of the improvement plans, including changes thereto, or without the inspection and testing required by the City Engineer is subject to rejection. Such work shall be deemed to have been done at the risk and peril of the subdivider.

(d) Installation of Underground Facilities. All underground facilities including sewerage and drainage facilities and excepting survey monuments installed in streets, alleys or pedestrian ways shall be constructed prior to the surfacing of such street, alley or pedestrian way. Service connections for all underground utilities and sewers shall be laid to such length as will obviate the necessity for disturbing the street, alley or pedestrian way improvements when service connections are completed to properties in the subdivision.

SEC. 1348. Failure to Complete Improvements within Agreed Time.

The provisions of Section 206(b) of the Public Works Code apply to this Article regarding extensions of time and liquidated damages when improvements are not completed within the agreed time.

SEC. 1349. Inspection and Testing Fees.

(a) The costs of inspecting the construction of improvements under Section 1347(b) of this Code shall be paid by the subdivider.

(b) The costs of testing the materials incorporated in the improvements under Section 1347(b) of this Code shall be paid by the

subdividor.

SEC. 1350. Fees for Construction of Planned Facilities.

(a) As a condition for approval of a Final Map, fees shall be required to defray the actual or estimated construction or reconstruction costs of the following planned facilities to serve the general area in which said subdivision is located:

1. Sanitary and drainage facilities;
2. Bridges; and
3. Major thoroughfares.

(b) Such fees shall equal the subdivision's pro-rated share of the actual or estimated construction costs of said facilities.

ARTICLE 7
FINAL MAPS AND PARCEL MAPS

SEC. 1355. Time Limit for Submittal. Within eighteen (18) months after the approval of the Application Packet, unless such time has been extended, the Final Map or the Parcel Map shall be filed with the City Engineer.

SEC. 1356. Final Map.

(a) The Final Map shall consist of Title Sheets and Map Sheets.

(b) The Title Sheets shall contain the following data:

1. The title, consisting of the name of the subdivision and the location;
2. A general description of all the property being subdivided by reference to recorded deeds or to recorded maps;
3. Certificates, affidavits and acknowledgements; and
4. General information including a key map when there is more than one Map Sheet.

(c) The Map Sheets shall contain the following data, in sufficient detail so that the sale, transfer and description of real property may be accomplished by reference to the Final Map and that

1 all public facilities, properties and easements may be determined as
2 to location, extent and condition;

- 3 1. Title;
- 4 2. Explanatory and Description Notes; and
- 5 3. Map.

6 (d) The Final Map shall conform to the requirements of Chapter 2,
7 Article 2 of SMA and to the Subdivision Regulations regarding detailed
8 format and contents.

9 SEC. 1357. Certificates on Final Map.

10 (a) In addition to the certificates required by SMA, the follow-
11 ing certificates shall be on the Final Map:

- 12 1. City Attorney's Certificate;
- 13 2. Advisory Agency's Certificate;
- 14 3. Department of City Planning's Certificate of Consistency
15 with the Master Plan;
- 16 4. A Certificate signed by the Superintendent of Building
17 Inspection either waiving the required Preliminary Soil
18 Report or certifying that the Preliminary Soil Report is
19 on file at BBI; and
- 20 5. A Certificate of Agreement. Whenever the conditional
21 approval of the Application Packet includes conditions
22 which are to be met after the recordation of the Final
23 Map, a Certificate signed by the subdivider agreeing to
24 perform said conditions, which are listed on the
25 Certificate, is required.

26 SEC. 1358. Preliminary Soil Report.

27 (a) A Preliminary Soil Report, prepared by a soils engineer or
28 a registered engineering geologist, and based upon test borings and
29 excavations done at the subdivision site, shall contain the following
30 elements:

- 1 1. The specific geologic and soil conditions within and
2 immediately adjacent to the subdivision;
- 3 2. Indication and delineation of critically expansive soils
4 or other soil problems which, if not corrected, may lead
5 to defects in structures, buildings and other improvements;
- 6 3. Report on the suitability of the earth material for the
7 construction of stable embankments and excavation slopes,
8 together with recommended construction procedures needed
9 to obtain the required stability; and
- 10 4. Report on slides, springs and seepage conditions, faults
11 and erosion problems, together with recommendations for
12 correction of any problems or hazards presented by such
13 conditions.

14 SEC. 1359. Parcel Map.

15 (a) The requirements of subsection (c) of Section 1356 of this
16 Code shall apply to Parcel Maps.

17 (b) The Parcel Map shall conform to the requirements of Chapter 2,
18 Article 3 of SMA and to the Subdivision Regulations regarding detailed
19 format and contents.

20 SEC. 1360. Check Prints.

21 (a) Prior to filing of the Final Map or Parcel Map, the subdivider's
22 engineer shall submit to the City Engineer:

- 23 1. Prints of the Final Map sheets or the Parcel Map sheets;
 - 24 2. A preliminary title report;
 - 25 3. Traverse sheets, showing the mathematical closure of the
26 exterior boundaries around the subdivision, of each lot
27 boundary in the subdivision, and of boundaries of easements
28 and of dedicated rights-of-way; and
 - 29 4. The Preliminary Soil Report, unless it has been waived.
- 30

1 SEC. 1361. Map Check.

2 (a) The City Engineer shall check the prints of the Final Map
3 or the Parcel Map to determine if it substantially conforms to the
4 approved Tentative Map, this Code and SMA.

5 (b) If the prints do not substantially conform to the approved
6 Tentative Map, the City Engineer shall refer a set of said prints to
7 City Planning for its review and recommendation.

8 (c) The City Engineer shall send copies of the Preliminary Soil
9 Report to B31 for evaluation.

10 (d) Within fourteen (14) days after submittal or twenty-eight
11 (28) days if referral to City Planning is required under subsection (b)
12 of this Section, the City Engineer shall return a set of the submitted
13 prints, noting therein any required corrections, to the subdivider's
14 engineer.

15 SEC. 1362. Filing.

16 (a) After the check prints have been approved by the City
17 Engineer, the subdivider shall file with the City Engineer:

- 18 1. The Final Map or Parcel Map, corrected to its final form,
19 together with the copies specified in the Subdivision
20 Regulations;
 - 21 2. The bonds that may be required;
 - 22 3. When applicable, deeds conveying all streets in the
23 subdivision to the City and deeds granting easements for
24 sewers, drains and pedestrian walkways which are not
25 dedicated on the Map;
 - 26 4. Evidence of title;
 - 27 5. The recording fee and evidence that all fees required by
28 this Code have been paid; and
 - 29 6. The corrected Preliminary Soil Report, when required.
- 30

1 SEC. 1363. Submittal to Board.

2 (a) After obtaining the required certificates on the Final Map,
3 or on the Parcel Map when dedications are included therein, the
4 City Engineer shall submit said Map and the other documents to
5 the Director.

6 (b) After determining that all requirements of SMA and this
7 Code have been met, the Director shall endorse the Map and file
8 the same, together with the other documents, with the Clerk.

9 SEC. 1364. Recordation.

10 (a) After approval of a Final Map or Parcel Map by the Board,
11 the Clerk shall file said Map with the Recorder.

12 (b) After signing a Parcel Map, when no dedications are
13 included therein, the City Engineer shall file said Map with the
14 Recorder.

15 (c) No Final Map or Parcel Map for a subdivision governed by this
16 Code shall be recorded unless said Map has been approved by the City
17 Engineer or by the Board as required herein.

18
19
20 ARTICLE 8
21 BONDS

22 SEC. 1370. Improvement Bonds.

23 (a) As a guarantee of good faith to furnish, install and
24 construct the required improvements, the subdivider shall furnish
25 a corporate surety bond or other acceptable security deposit for
26 an amount not less than fifty percent (50%) of the estimated cost
27 of said improvements.

28 (b) As a guarantee of payment for the labor, materials,
29 equipment and services required to furnish, install and construct
30

1 said improvements, the subdivider shall furnish a corporate surety
2 bond or other acceptable security deposit for an amount not less
3 than fifty percent (50%) of the estimated cost of said improvements.

4
5 SEC. 1371. Monument bonds. As a guarantee of good faith
6 to furnish and install the required survey monuments and to pay
7 the subdivider's engineer or surveyor for said work, the sub-
8 divider shall furnish a corporate surety bond or other acceptable
9 security deposit for an amount equal to one hundred percent
10 (100%) of the estimated cost of such work. Such work shall
11 consist of satisfactorily furnishing and installing the said
12 survey monuments and of accurately fixing exact survey points
13 thereon.

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ARTICLE 9
CONVERSIONS

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SEC. 1380. General. The Sections of this Article 9 modify
the applicable provisions of Articles 3 through 8, inclusive,
of this Code in the case of Conversions.

SEC. 1381. Additions to Application Packet.

(a) Application Packets for Conversions shall contain the
following information in addition to that required by previous pro-
visions of this Code:

1. A Building History detailing the date of construction,
major uses since construction, major repairs since
construction, current ownership of buildings and
underlying land, and the proposed ownership upon
Conversion; and
2. A Rental History detailing for each unit the
size, the current or last rental rate, the

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monthly rental rate for the preceding five (5) years,
the monthly vacancy over the preceding three (3) years,
and the names of the current tenant or tenants for
each unit.

(b) When neither new buildings nor major additions to
existing facilities are indicated in the Tentative Map, a Statement
of Known Soil and Geologic Conditions may be substituted for the
required Soil and Geologic Reconnaissance Report. Said Statement
shall be prepared by the engineer or surveyor who prepares the
Tentative Map and shall contain the following information as
taken from the latest U.S. Geologic Maps:

1. Soil Deposits;
2. Rock Formations;
3. Faults;
4. Ground Water; and
5. Landslides.

SEC. 1382. Exceptions from Application Packet.

(a) Application Packets for Conversions shall have
deleted the following information required by previous pro-
visions of this Code:

1. Except as otherwise required by other Sections of
this Article 9, the statements required by Section
1323(a), paragraphs 1, 2, and 3 shall be
deleted.
2. The environmental evaluation data required by Sec. 1323 (b)
SEC. 1383. Additional Submittals. shall be deleted.

3-18-76
D.W.
(a) In addition to that information required by previous
provisions of this Code to be submitted before the Final Map
or Parcel Map is approved, the following shall be submitted for

any Conversion:

1. A building inspector's report made by either the Bureau of Building Inspection or a certified engineer or architect acceptable to the Bureau of Building Inspection; with said report to contain any Housing Code violations and incipient or potential deficiencies including electrical, plumbing and boiler requirement;
2. A statement of repairs and improvements the subdivider plans to make before conveyance of the units by the subdivider;
3. A summary of the range of sales prices for each unit and a summary of the proposed sales program, particularly plans to promote affirmative action in housing; these summaries to be used solely to assure compliance with the requirements of this Code and SMA;
4. A summary of tenant contacts including all meetings held with tenants and all information provided to them about the project and their own options; a list of all tenants who have expressed agreement in principle to buy their own units; proposed methods of dealing with those tenants who do not plan to buy, especially those over age sixty-five (65), those totally disabled, and families with children; and any proposed program for relocation services;
5. A copy of the purchase agreement to be used for the project; and

6. Copies of all Management Documents submitted to the California State Department of Real Estate.

SEC. 1384. Procedural Additions.

(a) In addition to the notice of Public Hearing required by Section 1313, notice of the Public Hearing by the Director shall be sent to each tenant of the property proposed for Conversion in accordance with the provisions of Section 1313. The cost of such notice shall be borne by the subdivider.

(b) In addition to the requirements of Section 1331 of this Code regarding the Advisory Agency's Report, the Director shall mail a notice to each tenant which shall inform the tenant of the following:

1. The Director's decision;
2. The right of tenants to appeal the Director's decision; and
3. The availability for examination of a copy of the Advisory Agency's Report at the Director's office.

The cost of such notice shall be borne by the subdivider.

(c) Section 1333 of this Code is modified to provide for an appeal by the tenants of any project to be converted, from the final action by the Director on any application for Conversion. Any such appeal shall be taken by filing a written notice of appeal, subscribed by at least twenty percent (20%) of ^{said} ~~the~~ tenants, with the Clerk within fifteen (15) days after the Director's action. The Board shall hear and act upon the appeal in accordance with SMA and this Code.

(d) Within ten (10) working days after the approval or conditional approval by the Director of a Tentative Map, the subdivider shall notify each tenant of the intention to convert and of the rights established on behalf of the tenant by Section 1385 of this Code.

SEC. 1385. Additional Requirements. Conversions shall meet the following requirements in addition to those contained in previous provisions of this Code:

1 (a) The project shall conform to the applicable standards of the
2 San Francisco Housing Code before the sale of any unit or units, or,
3 if not, the plans to bring the property into conformity with said Code
4 after final approval must be judged reasonable by the Director. If
5 there will be conformance after final approval, the plans shall be
6 embodied as a guarantee by the subdivider in each purchase agreement;
7 or, if the proposed purchasers so desire, the proposed purchasers may
8 present their own plans to bring the property into conformity for
9 approval by the Director.

10 (b) The City Planning Commission shall determine whether any units
11 to be converted are part of the City's low or moderate income housing
12 stocks. If the Commission determines that any unit to be converted is
13 part of the City's low or moderate income housing stocks, then the
14 price of the unit upon conversion shall not be such as to remove it
15 effectively from said low or moderate income housing stocks.

16 (c) When the City Planning Commission determines that vacancies
17 in the project have been increased for the purpose of preparing the
18 project for Conversion, the ^{Tentative Map} application shall be disapproved and the
19 subdivider may not re-apply for eighteen (18) months from date of
20 denial. In evaluation of the current vacancy level under this sub-
21 section, the increase in rental rates for each unit over the preceding
22 five (5) years and the average monthly vacancy rate for the project
23 over the preceding three (3) years shall be considered. ~~reason-for-~~
24 ~~disapproval.~~

25 (d) The present tenant or tenants of any unit to be converted
26 shall be given a nontransferable right of first refusal to purchase
27 the unit occupied at a price no greater than the price offered to the
28 general public. The right shall extend for at least sixty (60) days
29 from the date of recordation of the Final Map or Parcel Map, providing
30 that the tenant may cancel the purchase agreement if the unit is not

1 conveyed to that tenant within six (6) months.

2 (e) If temporary relocation of any tenant is necessary for
3 renovation of a unit between the date of submission of the Tentative
4 Map and the date established for permanent relocation by subsections
5 (f) and (g) of this Section, then the subdivider shall find equivalent
6 substitute housing for that tenant for the period of renovation, and
7 shall pay to that tenant any additional cost of the substitute housing.

8 (f) For permanent relocation, each tenant not remaining in the
9 project shall be allowed ^{thirty (30)} ~~one-hundred-twenty-(120)~~ days past the date
10 of recordation of the Final Map or Parcel Map, or until the expiration of
11 that tenant's lease, whichever is longer; provided that, if the tenant
12 is eligible for relocation services within Section 1385(g), that tenant
13 shall not be evicted until he or she has been permanently relocated
14 or until the tenant has arbitrarily rejected adequate relocation
15 housing as provided in Section 1385(g); and provided further that any
16 tenant over age sixty-five (65), any ^{totally} ~~permanently~~ disabled, or
17 any tenant with more than one minor child living with that tenant
18 shall be allowed for permanent relocation ^{thirty (30) days} ~~eighteen-(18)-months~~ past
19 the date of recordation of the Final Map or Parcel Map.

20 (g) If one or more of the units in the project are occupied by
21 tenants of low or moderate income as defined in this Code, the sub-
22 divider shall contract with the Central Relocation Service to provide
23 permanent relocation services for such tenant or tenants, and the
24 subdivider shall bear the cost of that service and the actual moving
25 expenses of such tenant or tenants to the extent approved by the Central
26 Relocation Service. If there are any such tenants of low or moderate
27 income in the project, the subdivider shall notify the Central Reloca-
28 tion Service of such tenant or tenants within ten (10) working days
29 after approval or conditional approval of the Tentative Map.
30

(h) In addition to the above requirements, no conversion of a project containing fifty (50) or more units or of a portion of a development containing fifty (50) or more units shall be approved unless a number of tenants in such project or in such development, equal to or exceeding thirty-five (35%) of all the units in the project or development shall have consented in principle to the proposed conversion. For the purposes of this requirement, each unit shall have one vote and only tenants who were in occupancy at the time of the filing of the Tentative Map shall vote. Each tenant voting shall subscribe his or her name to a list to be filed with the Advisory Agency. Tenant consent to conversion in principle shall not be obtained by either:

1. Representations to the tenant which violate SMA or Real Estate Commissioner Regulations prohibiting offering units for sale prior to issuance of the State Subdivision Report; or
2. By offering to the tenant a discount on the purchase price, or other inducement to consent, which will not be offered to all other tenants or other non-tenants.

1-23

APPROVED AS TO FORM ONLY:
 THOMAS M. O'CONNOR, CITY ATTORNEY

By _____

Passed for Second Reading
 Board of Supervisors, San Francisco
 MAR 17 1975

Ayes: Supervisors Barbagelata, Feinstein, Francois, Gonzales, Kopp, Mendelsohn, Molinari, Nelder, Pelosi, Tamaras, von Beroldingen.

~~Noes: Supervisors~~

~~Absent: Supervisors~~

..... Clerk

569-74-1
 File No.

..... Approved

..... Mayor

Read Second Time and Finally Passed
 Board of Supervisors, San Francisco

Ayes: Supervisors Barbagelata, Feinstein, Francois, Gonzales, Kopp, Mendelsohn, Molinari, Nelder, Pelosi, Tamaras, von Beroldingen.

Noes: Supervisors

Absent: Supervisors

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

ACTA
 Clerk

Passed for Second Reading
 Board of Supervisors, San Francisco
 MAR 24 1975

Ayes: Supervisors Barbagelata, Feinstein, Francois, Gonzales, Kopp, Mendelsohn, Molinari, Nelder, Pelosi, Tamaras, von Beroldingen.

Noes: Supervisors BARBAGELATA

~~Absent: Supervisors~~

..... Clerk

569-74-1
 File No.

..... Approved

..... Mayor

Read Second Time and Finally Passed
 Board of Supervisors, San Francisco

Ayes: Supervisors Barbagelata, Feinstein, Francois, Gonzales, Kopp, Mendelsohn, Molinari, Nelder, Pelosi, Tamaras, von Beroldingen.

Noes: Supervisors

Absent: Supervisors

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

..... Clerk

1 AMENDING CHAPTER XIII OF PART II OF THE SAN FRANCISCO MUNICIPAL CODE
2 (SUBDIVISION CODE) BY AMENDING SECTION 1315 THEREOF RELATING TO THE
3 FEES COLLECTED FOR CHECKING AND PROCESSING THE SUBDIVISION MAPS.

4
5 Be it ordained by the People of the City and County of San Francisco:
6 Section 1. Chapter XIII of Part II of the San Francisco
7 Municipal Code (Subdivision Code) is hereby amended by amending
8 Section 1315 thereof to read as follows:

9 Section 1315. Fees.

10 (a) Fees, payable to the Department of Public Works, shall be
11 charged for checking and processing the maps, plans and reports filed
12 under this Code. Said fees shall consist of an initial payment of
13 one hundred dollars (\$100.00), paid at the time of filing a Tentative
14 Map, plus any required additional sum needed to equal the actual cost
15 of checking the maps, plans and reports, together with the investi-
16 gations incidental thereto. For Parcel Maps which do not require the
17 filing of a Tentative Map, a flat fee of fifty dollars (\$50.00) shall
18 be charged for checking and processing. All such fees shall have
19 been paid prior to approval by the Board of the Final Map and by the
20 City Engineer of the Parcel Map.

21 (b) Payment of Fees charged under this Code does not waive the
22 fee requirements of other ordinances and rules and regulations
23 pursuant thereto.
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Act

CLERK OF SUPERVISORS

1 (c) There is hereby created a Subdivision Fund wherein all
2 funds received under the provisions of this Section shall be
3 deposited. All expenditures from the Fund shall be for engineering
4 or technical investigations and equipment directly related to the
5 checking and processing of the maps, plans and reports filed under
6 this Code, and all such expenditures are hereby appropriated for
7 said purposes.

8 RECOMMENDED: G.E.W.

APPROVED AS TO FORM:
THOMAS M. O'CONNOR, CITY ATTORNEY

9
10
11 City Engineer *[Signature]*

By
Deputy City Attorney *[Signature]*

12
13
14 Director of Public Works *[Signature]*

APPROVED: *[Signature]*

15
16 Chief Administrative Officer *[Signature]*

17 Passed for Second Reading
Board of Supervisors, San Francisco

SEP - 2 1975

18 Ayes: Supervisors Barbagelata, Feinstein, Fran-
19 cois, Gonzales, Kopp, Mendelsohn, Molinari, Nel-
20 der, Pelosi, Tamara, von Beroldingen.

21 Nays: Supervisors MOLINARI

22 Absent: Supervisors

23 Read Second Time and Finally Passed
Board of Supervisors, San Francisco

SEP - 5 1975

24 Ayes: Supervisors Barbagelata, Feinstein, Fran-
25 cois, Gonzales, Kopp, Mendelsohn, Molinari, Nel-
26 der, Pelosi, Tamara-von Beroldingen.

27 Absent: Supervisors

28 Absent: Supervisor TAMARAS

I hereby certify that the foregoing ordinance was
finally passed by the Board of Supervisors of the
City and County of San Francisco.

ACTING
Clerk

ACTING
Clerk

569-74-5 SEP 11 1975
File No. Approved

[Signature] Mayor

AMENDING CHAPTER XIII OF PART II OF THE SAN FRANCISCO MUNICIPAL CODE (SUBDIVISION CODE) BY AMENDING SECTION 1303 THEREOF TO WAIVE THE REQUIREMENT FOR A PARCEL MAP UNDER CERTAIN CONDITIONS

As it obtained by the people of the City and County of San Francisco;

Section 1. Chapter XIII, Part II, of the San Francisco Municipal Code (Subdivision Code) is hereby amended by amending Section 1303 thereof to read as follows:

SEC. 1303. Secs.

(a) This Code supplements SMA, prescribing rules, regulations and procedures authorized therein.

(b) The necessity for tentative Maps, Final Maps and Parcel Maps shall be governed by this Section and SMA.

(c) For subdivisions creating five (5) or more parcels or units, a Tentative Map and a Final Map or Parcel Map shall be required pursuant to this Code and SMA.

1. A Tentative Map and a Final Map shall be required for all such subdivisions except those coming within the exceptions set forth in Section 66426 of SMA.

2. A Tentative Map and a Parcel Map shall be required for all such subdivisions coming within the exceptions set forth in Section 66426 of SMA.

(d) For subdivisions creating fewer than five (5) parcels or units, no Tentative Map shall be required, but a Parcel Map containing the information specified by Section 1359 of this Code and SMA shall be required.

Said Parcel Map shall be filed with the City Engineer and recorded according to the procedure set forth in Sections 1360 through 1364 of this Code.

(e) No Tentative Map, Final Map or Parcel Map shall be required for those specific types of subdivision exempted by Sections 66422 and 66428 of SMA.

(f) The Director of Public Works shall ~~have the authority to~~ waive the requirement of a Parcel Map for any improved or unimproved land shown on the latest equalized county assessment roll as contiguous units or parcels where the units or parcels have been subdivided legally and complies with the requirements as to lot width and area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability and environmental protection.

Passed for Second Reading
Board of Supervisors, San Francisco

NOV 1 1976

Ayes: Supervisors ~~Baronick, Feinstein, Fran-
cois, Conzelmann, Kopp, Mendonça, Molinari, Nel-
der, Pelosi, Tamaris, von Beroldingen.~~

Noes: Supervisors

Absent: Supervisors MENDELSON

Read Second Time and Finally Passed
Board of Supervisors, San Francisco

NOV 5 1976

Ayes: Supervisors ~~Baronick, Feinstein, Fran-
cois, Conzelmann, Kopp, Mendonça, Molinari, Nel-
der, Pelosi, Tamaris, von Beroldingen.~~

Noes: Supervisors

Absent: Supervisors MENDELSON

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

Clerk

Vertical stamp on the right edge of the page.

1 AMENDING CHAPTER XIII OF PART II OF THE SAN FRANCISCO MUNICIPAL CODE
2 (SUBDIVISION CODE) BY AMENDING SECTION 1315 THEREOF TO REQUIRE PAYMENT
3 OF A FEE FOR PROCESSING PARCEL MAP WAIVER

4 Be it ordained by the people of the City and County of San Francisco;
5 Section 1. Chapter XIII, Part II, of the San Francisco Municipal
6 Code (Subdivision Code) is hereby amended by amending Section 1315
7 thereof to read as follows:

8 SEC. 1315. Fees.

9 (a) Fees, payable to the Department of Public Works, shall be
10 charged for checking and processing the maps, plans and reports filed
11 under this Code. Said fees shall consist of an initial payment of one
12 hundred dollars (\$100.00), paid at the time of filing a Tentative Map,
13 plus any required additional sum needed to equal the actual cost of
14 checking the maps, plans and reports, together with the investigations
15 incidental thereto. For Parcel Maps which do not require the filing
16 of a Tentative Map, a flat fee of fifty dollars (\$50.00) shall be
17 charged for checking and processing. A fee of twenty five dollars
18 (\$25.00) shall be charged for processing a Parcel Map waiver. All
19 such fees shall be paid at the time of filing.

20 (b) Payment of Fees charged under this Code does not waive the
21 fee requirements of other ordinances and rules and regulations pursuant
22 thereto

23 (c) There is hereby created a Subdivision Fund wherein all funds
24 received under the provisions of this Section shall be deposited. All
25 expenditures from the Fund shall be for engineering or technical
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BOARD OF SUPERVISORS

1 investigations and equipment directly related to the checking and
2 processing of the maps, plans, reports and parcel map waivers filed
3 under this Code, and all such expenditures are hereby appropriated for
4 said purposes.
5

6 *Rw*
7 RECOMMENDED:

APPROVED AS TO FORM
THOMAS M. O'CONNOR, CITY ATTORNEY

8
9 By [Signature]
Deputy City Attorney

10 [Signature]
City Engineer
11
12 [Signature]
Director of Public Works

13 [Signature]
Chief Administrative Officer

Passed for Second Reading
Board of Supervisors, San Francisco

AUG 8 - 1977

Ayes: Supervisors Barbagelata, Peimatum, Fran-
cois, Gonzales, Kopp, Mendelsohn, Nelder,
Pelosi, Tamaras, von Beroldingen.

Noes: Supervisors

Absent: Supervisors FEINSTEIN MENDELSON
MOLINARI TAMARAS

[Signature] Clerk

Read Second Time and Finally Passed
Board of Supervisors, San Francisco

AUG 15 1977

Ayes: Supervisors Barbagelata, Feinstein, Fran-
cois, Gonzales, Kopp, Mendelsohn, Molinari,
Pelosi, Tamaras, von Beroldingen.

Noes: Supervisors

Absent: Supervisors BARBAGELATA MENDELSON
NELDER

I hereby certify that the foregoing ordinance was
finally passed by the Board of Supervisors of the
City and County of San Francisco.

[Signature] Clerk

496-76-2
File No. AUG 26 1977
Approved

[Signature] Mayor

FILE COPY

AMENDING CHAPTER XIII OF PART II OF THE SAN FRANCISCO MUNICIPAL CODE (SUBDIVISION CODE) BY AMENDING SECTION 1315 THEREOF TO REQUIRE PAYMENT OF A FEE FOR PROCESSING PARCEL MAP WAIVER

Be it ordained by the people of the City and County of San Francisco; Section 1. Chapter XIII, Part II, of the San Francisco Municipal Code (Subdivision Code) is hereby amended by amending Section 1315 thereof to read as follows:

SEC. 1315. Fees. (a) Fees, payable to the Department of Public Works, shall be charged for checking and processing the maps, plans and reports filed under this Code. Said fees shall consist of an initial payment of one hundred dollars (\$100.00), paid at the time of filing a Tentative Map, plus any required additional sum needed to equal the actual cost of checking the maps, plans and reports, together with the investigations incidental thereto. For Parcel Maps which do not require the filing of a Tentative Map, a flat fee of fifty dollars (\$50.00) shall be charged for checking and processing. A fee of twenty five dollars (\$25.00) shall be charged for processing a Parcel Map waiver. All such fees shall be paid at the time of filing.

(b) Payment of Fees charged under this Code does not waive the fee requirements of other ordinances and rules and regulations pursuant thereto

RECOMMENDED BY: [Signature] Director of Public Works

DESCRIPTION APPROVED: [Signature] City Engineer

COPY APPROVED: THOMAS M. O'CONNOR, CITY ATTORNEY

APPROVED: [Signature] Chief Administrative Officer

BOARD OF SUPERVISORS

Passed for Second Reading Board of Supervisors, San Francisco

MAY 31 1977

Ayes: Supervisors [List of names]

Noes: Supervisors

Absent: Supervisors

Absent: Supervisors

[Signature] Clerk

Read Second Time and Finally Passed Board of Supervisors, San Francisco

JUN 6 1977

Ayes: Supervisors [List of names]

Noes: Supervisors

Absent: Supervisors

PELOSI

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco.

[Signature] Clerk

496-76-1 JUN 17 1977 Approved

[Signature]

FILE NO. 152-79-1

ORDINANCE NO. 337-79

AMENDING PART II, CHAPTER XIII (SUBDIVISION CODE), SAN FRANCISCO MUNICIPAL CODE BY AMENDING ARTICLE 1 CONCERNING THE PURPOSES OF THE SUBDIVISION CODE; ARTICLE 2 CONCERNING THE DEFINITIONS OF TENANT, SUB-TENANT, AND LOW AND MODERATE INCOME HOUSING STOCK; ARTICLE 3 CONCERNING THE REQUIREMENT OF PUBLIC HEARINGS; ARTICLE 4 CONCERNING THE REQUIREMENT FOR A TENTATIVE MAP APPLICATION, DISCRETION OF CITY ENGINEER TO HOLD SUBDIVISION CONFERENCE WHERE PUBLIC HEARING IS NOT REQUIRED, REQUIREMENT AND DISCRETION OF THE CITY PLANNING COMMISSION TO HOLD PUBLIC HEARING ON THE CONSISTENCY OF CONDOMINIUM SUBDIVISIONS OTHER THAN CONVERSIONS OF MORE THAN FIFTY UNITS WITH THE MASTER PLAN; ARTICLE 5 CONCERNING LOW AND MODERATE INCOME OCCUPANCY REQUIREMENTS AND A HOUSING DEVELOPMENT FUND; ARTICLE 7 CONCERNING REQUIREMENTS FOR FINAL AND PARCEL MAPS; ADDING ARTICLE 9, SECTIONS 1380 THROUGH 1396 CONCERNING REQUIREMENTS FOR CONVERSION TO CONDOMINIUM WHICH INCLUDE REQUIREMENTS FOR AND EXCEPTIONS TO THE APPLICATION PACKET, CONFORMITY TO HOUSING, BUILDING AND PLANNING CODES, PRESERVATION OF LOW AND MODERATE INCOME HOUSING, CIRCUMSTANCES FOR DENIAL OF THE TENTATIVE MAP, RIGHT OF TENANTS TO CONTRACT FOR PURCHASE OF UNIT, REQUIREMENT FOR TENANT INTENT TO PURCHASE, PROVISION FOR TEMPORARY RELOCATION OF TENANTS, RENT INCREASES TO BE LIMITED FOR CERTAIN TIME PERIODS TO BAY AREA COST OF LIVING INDEX, NOTICE OF INTENT TO CONVERT AND NOTICE OF EVICTION TO BE GIVEN, EXTENSION OF LEASES TO ALL TENANTS, EXTENSION OF LIFETIME LEASES TO ELDERLY

BOARD OF SUPERVISORS

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AMENDMENTS To SUBDIVISION CODE

AND PERMANENTLY DISABLED, PROVISION OF MOVING EXPENSES AND RELOCATION ASSISTANCE BY SUBDIVIDER, TIME LIMITS FOR RE-APPLICATION FOR CONVERSION, SALE OF UNITS, AND LIMITATION ON NUMBER OF APPROVED CONVERSIONS TO 1,000 UNITS PER YEAR; AND REPEALING ARTICLE 9 SECTION 1380 THROUGH 1385, AN EMERGENCY ORDINANCE.

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

Section 1. Part II, Chapter XIII of the San Francisco Municipal Code (Subdivision Code) is hereby amended by amending Article 1, Section 1302; by amending Article 2, Section 1308; by amending Article 3, Section 1314; by amending Article 4, Section 1323, 1328 and 1332; by amending Article 5, Section 1341; and, by amending Article 7, Sections 1357 and 1359, to read as follows:

ARTICLE 1

GENERAL PROVISIONS

SEC. 1302. Purposes.

(a) This Code is enacted to establish procedures and requirements for the control and approval of subdivision development within the City and County of San Francisco in accordance with SMA.

(b) This Code is enacted to encourage and ensure the development of subdivisions consistent with the objectives of the San Francisco Master Plan.

BOARD OF SUPERVISORS

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1 such real property, such as an apartment, office, or store. A
2 Condominium may include in addition a separate interest in other
3 portions of such real property. Such estate may, with respect to
4 the duration of its enjoyment, be either (1) an estate of
5 inheritance of perpetual estate, (2) an estate for life, or (3)
6 an estate for years, such as a leasehold or subleasehold. This
7 definition is intended to conform to Section 783 of the
8 California Civil Code and any other section of California law.

9 (d) "Conversion" shall mean a proposed change in the type
10 of ownership of a parcel or parcels of land, together with the
11 existing attached structures, to that defined as a Condominium
12 project, Community Apartment project or Stock Cooperative,
13 regardless of the present or prior use of such land and struc-
14 tures and of whether substantial improvements have been made to
15 such structures.

16 (e) "Project" shall mean the entire parcel of real property
17 divided or to be divided in any of the methods defined as a
18 subdivision.

19 (f) "Stock Cooperative" shall mean a corporation formed or
20 availed of primarily for the purpose of holding title to, either
21 in fee simple or for a term of years, improved real property, if
22 all or substantially all of the shareholders of such corporation
23 receive a right of exclusive occupancy in a portion of the real
24 property, title to which is held by the corporation, which right
25 of occupancy is transferable only concurrently with the transfer
26 of the share or shares of stock in the corporation held by the

1 person having such right of occupancy.

2 (g) "Subdivider" shall mean a person, firm, corporation,
3 partnership or association who proposes to divide, divides or
4 causes to be divided real property into a subdivision for himself
5 or for others. City agencies, including the San Francisco
6 Redevelopment Agency, are exempted from this definition.

7 (h) "Subdivision" shall mean the division of any improved
8 or unimproved land, shown on the latest equalized county assess-
9 ment roll as a unit or as contiguous units, for the purpose of
10 sale, lease or financing, whether immediate or future. Property
11 shall be considered as contiguous units even if it is separated
12 by roads, streets, utility easements or railroad rights-of-way.
13 This definition shall specifically but not exclusively include
14 Condominiums, Community Apartments, Stock Cooperatives and
15 Conversions.

16 (i) "Unit" shall mean the elements of a project which are
17 to be owned individually and not in common with the owners of
18 other elements of the project.

19 (j) "Tenant" shall mean a person or persons entitled under
20 a lease rental agreement or other agreement with the property
21 owner or his or her agent to occupy a dwelling unit to the
22 exclusion of others. For purposes of this definition, "Tenant"
23 shall mean "Subtenant" or defined in Section 1308(k) where the
24 subtenant occupies and resides in the unit in agreement with and
25 to the exclusion of the tenant and with the consent of the owner.

26 (k) "Sub-tenant" shall mean a person or persons whose

1 or a Parcel Map;

2 5. Description of variances and exceptions that are
3 requested; and

4 6. Certification that the subdivider or his or her
5 agent shall not retain any right, title or interest in
6 any common area or areas or facilities of the
7 subdivision and its amenities, except those common
8 areas in which the subdivider retains an individual
9 interest by virtue of ownership of one or more of the
10 units.

11 (b) Environmental Evaluation Data. Data shall be supplied
12 on the appropriate City Planning forms for an Environmental
13 Impact Evaluation or in appropriate format to satisfy require-
14 ments for environmental review under the California Environmental
15 Quality Act.

16 SEC. 1328. Subdivision Conference. Within six (6) days
17 after all agency reports have been received or after expiration
18 of the review time limits or any mutually agreed extension
19 thereof, and if a public hearing is not required by this code or
20 deemed necessary by the Director, the City Engineer at his or her
21 discretion may hold a subdivision conference to discuss the
22 reports submitted. Written notice of such conference shall be
23 sent to the subdivider, to all agencies who have submitted a
24 report, and to other persons and organizations who have expressed
25 an interest in the proposed subdivision.

26 SEC. 1332. Consistency with Master Plan.

1 (a) Whenever a property is to be subdivided, the City
2 Planning Commission shall hold a public hearing on the question
3 of consistency of the subdivision with the Master Plan except for
4 condominiums other than conversions, where the property to be
5 subdivided will be divided into fewer than fifty (50) units; a
6 public hearing shall be held in such cases, however, upon request
7 by one or more owners of contiguous property within ten (10) days
8 following the mailing of notice to those owners of the filing of
9 an application for a condominium subdivision, or upon a
10 determination of the Department of City Planning that a public
11 hearing is warranted on the question of consistency of the
12 subdivision with the Master Plan. Notice of such hearing shall
13 be given pursuant to Section 1313.

14 (b) The Director shall disapprove the proposed subdivision
15 when the Department of City Planning finds that the proposed
16 subdivision is not consistent with the Master Plan.

17 (c) When the Department of City Planning finds that a
18 proposed subdivision will be consistent with the Master Plan only
19 upon compliance with certain conditions, the Director shall
20 incorporate said conditions in his or her conditional approval of
21 the proposed subdivision.

22 ARTICLE 5

23 SUBDIVISION REQUIREMENTS

24 SEC. 1341. Low and Moderate Income Occupancy.

25 (a) In all subdivisions involving fifty (50) or more lots
26 or units, except for condominium or cooperative conversion

1 the Director or his or her designee. In considering the
2 reasonableness of a rent increase, the Director shall consider
3 whether the rental revenues are sufficient to adequately maintain
4 the building in safe and sound condition, and in conformity with
5 any applicable sections of the San Francisco Housing and Building
6 Codes. The Director may allow rent increases greater than the
7 proportionate increases in the residential rent component of the
8 "Bay Area Cost of Living Index, U. S. Department of Labor", in
9 order to allow the building to be maintained in safe and sound
10 condition. The rental increase provisions of this section shall
11 apply only in the absence of other applicable rent increase or
12 arbitration laws.

13 (e) Units made available for purchase by households of low
14 or moderate income shall remain within the low or moderate income
15 housing stock pursuant to the recapture provision of Section (c)
16 above. Units made available for rental shall remain as rental
17 units for no less than twenty (20) years, provided, however, that
18 such rental units may be converted to condominiums during such
19 twenty (20) year period if offered for sale according to the
20 sales price formula of section (c) above.

21 (f) As an alternative to the provisions of subsections (b)
22 and (c) above, the subdivider shall make a bona fide agreement,
23 satisfactory to the Department of City Planning, to construct or
24 cause to be constructed within a period commencing eighteen (18)
25 months prior to the date of filing the application for conversion
26 and ending eighteen (18) months after filing of the final or

1 parcel map, or to provide through other means, the same number of
2 units and under the same conditions as would be required for low
3 or moderate income occupancy under the provisions of subsections
4 (b) and (c) above, in areas approved by the Department of City
5 Planning as being non-impacted with assisted housing.

6 (g) As a further alternative to the provisions of
7 subsections (b), (c), and (f) above, the subdivider shall pay to
8 the City and County of San Francisco an amount equal to ten
9 percent (10%) of the difference between the aggregate total of
10 the proposed market rate sales prices, as indicated on the price
11 list supplied with the application packet, and the aggregate
12 total of the sales prices if the units were to be sold at
13 moderate income sales prices, as determined by the sales price
14 formula of Section 1385 and subsection (c) above. This payment
15 shall be made within two years of the recordation of the Final
16 Map.

17 (h) Funds collected pursuant to subsection (g) above, shall
18 be deposited into the Housing Development Fund, which fund is to
19 be used to provide assistance in the development of new housing
20 resources for persons and households of low or moderate income.

21 SEC. 1343. Policies and Procedures for use of the Housing
22 Development Fund.

23 1. Purpose of the Fund

24 (a) To reduce the cost of construction of new
25 residential structures so that dwelling units in
26 such structures are affordable by persons of low

1 Department for the use of monies from the Fund to be applied to a
2 specific residential development or for creation of a loan
3 program or co-ownership or equity partnership program.

4 Applications shall specify how monies from the Fund would
5 make units affordable by persons or households of low or moderate
6 income and shall specify how units assisted by the Fund would
7 remain in occupancy by low or moderate income households. If the
8 application is for a loan program or co-ownership or equity
9 partnership program, the application shall specify the
10 eligibility standards, the maximum amount of any loans to be
11 made, the terms and conditions of any loans or equity partnership
12 agreements, and all other requirements necessary to make the
13 proposed program conform to the purposes of this section.

14 Applications shall be reviewed by the Loan and Grant Committee,
15 whose decisions on such applications shall be final. Monies may
16 be disbursed from the Fund only on the recommendation of the Loan
17 and Grant Committee.

18 5. Reporting on Program Status

19 The Real Estate Department shall report quarterly to the
20 Board of Supervisors on the current status of the Fund, the
21 amounts approved for disbursement, the number and types of
22 projects assisted, and shall make recommendations for any changes
23 deemed necessary to improve the effectiveness of the Fund in
24 achieving its purpose.

25 ////

26 ////

1 ARTICLE 7

2 FINAL MAPS AND PARCEL MAPS

3 Sec. 1357. Certificates on Final Map.

4 Sec. 1359. Parcel Map.

5 SEC. 1357. Certificates on Final Map.

6 (a) In addition to the certificates required by SMA, the
7 following certificates shall be on the Final Map:

- 8 1. City Attorney's Certificate;
- 9 2. Advisory Agency's Certificate; and
- 10 3. A Certificate of Agreement. Whenever the
- 11 conditional approval of the Application Packet includes
- 12 conditions which are to be met after the recordation of
- 13 the Final Map, a Certificate signed by the subdivider
- 14 agreeing to perform said conditions, which are listed
- 15 on the Certificate, shall be required.

16 SEC. 1359. Parcel Map.

17 (a) The requirements of subsection (c) of Section 1356 of
18 this Code shall apply to Parcel Maps.

19 (b) The Parcel Map shall conform to the requirements of
20 Chapter 2, Article 3 of the SMA and to the Subdivision Regula-
21 tions regarding detailed format and contents.

22 (c) In the case of conversions where a Tentative Map is not
23 required, the requirements of Article 9 on the conversions shall
24 apply, provided that public hearings as provided in Section 1332
25 shall not be required, and the ten percent (10%) low and moderate
26 income occupancy as provided in Section 1341 shall not be

1 disabled who have resided in the building over the past
2 three (3) years to the extent that such information is
3 known or can be made known to the subdivider.

4 6. A building condition and sales program report
5 including:

6 (a) A building inspector's report made by either
7 the Bureau of Building Inspection or a certified
8 engineer or architect acceptable to the Bureau of
9 Building Inspection; with said report to contain
10 any Housing Code violations and incipient or
11 potential deficiencies including electrical,
12 plumbing and boiler requirements; where a
13 building to be converted to condominiums is two
14 (2) years old or less, a Certificate of
15 Completion issued by the Bureau of Building
16 Inspection may be accepted in lieu of a building
17 inspector's report;

18 (b) A statement of repairs and improvements and
19 projected cost of same the subdivider plans to
20 make before conveyance of the units by the
21 subdivider;

22 (c) A list of the proposed sales prices for each
23 unit including an indication as to whether the
24 unit will be sold in fee simple or a leasehold
25 interest, the estimated condominium association
26 dues, the rentals if a leasehold interest is

1 proposed, and a statement of the proposed sales
2 program, particularly plans to promote
3 affirmative action in housing; this information
4 to be used to assure compliance with the
5 requirements of this code and SMA. The sales
6 prices listed for each unit shall remain in
7 effect and shall not be increased by the
8 subdivider until the unit is sold to the tenant
9 or until the tenant has waived his or her right
10 of first refusal and the unit is made available
11 to the general public, provided that the sales
12 price may be increased by the following amounts:
13 (1) the percentage increase in the Housing
14 Component of the "Bay Area Consumer Price Index,
15 U. S. Dept. of Labor," above the price index
16 in existence as of the date the application is
17 filed; and (2) the pro rata actual cost of any
18 repairs or improvements made by the applicant in
19 addition to those set forth in the application,
20 pursuant to section 1381(a)(4)(b). During this
21 period of time, any reduction in price of any one
22 unit from the price level indicated on the state-
23 ment shall not be made without comparable reduc-
24 tions to the prices of all other units.

25 (d) A summary of tenant contacts including all
26 meetings held with tenants and all information

1 existing facilities are indicated in the Tentative Map, a State-
2 ment of Known Soil and Geologic Conditions may be substituted for
3 the required Soil and Geologic Reconnaissance Report. Said
4 Statement shall be prepared by the engineer or surveyor who
5 prepares the Tentative Map and shall contain the following
6 information as taken from the latest U.S. Geologic Maps:

- 7 1. Soil Deposits;
- 8 2. Rock Formations;
- 9 3. Faults;
- 10 4. Ground Water; and
- 11 5. Landslides.

12 **SEC. 1382. Exceptions From Application Packet.**

13 (a) Application Packets for Conversions shall have deleted
14 the following information required by provisions of this Code:

- 15 1. Except as otherwise required by other Sections of
16 this Article 9, the statements required by Section
17 1323(a), paragraphs 1, 2, and 3, shall be deleted.
- 18 2. The environmental evaluation data required by
19 Section 1323(b).

20 **SEC. 1383. Conformity of Housing, Building and Planning**
21 **Codes.** As a condition of Final Map approval, the subdivider must
22 demonstrate that all applicable provisions of the City's Housing,
23 Building and City Planning Codes have been met and that all vio-
24 lations of such codes have been satisfactorily corrected or, upon
25 the approval of the Director, and prior to Recordation of the
26 Final Map or Parcel Map, funds have been adequately escrowed or

1 bonded to assure completion of such corrective work prior to the
2 closing of escrow of any unit in the project.

3 **SEC. 1384. Procedural Additions.**

4 (a) In addition to the notice of Public Hearing required by
5 Section 1313, notice of any Public Hearing by the Director shall
6 be sent to each tenant of the property proposed for Conversion in
7 accordance with the provisions of Section 1313. The cost of such
8 notice shall be borne by the subdivider.

9 (b) In addition to the requirements of Section 1331 of this
10 Code regarding the Advisory Agency's Report, the Subdivider,
11 subject to review by the Director shall mail a notice to each
12 tenant which shall inform the tenant of the following:

- 13 1. The Director's decision, along with a statement of
14 any conditions which may have been incorporated in a
15 conditional approval of a Tentative Map;
- 16 2. The right of tenants to appeal the Director's
17 decision; and
- 18 3. The availability for examination of a copy of the
19 Advisory Agency's Report at the Director's office.

20 The cost of such notice shall be borne by the
21 subdivider.

22 (c) Section 1333 of this Code is modified to provide for an
23 appeal by the tenants of any project to be converted, from the
24 final action by the Director of any application for Conversion.
25 Any such appeal shall be taken by filing a written notice of
26 appeal, subscribed by at least twenty percent (20%) of said

1 the subdivider may not reapply for eighteen (18) months from date
2 of denial. In evaluation of the current vacancy level under this
3 subsection, the increase in rental rates for each unit over the
4 preceding five years and the average monthly vacancy rate for the
5 project over the preceding three years shall be considered. In
6 the evaluation of the displacement of elderly tenants any such
7 displacements over the preceding three years, and the reasons
8 therefore, shall be considered.

9 SEC. 1387. Right of Tenants to Contract for the Purchase
10 of Unit.

11 (a) The present tenant or tenants at the date of filing of
12 the application for a Tentative Map of any unit to be converted
13 or, in the event of a voluntary vacation, or eviction for cause,
14 the tenant or tenants in occupancy at the date of issuance of the
15 State Department of Real Estate's Final Subdivision Public Report
16 shall be given a non-transferable contract right to purchase the
17 unit occupied at a price no greater than the price offered to the
18 general public.

19 (b) The right of contract for purchase of the unit shall
20 extend for sixty (60) days from the date the unit is initially
21 offered to the tenant in writing by the subdivider. The period
22 of acceptance of the offer may be extended if such an agreement
23 is executed in writing by the subdivider and tenant, provided
24 that the tenant may cancel the purchase agreement if the unit is
25 not conveyed to that tenant within six (6) months of the agree-
26 ment to purchase.

1 (c) The offer of sale may not be extended by the subdivider
2 to the tenant until the recordation of the Final Map or Parcel
3 Map, and until the issuance of the State Department of Real
4 Estate's Final Subdivision Public Report.

5 SEC. 1388. Tenant Intent to Purchase. No application for
6 conversion shall be approved unless there are substantial numbers
7 of tenants who have indicated their intent to purchase their
8 rental unit. This intent shall be evidenced by the submittal in
9 writing by no less than forty percent (40%) of the tenants of
10 intent to purchase forms, as provided by the Department of Public
11 Works. In obtaining or soliciting intent to purchase forms from
12 tenants, subdividers shall comply with any restrictions set forth
13 in the California Business and Professions Code and Regulations
14 of the Real Estate Commissioner. In calculating the total number
15 of units necessary to satisfy this provision, there shall be
16 included in the forty percent (40%) requirement any units in
17 which the occupant qualified for and has expressed an intent to
18 obtain a renewable lifetime lease pursuant to Section 1391(c).

19 Any tenant intent to purchase forms obtained by way of an
20 inducement of the subdivider to provide benefits to that tenant
21 beyond those established by this Code shall be so identified and
22 the specific representations of the subdivider shall be set forth
23 in detail. All such intent to purchase forms shall become a
24 matter of public record and the subdivider shall be required to
25 comply with his or her representations as conditions of approval.

26 The intent to purchase forms, once signed by a tenant, shall

1 the date of approval of the Final Map; the rental charge and
2 rights and obligations of the parties during said period shall be
3 in accordance with subsection (c) of this section.

4 (b) Upon expiration of all such time requirements and upon
5 satisfaction of any conditions required for conformity with the
6 Master Plan, including the recordation of the Final Map or Parcel
7 Map, the tenant shall also be entitled to the statutory period
8 for notice of eviction as provided in California Civil Code
9 Section 1946.

10 This provision shall not affect the requirement that a
11 tenant receive relocation services and reimbursement for moving
12 expenses provided that the tenant request and be eligible for
13 said services as provided in Section 1392 and Section 1393, and
14 provided that the time for relocation assistance not extend
15 beyond the 120 day period of the notice of intent to convert or
16 any lease extension as required in subsection (a) of this section.

17 (c) No subdivider or subsequent condominium unit owner
18 shall refuse to renew a lease or extend a rental agreement to any
19 non-purchasing tenant aged sixty-two (62) or older at the time of
20 Recordation of the Final Map or Parcel Map, or any tenant perma-
21 nently disabled. Any extended leases or rental agreements made
22 pursuant hereto shall expire only upon the death or demise of
23 such tenant or the last surviving member of the tenant's house-
24 hold, provided such surviving member is related to the tenant by
25 blood or marriage and is aged sixty-two (62) or older at the time
26 of death or demise of such tenant, or at such time as the tenant

1 voluntarily vacates the unit after giving due notice of such
2 intent to vacate. Each lease shall contain a provision allowing
3 the tenant to terminate the lease and vacate the unit upon 30
4 days notice. Rent charged during the term of any extended lease
5 or rental agreement pursuant to the provisions of this section
6 shall not exceed the rent charged at the time of filing of the
7 application for conversion, plus any increases proportionate to
8 the increases in the residential rent component of the "Bay Area
9 Cost of Living Index, U. S. Dept. of Labor," provided that the
10 rental increase provisions of this section shall be operative
11 only in the absence of other applicable rent increase or
12 arbitration laws. This section shall not alter or abridge the
13 rights or obligations of the parties in performance of their
14 covenants, including but not limited to the provision of
15 services, payment of rent or the obligations imposed by Sections
16 1941, 1941.1 and 1941.2 of the California Civil Code. There
17 shall be no decrease in dwelling unit maintenance or other
18 services historically provided to such units and such tenants.

19 SEC. 1392. Subdivider to Provide Moving Expenses.

20 (a) The subdivider shall bear the cost of moving expenses
21 of any tenant who relocates from the building to be converted.
22 The tenant, at his or her option, shall be reimbursed either for
23 the actual moving expenses up to a maximum of one thousand
24 dollars (\$1,000), or for the fixed amount allowed by the moving
25 expense schedule of the Central Relocation Services agency. In
26 the event the unit is occupied by a sub-tenant under an agreement

1 year or for action after all previously accepted applications
2 have been acted upon and less than 1000 units had been approved
3 for conversion. The Board of Supervisors shall review this
4 section within one year from the date of approval of this
5 ordinance.

6 Section 4. Emergency Provision. This ordinance is hereby
7 enacted as an emergency ordinance pursuant to Charter Sections
8 2.300 and 2.301. The basis for said emergency is as follows:

9 "An increase in condominium conversions coupled with a low
10 vacancy factor and increasing rents has precipitated a rental
11 housing crisis in San Francisco. The number of condominium
12 conversion applications has greatly increased during the last
13 twelve months, straining the ability of the Department of Public
14 Works, City Planning Department and the Board of Supervisors to
15 process applications within the time limitations established by
16 the State Subdivision Map Act. In anticipation of the enactment
17 of this ordinance, applications continue to be filed at an
18 increasing rate. Because of the large number of pending
19 applications, the City and County may be prevented from properly
20 reviewing those applications within the required time
21 limitations, resulting in the automatic approval of such
22 applications, thus creating an actual emergency."

23 APPROVED AS TO FORM:
24 GEORGE AGNOST, CITY ATTORNEY

25 By: _____
26 Deputy City Attorney

BOARD OF SUPERVISORS

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Passed as an emergency measure—Board of Supervisors, San Francisco..... JUL 2 1979

Ayes: Supervisors ~~Chitt~~, Dolson, ~~Chen~~, Horanzy, Hutch, Kopp, Lau, Molinari, Pelosi, Renne, Silver.

~~Four Supervisors~~.....

Absent: Supervisors BRYAN EDGEMAN.....

I hereby certify that the foregoing ordinance was passed by the
Board of Supervisors of the City and County of San Francisco.

.....
Clerk,

152-794
File No.

JUL 06 1979
Approved

.....
Mayor

PROCEDURES GOVERNING CONDOMINIUM CONVERSION
AND CREATION OF NEW CONDOMINIUMS

With

Appendix "A"	Application Packet
Appendix "B"	Construction Loan Guarantee Form
Appendix "C"	Bureau of Building Inspection Physical Inspection Fee Schedule
Appendix "D"	Central Relocation Services Information For Condominium Conversions

Division of Surveys and Mapping
Bureau of Engineering
Department of Public Works

July 12, 1979

PROCEDURES GOVERNING CONDOMINIUM CONVERSIONS
AND CREATION OF NEW CONDOMINIUMS

A condominium, whether conversion or new, falls within the category of a subdivision; as such, it is governed by the Subdivision Map Act of the State of California and the Subdivision Code, and all amendments thereto, of the City and County of San Francisco.

The following are general procedures describing the requirements for converting rental units into condominiums, or creating a new condominium. It is not the purpose of this brochure to go in details on all the technical and legal aspects of subdividing real properties, including condominiums, in the City and County of San Francisco. They are within the realm of said Act and Code.

Principally, there are two categories of condominium subdivision. One is where a project consisting of four or less units. Such a condominium subdivision require only a parcel map and does not require a tentative map. The other is where a project having five or more units. The latter requires both a tentative and a final map. The major distinctions are that approval of a parcel does not require action of the Board of Supervisors, nor does it require a public hearing; whereas a regular subdivision map usually goes through a public hearing procedure, and the final map must be approved by the Board of Supervisors. Those with four or less units need not reserve 10% of their units for low and moderate income households; while those with five or more units are required to reserve 10% of the units for occupancy by low and moderate income households, or be subjected to some other alternatives as specified in the Subdivision Code, as amended.

Other than the above, the following procedures generally apply to all condominium conversions regardless of the number of units involved.

I. Initial Submittal

See Appendix "A" attached
(Note: Parcel or Subdivision Maps must be prepared by
a licensed Surveyor or a Registered Civil Engineer)

II. Referral to other City Agencies:

Upon receipt of the initial submittal package, referral will be made to the Department of City Planning at 100 Larkin Street, for their checking and review with regard to consistency with the Master Plan and other pertinent Planning Codes.

For those projects consisting of five or more units, the Planning Department may require Environmental Impact Evaluations on the proposed conversions. For such projects, there will also be a public hearing before the Planning Commission.

Where required, referrals will be made to other City agencies for their comment and recommendations.

III. Approval, Conditional Approval or Disapproval of Parcel or Tentative Map

The surveyor or Engineer who prepared the map will be notified by letter of the approval and conditions of such approval, or disapproval of the parcel or tentative map.

Where a conversion involving five or more units, the City Engineer may, at his discretion, hold a subdivision conference with the subdivider or his agent prior to formally approving or conditionally approving the tentative map.

Where a condominium project consisting of 25 or more units, a public hearing may be required. Such a hearing, if required, may take place either jointly with the Department of City Planning or independently thereof.

IV. Submittal of Final Map

1. Two copies or sets of final map in cloth prints bearing all required signatures and incorporating all corrections, additions or omissions as specified in the letter of approval. Original signatures, stamps or seals must appear on said cloth prints of the final map.
2. One copy or set of Vandyke of the final map.
3. One copy or set of tracing of the final map.
4. Where a condominium project consisting of 5 or more units, approval of the final map shall be by legislation of the Board of Supervisors. In which case, the subdivider must submit, in addition to the above, a current Tax Certificate issued by the Controller of the City and County, and a certified or cashier's check of the amount as shown on Said Tax Certificate. In lieu thereof, an approved bond of twice of that amount may be accepted.

V. Actions Leading To Approval By The Board of Supervisors

The Board of Supervisors holds hearings on subdivisions and other matters every Monday, except when a Monday falls on a legal holiday. Generally speaking, it takes about 3 weeks from the time a final subdivision map and all required inclusions are properly submitted to the Advisory Agency to the time it is heard by the Board.

After the Board has approved the final map, the Resolution of such approval must be signed by the Mayor, who has ten days to do so.

VI. Recordation

1. Conversions

No parcel map or final map of a condominium conversion may be recorded until a current 3R inspection report issued by the Bureau of Building Inspection of the City and County has been submitted by the subdivider, demonstrating that there are no violations of the Building and Housing Codes. If any such violations exist, they must be satisfactorily corrected, as evidenced by a Certificate of Completion issued by said Bureau, before the map can be recorded. (See VII below for alternatives)

2. New Constructions

No parcel or final subdivision map of a new condominium may be recorded until a Certificate of Completion has been issued by the Bureau of Building Inspection. (See VII below for alternatives)

3. Updating Title Report

When a parcel or final map is ready for recordation, the title company involved will be notified to update the title report on, or verification of, the ownership of the property shown on the map as of the date of recordation.

4. The subdivider is required to submit a copy of CC and R (Declaration of Conditions, Covenants and Restrictions) prior to recordation of a parcel or final condominium subdivision map, whether conversion or new.

VII. Improvement Bond, Financial Guarantee of Completion

1. Where time is such an essence that a delay in the recordation of an approved parcel or final map will create financial hardship on the subdivider, who has demonstrated his

intention in good faith to correct all code violations as reported by the Bureau of Building Inspection prior to closing escrow of any unit or units of the condominium, he may post an improvement bond of an amount approved by the Advisory Agency, or deposit sufficient funds in an escrow, as a guarantee that all necessary work will be done to correct such said code violations.

2. Funds deposited in an escrow for the aforesaid purposes shall not be released until such time when all corrective works have been completed as evidenced by a Certificate of Completion issued by said Bureau of Building Inspection.

Under certain circumstances and upon approval by the City Engineer, funds deposited in an escrow may be partially released to meet progressive payments for the portion or portions of the corrective works that have been completed, provided that the inspector who signed the original inspection report certifies in writing that such is the case.

3. In the case of a new construction where granting of a construction loan by a banking institute hinges on the recordation of the approved parcel or final map, or where the subdivider has already secured a construction loan of sufficient amount, the map in question may be recorded prior to completion of all units and improvement shown thereon, when the banking institute involved guarantees the City and County in writing that all such constructions will be completed within a certain time limit. Such a letter of guarantee shall be worded as shown on the form attached under Appendix "B".

VIII. Extension of Advisory Agency Review Time Limit

The time limit for reviewing a properly submitted tentative map by the Advisory Agency where specified in the Subdivision Map Act of the State of California may be extended when necessary, in which case, the subdivider will be so notified; and a formal agreement on the time extension shall be executed.

IX. Fees

1. Processing fees charged by the Department of Public Works for checking, reviewing and processing a parcel or subdivision map is based on the estimated cost of doing all such works. Such fees are not refundable regardless whether or not the map in question is approved. All fees must be settled prior to recordation of the map.
2. Recording fee is computed on the basis of \$5 for the first sheet of the map, and \$2 for each additional sheet thereafter. Recording fee is payable to the County Recorder.

APPENDIX "A"

Application Packet



CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS

OFFICE OF THE
DIRECTOR OF PUBLIC WORKS

July 16, 1979

260 CITY HALL
SAN FRANCISCO
CALIFORNIA 94102

Application For Condominium
Subdivision (Residential)

Gentlemen:

Part II, Chapter XIII of the San Francisco Municipal Code, commonly known as the Subdivision Code, has been amended by Ordinance No. 337-79, adopted by the Board of Supervisors on July 2, 1979, and signed by the Mayor on July 6, 1979. To implement the provisions of the amended Code and standardize all applications for residential condominium subdivisions, whether new or conversions, the attached forms, hereinafter referred to as the Application Packet, have been developed to assist you in making proper and complete submittals for our review and processing.

The subdivider is required to check and complete all items on said forms applicable to the proposed project, and attach all necessary supporting documents and data corresponding to those items that have been checked.

List "A" of the Application Packet consists of those items which are required by the Department of Public Works. List "B" of said Application Packet consists of such items which must be reviewed by the Department of City Planning.

Both lists and all documents related thereto, respectively, shall be submitted at the same time to the Division of Surveys and Mapping of the Bureau of Engineering, Department of Public Works, Room 352, City Hall. Items and documents belonging to the separate lists shall be clearly so labeled, segregated and packaged to assure smooth handling. Any required item or items, document or documents, missing from either list shall be deemed incomplete submittal, causing either rejection of the submittal or delay in processing.

July 16, 1979
Page 2

If you have further questions concerning the subject matter, please call Messrs. George Woo or Raymond Wong of the Department of Public Works at 558-4972, or Messrs. Alec Bash or Jim Miller of the Department of City Planning at 552-3055 for assistance.

Very truly yours,

Jeffrey Lee
Director of Public Works
and Advisory Agency

Encl: Application Packet (Lists "A" and "B")
Tenant Intent to Purchase Form

(Date)

Application for Condominium
Subdivision

Mr. Jeffrey Lee
Director of Public Works
City Hall, Room 260
San Francisco, CA 94102

Dear Mr. Lee:

In compliance with the Subdivision Code of the City and County of San Francisco and all amendments thereto, I, we, the undersigned subdivider, or agent, hereby submit to you for your review and processing a proposed condominium subdivision of residential property, together with Lists "A" and "B" of the Application Packet and all applicable items, fees, documents and data checked thereon.

Very truly yours,

Attachment: Application Packet

APPLICATION PACKET

List "A"

(Required by Department of Public Works for all residential condominiums of two or more Units)

Property Address:

Assessor's block and lot No.:

Name and Address of Subdivider:

Name and Address of firm or agent preparing the subdivision map:

Title of Map:

Number of Units in Project:

New Construction (Not Previously Occupied) _____; Conversion _____

Number of Studio Units with no bedrooms _____

Number of Units with one bedroom _____

Number of Units with two bedrooms _____

Number of Units with three or more bedrooms _____

Date of Submittal:

Check the following items enclosed where applicable:

1. Six (6) Prints or Sets of Parcel Map -----
(For 4 or less Units)

2. Eight (8) Prints or Sets of Tentative Map -----
(For 5 or more Units)

3. Preliminary Title Report -----

4. Checking Fee (\$ _____) -----

5. 3R Report -----

6. Building Inspection Report ----- *

Report No. 3R-_____

Date of Report _____

Inspector's Name : _____ (Building)
_____ (Electrical)
_____ (Plumbing)

APPLICATION PACKET

List "A" Continued

- 7. Building History-----
- 8. Previous land use (For New Construction Only)-----
- 9. List of Tenants and their apartment Nos.-----
- 10. Rental History -----
- 11. Proposed Sales Prices -----
- 12. Soils Report
 - For Conversion only, prepared by a Licensed Surveyor
or a Registered Civil Engineer -----
 - For new Construction or major renovations, prepared
by a Soils Engineer -----
- 13. Notice to tenants of the proposed conversion ----- *
- 14. Tenant Intent to Purchase Forms (of the Department of Public
Works), properly signed, and/or documentation concerning life-
time leases to the elderly or disabled, together representing
forty percent (40%) or more of the occupied units.----- *
- 15. Is an EXCEPTION requested pursuant to Section 1312 of the
Subdivision Code? YES _____ NO _____

* Submit documental evidence

APPLICATION PACKET

List "A" Continued

16. Subdivider's Affidavit.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

I (We) _____
(Print Subdivider's Name in Full)

declare, under penalty of perjury, that I am (we are) the owner(s)
(authorized agent of the owner(s)) of the property that is the
subject of this application, that the statements herein and in the
attached exhibits present the information required for this appli-
cation, and the information presented is true and correct to the
best of my (our) knowledge and belief.

Date: _____

Signed: _____
(Applicant)

APPLICATION PACKET

List "B"

(Required by Department of City Planning for all residential condominiums of 2 or more Units unless otherwise noted)

1. Address of Project:
2. Assessor's block and Lot number (s):
3. Name, address, and telephone number of person to be contacted concerning this project:

Name and address of subdivider:

Name and address of owner, if different from subdivider:

4. Title of Map:
5. New Construction (Not Previously Occupied) _____ Conversion _____
6. Number of Units Proposed: _____
(If the number of Units proposed upon conversion differs from the number of existing units, check this box and attach an explanation.)
7. If the project requires an exception to any of the substantive requirement of the Subdivision Code, check this box and attach an explanation as to why the exception is required. State why you believe any such exception to be consistent with the Master Plan.
8. A public hearing may be required in this case. Provide each of the following with this application. (Applicable only to condominium consisting of 5 or more Units, excepting "Address List" under (b))

- (a) 300-Foot Radius Map: A map drawn on tracing paper, scale 1" = 50', showing the property that is the subject of this application and all other property within a radius of 300 feet of the exterior boundaries of the subject property, the Assessor's block number on each block and Assessor's Lot number on each lot, and the names of all streets shown. Map of individual blocks may be traced at the Assessor's Office, and street widths may be obtained at the City Engineer's office; however, it is advisable that this work be done by an experienced draftsman.

APPLICATION PACKETList "B" Continued

In the case of new condominiums of fewer than fifty (50) units, a public hearing is not required unless an owner of contiguous property (at the side, rear or across the street) requests a hearing. The 300-Foot Radius Map may be omitted, and in its place a map showing only the contiguous property may be substituted, provided that in the event a hearing is ultimately required, you must then provide the 300-Foot Radius Map.

- (b) Address List: A typed or printed list (ink) showing the names, addresses and zip codes of all current tenants of the property and showing in numerical order by Block and Lot the names, addresses and zip codes of the last-known owners of all properties within the 300-foot radius shown on the map. The names and addresses are available to the public at the Tax Collector's Office and are those shown on the latest city-wide assessment roll. Also, include all names and addresses of additional owners, attorneys, and other parties you wish notified of the hearing.

In the case of new condominiums of fewer than fifty (50) units, this list need show only the names and mailing addresses of owners of contiguous property and others you wish notified of the hearing, provided that in the event a hearing is ultimately required, you must then provide the names and addresses of all owners within the 300-foot radius.

- (c) Envelopes: Stamped, pre-addressed envelopes, with Department of City Planning return addresses, to all persons shown on the address lists.

9. If new construction of five units or more is involved, an environmental evaluation (negative declaration or environmental impact report) is required. If you have already submitted the environmental form, give the EE number: EE _____. If you have not submitted the environmental form, check this box and complete and attach an Environmental Evaluation Form (available at the Department of City Planning) to this application.
10. Rental History and Proposed Sales Prices. Submit the rental history and proposed sales prices pursuant to Section 1331(a) 3 and 4(c) of the Subdivision Code. Information on the unit number, square feet, number of bedrooms, the current rental rate, the five year rental history, and the proposed sales prices shall be included in one table, and be clearly set for each unit.

APPLICATION PACKETList "B" Continued

- (a) Number of vacant units _____
- (b) Number of current households with tenants aged 62 or older, or permanently disabled _____
- (c) Attach a statement giving the names of all tenants aged 62 or older or permanently disabled who have resided in the building over the past three years. Include the forwarding addresses and reasons for relocation, if applicable. Check this box if there were no such tenants.
11. Give the names of tenants who intent to purchase their units, and their unit numbers, on a separate list. (Form of Intent to Purchase shall be the standard form as designed by the Department of Public Works)
12. Attach the notice to be mailed to tenants pursuant to Section 1381(a) 6 of the Subdivision Code, omitting any attachments to that notice otherwise submitted with the Application Packet.
13. Indicate by number any applications for building permits that have been filed in connection with the proposed use of this property.
14. For conversions, indicate which of the following additional items are included with this application, and explain any omission. Conversion application generally requires all the following material.
- (a) Building History (Code Section 1381(a) 1 -----
- (b) 3-R Report (Sec. 1381(a) 2) -----
- (c) Building Inspector's Report (Sec. 1381(a) 4(a)) --
- (d) Statement of Repairs and Improvements
(Sec. 1381(a) 4(b)) -----
- (e) Summary of tenant contacts
(Sec. 1381(a) 4(d)) -----
- (f) Subdivider commitment to provide to new tenants
notice of conversion (Sec. 1381(a) 6(c)) -----

APPLICATION PACKET

List "B" Continued

15. Certificate of subdivider not to retain any right, title or interest in common areas or facilities of the subdivision -----

16. For conversions consisting 5 or more Units each, OR new construction consisting 50 or more units, indicate how you intend to satisfy the 10% low and moderate income occupancy (Section 1341 of the Subdivision Code):

Within the Condominium Subdivision -----

New Construction elsewhere -----

In lieu payment to Housing Development Fund -----

17. Subdivider's Affidavit.

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

I (We) _____
(Print Subdivider's Name in Full)

declare, under penalty of perjury, that I am (we are) the owner(s) (authorized agent of the owner(s)) of the property that is the subject of this application, that the statements herein and in the attached exhibits present the information required for this application, and the information presented is true and correct to the best of my (our) knowledge and belief.

Date: _____

Signed _____
(Applicant)

TENANT INTENT TO PURCHASE

_____, as tenant(s) of property
at _____ at the time of filing of
the application for a condominium conversion subdivision of such property, do
hereby certify my/our intent to purchase my/our occupied Unit No. _____ at
said property. I/We have seen the list of proposed sales prices to tenants, to
be filed by the subdivider with the City and County of San Francisco, and this
list indicates the sales price for the subject unit to be \$ _____.

I/We have reviewed Section 1388 of the Subdivision Code, which is printed on
the reverse side of this form, concerning Tenant Intent to Purchase. It is
understood that signing this Intent to Purchase Form, while not creating a
contractual obligation to buy, does represent my/our bona fide current desire
which I/we have every intention to pursue to completion.

It is further understood that this Intent to Purchase Form will be filed with
the City and County for the purpose of establishing the percentage of tenants
that may be expected to purchase units if the units are sold as condominiums,
pursuant to Section 1388 of said Subdivision Code.

I/We declare, under penalty of perjury, that the statements herein are true
and correct.

Tenant(s) and Prospective Buyer(s):

Dated: _____

APPENDIX "B"

Construction Loan Guarantee Form

APPENDIX "C"

Bureau of Building Inspection
Physical Inspection Fee Schedule

BUREAU OF BUILDING INSPECTION
PHYSICAL INSPECTION FEE SCHEDULE

Occupancies A, B and warehouses in occupancies E-3 and F-1;
single and two family dwellings. . . \$120.00.*

Apartment Houses:

Including 3 units	\$140.00
4 units through 10 units	180.00 plus \$20 per unit over 4
11 units through 20 units	320.00 plus \$15 per unit over 11
21 units through 40 units	470.00 plus \$10 per unit over 21
41 or more units	670.00 plus \$5 per unit over 41

Hotels:

Including 10 guestrooms	\$180.00
11 guestrooms thru 20 guestrooms	\$190 plus \$7.50 per guestroom over 11.
21 guestrooms thru 40 guestrooms	\$265 plus \$5.00 per guestroom over 21
41 or more guestrooms	\$365 plus \$2.50 per guestroom over 41

All Other Occupancies:

\$120.00 for the first 1000 square feet or fraction thereof
plus \$10.00 per each additional 1000 square feet or
fraction thereof with a total maximum fee of \$1000.00.

* Occupancies A and B are defined as any assembly building,
stadium, reviewing stand or amusement park.

Occupancy E-3 is a factory or warehouse in which loose combustible
material is manufactured or stored.

Occupancy F-1 includes gasoline filling and service stations and
factories, workshops and warehouses using or storing material
not highly flammable or combustible. See Article 5; Sec. 509.1;
S.F. County Building Code.

APPENDIX "D"

Central Relocation Services Information
For Condominium Conversions

CENTRAL RELOCATION SERVICES

RELOCATION REQUIREMENTS-CONDOMINIUM CONVERSION

In August of 1975, the Board of Supervisors enacted an ordinance known as the Subdivision Code of the City and County of San Francisco. The Code regulates the conversion of rental units to condominiums. Included in the Code are provisions for the protection of renters. Section 1385 of the Code sets forth guidelines to be followed in providing services and benefits to persons displaced by such conversions and, in certain instances, requires that the subdivider shall contract with Central Relocation Services to provide permanent relocation services.

There are certain major requirements and procedures related to relocation that you will be expected to follow both when making your application for condominium conversions and after approval of the tentative map. They are as follows:

1. Before the Final Map or Parcel Map is approved, you must submit to the City Engineer a description of any program you propose for relocation services (Section 1383(a)).
2. Within ten (10) working days after the approval or conditional approval of a Tentative Map you shall notify each tenant of "the rights established on behalf of the tenant by Section 1385." (Section 1384(d))
3. Within ten (10) working days after approval or conditional approval of the Tentative Map you are required to notify Central Relocation Services if there are any tenants of low or moderate income living in the property to be converted (Section 1385(g)). A chart of low-to-moderate income levels as defined in the Code is provided below for your information.
4. Section 1385(g) requires that a "Subdivider shall contract with the Central Relocation Services to provide relocation services...." if one or more of the units in the project are occupied by tenants of low or moderate income. (See chart below.)

We urge you to review the Subdivision Code thoroughly as there are other sections that relate to relocation activities and the subdivider's responsibilities to tenants.

It is important that information regarding relocation assistance be provided to your tenants at an early date. This will help prevent unnecessary upsets

and misapprehensions that would interfere with the success of the relocation process.

We suggest that when you make your application for condominium conversion you contact Central Relocation Services to arrange a meeting to discuss relocation assistance. The office is located at 939 Ellis Street, San Francisco. Please telephone 771-8800 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday.

Low-to-Moderate Income Levels*

San Francisco

No. of Persons in Family	1	2	3	4	5	6	7	8, 9, 10
Income Limits (Gross Annual)	\$16,124	18,450	20,700	23,024	24,450	25,950	27,374	28,800

* Figures are based on median income in San Francisco and greater Bay Area, as of January 1978, and are subject to change.

APPENDIX 4 -- Washington, D.C.
Ordinance

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D. C. LAW 3-53

"Condominium and Cooperative Conversion Stabilization
Act of 1979"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 3-208, on first and second readings, November 20, 1979 and December 4, 1979 respectively. Following the signature of the Mayor on December 21, 1979, this legislation was assigned Act No. 3-143, published in the January 4, 1980, edition of the D.C. Register, (Vol. 27 page 37) and transmitted to Congress on January 8, 1980 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and, therefore, cites this enactment as D.C. Law 3-53 effective February 23, 1980.

ARRINGTON DIXON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January	8, 9, 10, 11, 14, 15, 16, 17, 22, 23, 24, 25, 28, 29 30, 31
February	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 19, 20, 21, 22

D.C. LAW 3-53

EFFECTIVE
DATE FEB 23 1980

AN ACT

D.C. ACT 3-143

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DEC 21 1979

To enact a measure to stabilize the conversion of rental housing to condominium and cooperative housing in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Condominium and Cooperative Conversion Stabilization Act of 1979".

Sec. 2. (a) The Mayor shall not declare any housing accommodation, as defined in section 102(f) of the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54; D.C. Code, sec. 45-1681(f)); eligible to convert to a condominium pursuant to section 501(b)(1)(A) of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Code, sec. 5-1281(b)(1)(A)).

(b) The Mayor shall not issue any notice of filing of an application for registration of a condominium pursuant to section 406(a) of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Code, sec. 5-1266(a)) if that housing accommodation was declared eligible to convert

11221

pursuant to section 501(b)(1)(A) of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Code, sec. 5-1281(b)(1)(A)): EXCEPT, as provided for in section 4 of this act.

Sec. 3. (a) The Mayor shall not grant any housing accommodation, as defined in section 102(f) of the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54; D.C. Code, sec. 45-1681(f)), an exemption to convert to a cooperative pursuant to section 4(a)(3) of the Cooperative Regulation Act of 1979, effective September 28, 1979 (D.C. Law 3-19).

(b) The Recorder of Deeds shall not file any Articles of Incorporation pursuant to section 6 of the District of Columbia Cooperative Association Act, approved June 19, 1940 (54 Stat. 482; D.C. Code, sec. 29-806) for a housing accommodation exempted pursuant to section 4(a)(3) of the Cooperative Regulation Act of 1979, effective September 28, 1979 (D.C. Law 3-19): EXCEPT, as provided in section 4 of this act.

Sec. 4. (a) The Mayor is authorized to exempt from the provisions of sections 2(b) and 3(b) of this act:

(1) any housing accommodation that was purchased on or before May 22, 1979, in contemplation of the

Enclosed Original

conversion, by the purchaser, to condominium or cooperative status; or

(2) any housing accommodation for which a proper notice of intent to convert to a condominium or cooperative status was served on tenants before May 22, 1979; or

(3) any housing accommodation where the conversion was agreed to by the tenants' organization acting on behalf of the tenants pursuant to section 602(b) of the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54; D.C. Code, sec. 45-1699.9(b)), as amended by the Multi-Family Rental Housing Purchase Act of 1979, effective September 28, 1979 (D.C. Law 3-18); or

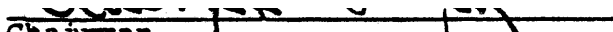
(4) any housing accommodation with respect to which there was a substantial financial investment on or before May 22, 1979, in its conversion.

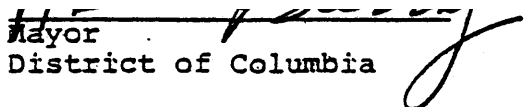
(b) Prior to granting any such exemptions, the Mayor shall issue rules and regulations prescribing standards for ascertaining compliance with the exemptions as set forth in section 4(a) of this act.

(c) It is the intent of the Council of the District of Columbia in adopting this section that declaration of a housing accommodation as eligible for condominium conversion or exemption for cooperative conversion, standing alone, does not constitute a substantial financial investment.

(d) It is also the intent of the Council of the District of Columbia that more than the filing of an application for registration for a condominium or delivery of Articles of Incorporation for a cooperative conversion be considered in determining the existence of a substantial financial investment.

Sec. 6. This act shall take effect after a thirty (30) day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-147(c)(1), and shall remain in effect for one hundred eighty (180) days.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED: December 21, 1979

COUNCIL OF THE DISTRICT OF COLUMBIA

RECORD OF OFFICIAL COUNCIL ACTION

DOCKET NO: Bill 3-208

ACTION: To Adopt (1st Reading) 11-20-79

VOICE VOTE: By Majority

Absent: Hardy

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.	COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.	COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
FARVIS					ROTARK									

CERTIFICATION OF RECORD

Secretary to the Council

ACTION: To Adopt (2nd Reading) 12-4-79

VOICE VOTE: By Majority

Absent: Clarke

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.	COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.	COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
FARVIS					ROTARK									

CERTIFICATION OF RECORD

Secretary to the Council

ACTION: _____

VOICE VOTE: _____

Absent: _____

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.	COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.	COUNCIL MEMBER	AYE	NAY	N.Y.	A.B.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
FARVIS					ROTARK									

CERTIFICATION OF RECORD

Secretary to the Council

D.C. LAW 3-35
EFFECTIVE DATE OCT 20 1979.

AN ACT

D.C. ACT 3-101

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUG 31 1979

To amend the Condominium Act of 1975 to increase the minimum rent levels to establish rental accommodation(s) as "high rent housing" eligible for conversion to condominiums.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Condominium Conversion Amendment Act of 1979".

Sec. 2. Section 501(b)(1) of the Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Code, sec. 5-1281 (b)(1)) is amended as follows:

(a) by deleting clause (ii) at the end thereof; and

(b) by adding the following new clauses (ii) and (iii)

to read as follows:

"(ii) total the results obtained in clause (i) above; and

"(iii) increase the result obtained in clause (ii) by the maximum percentage of any upward rent adjustments found to be warranted by the District of Columbia Rental

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D. C. LAW 3-35

"Condominium Conversion Amendment Act of 1979"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 3-139 on first and second readings, July 17, 1979 and July 31, 1979 respectively. Following the signature of the Mayor on August 31, 1979, this legislation was assigned Act No. 3-101, published in the September 7, 1979, edition of the D.C. Register, (Vol. 26 page 1121) and transmitted to Congress on September 7, 1979 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and, therefore, cites this enactment as D.C. Law 3-35 effective October 20, 1979.

ARRINGTON DIXON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

September	7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28
October	1, 2, 3, 4, 5, 9, 10, 11, 12, 15, 16, 17, 18, 19

-2-

Accommodations Commission pursuant to section 205(b) of the Rental Housing Act of 1977 (D.C. Law 2-54), beginning with the 1978 Annual Report."

Sec. 3. This act shall take effect as provided for acts of the Council of the District of Columbia in section 502(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED: August 31, 1979

COUNCIL OF THE DISTRICT OF COLUMBIA

BOOK OF OFFICIAL COUNCIL ACTION

DOCKET NO: Bill 3-139

ACTION: To Adopt (7-17-79)

VOICE VOTE: Unanimous

Absent: All Present

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.Y.	AB.	COUNCIL MEMBER	AYE	NAY	N.Y.	AB.	COUNCIL MEMBER	AYE	NAY	N.Y.	AB.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
TARUTS					ROTARY									

CERTIFICATION OF RECORD

Secretary to the Council

ACTION: To Adopt (7-31-79)

VOICE VOTE: Unanimous

Absent: All Present

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.Y.	AB.	COUNCIL MEMBER	AYE	NAY	N.Y.	AB.	COUNCIL MEMBER	AYE	NAY	N.Y.	AB.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
TARUTS					ROTARY									

CERTIFICATION OF RECORD

Secretary to the Council

ACTION: _____

VOICE VOTE: _____

Absent: _____

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.Y.	AB.	COUNCIL MEMBER	AYE	NAY	N.Y.	AB.	COUNCIL MEMBER	AYE	NAY	N.Y.	AB.
DIXON					KANE					SHACKLETON				
WINTER					MASON					SPAULDING				
CLARKE					MOORE					WILSON				
HARDY					RAY									
TARUTS					ROTARY									

CERTIFICATION OF RECORD

Secretary to the Council