

DATE ISSUED: May 20, 2005 REPORT NO. PC-05-151

ATTENTION: Planning Commission  
Agenda of May 26, 2005

SUBJECT: Recommendations on Possible Condominium Conversion Regulations

REFERENCE: Manager's Report No. 05-060 dated March 9, 2005

### SUMMARY

Issue – Should the Planning Commission RECOMMEND that City Council consider any of the condominium conversion regulations in question?

Manager's Recommendation – Consider recommendations on thirteen specific questions regarding condominium conversion regulations provided in the Discussion section of this report.

Environmental Impact – The proposed actions do not constitute a “project” and would, therefore, be exempt from the California Environmental Quality Act (CEQA) pursuant to state CEQA Guidelines Section 15060(c)(3).

Fiscal Impact – Not yet determined. Additional fees for condominium conversion applicants may be necessary for administration and to implement the recommended policies. Condominium conversions generally result in increased property revenues to the City. Restrictions on condominium conversions could reduce this increase.

Housing Affordability Impact – The actions proposed by the manager are intended to balance the goal of providing more affordable for-sale housing with the need to protect the supply of affordable rental housing and to minimize negative impacts to lower and moderate-income renters.

### BACKGROUND

On March 9, 2005, the Planning Commission and Land Use and Housing Committee held a joint workshop to discuss the recent increase in condominium conversions in San Diego and options for addressing this issue. Following the workshop, the Planning Commission and Land Use and

Housing Committee asked staff to evaluate and prepare recommendations regarding several specific suggestions for addressing and minimizing the potential negative impacts resulting from condominium conversions. The Planning Commission's recommendations on these issues will be forwarded to the Land Use and Housing Committee. Planning Commission and City Council hearings will then be scheduled to take action on any resolutions and/or ordinance changes that the Land Use and Housing Committee recommends.

Throughout the past year, applications for condominium maps to allow conversions have continued at a rapid rate. Between February 1, 2004 and May 5, 2005, applications to convert 10,013 rental units to condominiums have been submitted to the City. In addition, an unknown number of "off-the-shelf" conversions have been proceeding. These do not currently require any City approvals and are not tracked by the City.

## DISCUSSION

The following are the specific issues that staff was asked to evaluate and make recommendations on:

### **1. Should relocation assistance be continued or expanded?**

Recommendation: The relocation policy should be revised to require that all tenants displaced by condominium conversions receive a relocation payment equivalent to three months rent.

Analysis: All tenants forced to relocate are impacted by costs associated with moving and finding a home in an expensive market. Currently, three months relocation assistance is granted only to those tenants who earn less than the area median income. However, all tenants, regardless of income, suffer an inconvenience, whether financially or otherwise, upon being displaced.

The review process for relocation assistance has been time consuming and administratively difficult for both developers and staff. Tenants have also complained that the review process requires too much detailed personal financial information, and is infringing upon their privacy. Some tenants, although financially eligible, do not apply for assistance for this reason.

### **2. Should future approval of condominium conversions be tied to the vacancy rate for low- and moderate-cost units?**

Recommendation: Approval of condominium conversions should not be subject to the vacancy rate for low- and moderate-cost units.

Analysis: The Planning Department has contacted the two organizations that have been conducting rental vacancy rate surveys in San Diego for many years: the San Diego Apartment Association and MarketPointe Realty Advisors. Neither of these organizations gathered information on vacancy rates for units by rent level and both

believe that it would be very difficult to gather such data. Vacancy rates are difficult to measure and are generally less reliable than data on rent levels. Also, an inconsistent policy toward condominium conversions that varies from year to year depending on vacancy rates would create project processing problems and would result in uncertainty for both conversion applicants and tenants. Market fluctuations occur all the time and conditions can change rapidly.

**3. What parking, landscape, plumbing, electrical, roof, wall, fire and HVAC standards should be required for projects requesting condominium maps to allow conversion?**

General Recommendation: The Planning Department and Development Services Department suggest that in the future condominium conversions should meet standards that would make newly converted condominiums “good neighbors” in their communities and be consistent with reasonable consumer protection standards. The suggested standards, which are discussed below and summarized in Table 1, would in some instances be higher than what existed at the time the units were constructed. The City does not currently require upgrades for condominium conversions that meet building and zoning code requirements that were in effect at the time the units were constructed.

- A. Parking Recommendation: One space per unit for one bedroom units, 1.25 spaces per unit for two bedroom units, 1.5 spaces per unit for three bedroom plus units.

Analysis: This requirement would assure that converted properties have some off-street parking but would be significantly less restrictive than the existing requirement for new construction which is 1.5 spaces per unit for one bedroom units, 2 spaces per unit for two bedroom units and 2.25 spaces for three bedroom plus units.

- B. Landscaping Recommendation: Provide street trees and/or street yard landscaping per Land Development Code Section 142.0410 requirements.

Analysis: This requirement would assure that converted properties have some landscaping and there would be flexibility in how the landscaping could be provided.

- C. Electrical Recommendation: Require GFCI (Ground Fault Circuit Interrupter) outlets and grounded outlets in bathrooms, kitchens and utility rooms.

Analysis: The recommendation to provide outlets may offer life-safety benefits where no other electrical work is proposed as part of the conversion of a property to a condominium.

The electrical code typically grants nonconforming rights to existing electrical systems that are maintained in good working condition. Alterations to the existing electrical system, such as new circuits or branch circuits, new loads or

appliances, must comply with the current edition of the electrical code. Electrical panels may need to be upgraded to accommodate GFCI and arc fault interrupters as is required in the current electrical code. Access to electrical meters and electrical service may be required per the current electrical code and San Diego Gas and Electric requirements if the proposed scope of work necessitates it.

Home inspectors that perform inspections within the context of the real estate transaction and buyer due diligence will point out items that do not comply with current standards and it is up to the buyer and seller to agree on what corrective measures need to be taken.

- D. **Plumbing Recommendation:** Require converted units to have efficient plumbing fixtures such as low-flow toilets. Do not require retroactive re-plumbing of the building.

**Analysis:** Efficient plumbing provides environmental benefits at low cost. By contrast, retroactive re-plumbing would be expensive and could pose an undue hardship.

The plumbing code typically grants nonconforming rights to existing potable water distribution and drain/waste/vent systems that are maintained in good working condition. Alterations to the plumbing system for the purpose of repairing damage must comply with the current code. Replacement of like plumbing fixtures is not regulated per the plumbing regulations.

Re-piping projects involving the entire potable water distribution system or substantial portions of a system will require the entire system to be sized per the current code and to utilize materials permitted in the current plumbing code.

Where the scope of work includes the addition of new plumbing fixtures or appliances, such as automatic dishwashers or clothes washing machines, the plumbing system components serving the new fixtures need to be designed and installed to comply with the current code. The impact of the additional load demand to the overall system needs to be evaluated based on the plumbing code.

- E. **Roof Recommendation:** Disclosure of the condition of the roof should be included in a Building Condition Report (see Item I below).

**Analysis:** A building permit is not required for roofing projects on existing buildings when roof structure alterations are not required or proposed. Disclosure of roof condition should be sufficient in these instances.

- F. **Dwelling Unit Separation Recommendation:** Do not impose any additional regulations on dwelling unit separations for condominium conversions.

Analysis: The building code requires newly constructed multi-dwelling buildings including walls and floors separating dwelling units in the same building to be of not less than one-hour fire-resistive construction. This requirement became effective on January 1, 1990. Two-story buildings constructed prior to this date will not have been constructed to comply with this requirement. It will be impractical to require existing floor/ceiling assemblies to be upgraded as the sub-flooring would need to be upgraded to a double-wood floor or would require a light weight concrete topping. Upgrading of existing dwelling separation walls may not be practical if existing wall-hung cabinetry are to remain and if existing prefabricated tub and shower enclosures are to remain.

- G. Smoke Alarm Recommendation: Require wired and interconnected smoke detectors within each unit being converted to a condominium.

Analysis: Smoke detectors can provide life-safety benefits to occupants of a multi-unit dwelling which is undergoing upgrading during conversion to condominium ownership.

The building code requires that battery-operated smoke detectors be added within dwelling units when the value of an interior remodel exceeds \$1,000. Detectors required in hallways and sleeping rooms are not required to be interconnected to sound simultaneously. Interconnected smoke detectors sound simultaneously upon detection by one detector, thereby providing early notification to occupants of hazards in adjacent rooms or areas.

- H. Window Replacement Recommendation: The replacement of windows providing emergency escape and rescue openings for sleeping rooms in units being converted to condominiums should be required to comply with the minimum sill height and clear opening size required by the current building code.

Analysis: The recommendation above is recommended to ensure health and safety of condominium buyers.

- I. Building Condition Report Recommendation: A building condition report should be required for condominium conversions in which the operating systems of a building are to remain. The report should evaluate compliance with health and safety standards and current construction codes. The report should be accepted prior to the granting of the discretionary permit and should be provided to buyers of the converted units.

Analysis: The purpose of this report is to ensure that buyers are fully aware of the condition of the building in which they are purchasing a condominium. The report should be prepared by appropriate registered professionals. The evaluation should assess the condition and service life of all appliances, and the roofing, plumbing, electrical, heating and cooling systems.

**Table 1: Summary of Suggested “Good-Neighbor” Regulations**

<b>Good-Neighbor Regulation</b>	<b>Recommendation</b>	<b>Analysis</b>
<b>Parking</b>	<ul style="list-style-type: none"><li>• One space per unit for one bedroom units</li><li>• 1.25 spaces per unit for two bedroom units</li><li>• 1.5 spaces per unit for three bedroom plus units</li></ul>	<ul style="list-style-type: none"><li>• Would assure that converted properties have some off street parking</li><li>• Would be significantly less restrictive than the existing requirement for new construction</li></ul>
<b>Landscaping</b>	<ul style="list-style-type: none"><li>• Street trees and/or street yard landscaping per LDC Section 142.0410 requirements</li></ul>	<ul style="list-style-type: none"><li>• Would assure that converted properties have some landscaping</li><li>• Allows some flexibility</li></ul>
<b>Electrical</b>	<ul style="list-style-type: none"><li>• Require GCFI outlets and grounded outlets in certain areas</li></ul>	<ul style="list-style-type: none"><li>• May offer life-safety benefits where no other electrical work is proposed</li></ul>
<b>Plumbing</b>	<ul style="list-style-type: none"><li>• Require efficient plumbing fixtures</li><li>• Do not require retroactive re-plumbing of the building</li></ul>	<ul style="list-style-type: none"><li>• Efficient plumbing provides environmental benefits at low cost</li><li>• Retroactive re-plumbing could pose undue expense/hardship</li></ul>
<b>Roof</b>	<ul style="list-style-type: none"><li>• Roof condition should be included in a Building Condition Report</li></ul>	<ul style="list-style-type: none"><li>• Disclosure of roof condition is sufficient when roof structure alterations are not required or proposed</li></ul>
<b>Dwelling Unit Separation</b>	<ul style="list-style-type: none"><li>• No additional regulations on dwelling unit separations</li></ul>	<ul style="list-style-type: none"><li>• Impractical to require existing floor/ceiling assemblies or separation walls to be upgraded</li></ul>
<b>Smoke Alarm</b>	<ul style="list-style-type: none"><li>• Require wired and interconnected smoke detectors</li></ul>	<ul style="list-style-type: none"><li>• Would provide life-safety benefits to occupants during conversion to condominium ownership</li></ul>
<b>Window Replacement</b>	<ul style="list-style-type: none"><li>• Replacement of windows providing emergency escape to meet current building code</li></ul>	<ul style="list-style-type: none"><li>• Will help ensure health and safety of condominium buyers</li></ul>
<b>Building Condition Report</b>	<ul style="list-style-type: none"><li>• Should evaluate compliance with health and safety standards and current construction codes</li></ul>	<ul style="list-style-type: none"><li>• Will help ensure buyers are fully aware of building condition</li></ul>

**4. Should under grounding of utilities be required for condominium conversions?**

Recommendation: Under grounding of utilities is not recommended as a condition for approval of condominium conversions.

Analysis: The citywide under grounding program is proceeding by area based on an established schedule. In general, piecemeal under grounding along the frontage of one apartment or condo complex is not cost effective or beneficial. Requiring under grounding for condo conversions in areas where the surrounding area has not been under grounded would be costly and could prohibit some conversions while providing no real benefit to the surrounding community.

**5. Should on-site provision of inclusionary housing be required for condominium conversions that seek a condominium map?**

Recommendation: Condominium conversions with ten units or more should meet their ten percent inclusionary requirement on-site.

Analysis: On-site provision of the City's ten percent inclusionary housing requirement would be easier for a condominium conversion project than for new construction because the units already exist on site. This requirement could help the City address its acute shortage of affordable units. An inclusionary requirement of more than ten percent could be challenged unless the City's overall requirement is increased as well. It would also be difficult to impose an on-site requirement for projects with fewer than ten units unless the City's overall requirements are changed.

**6. Should a cut-off date be established after which condominium conversion requests must meet new regulatory requirements?**

Recommendation: Proposals for condominium maps received by the City after the date on which new regulations are adopted by Council should be subject to the new requirements.

Analysis: Rents and vacancy rates have not markedly increased in the past two to three years. Rents have been rising along with inflation but, unlike home prices, have not been rising significantly faster than the overall rate of inflation. Therefore, an emergency situation does not exist that would warrant a retroactive cut-off date for new regulations that may be adopted concerning condominium conversions.

**7. Should relocation payment requirements, “good neighbor” and consumer protection upgrades be required for “off-the-shelf” conversions that already have a condominium map?**

Recommendation: Relocation payments should be required for “off-the-shelf” conversions that already have a condominium map. A revision to the Municipal Code should be made to authorize this requirement. Application of the inclusionary requirement and upgrades should not be required for conversions that already have a condominium map.

Analysis: The City’s police power to aid displaced renters could be applied to “off-the-shelf” condominium conversions allowing the City to require rental assistance for tenants in these conversions as well as those that do need to obtain condominium maps. However, this would require a change in the Municipal Code. Enforcement of this would have to be complaint driven because if a City approval (condominium map) is not required, the City would only know about the conversion if impacted tenants inform the City.

Other requirements that impact conversions required to obtain a condominium map, including the inclusionary requirement, and “good neighbor” or consumer protection upgrades, cannot be imposed upon conversion projects that already have a condominium map because these projects already have legal entitlements necessary to become condominiums.

**8. Should condominium conversions be subject to park fees?**

Recommendation: Condominium conversions should not be subject to park fees.

Analysis: In general, conversions of rental apartments to condominiums would not create new need for parks or additional impacts to parks because the number of units and size of the units would be unchanged following conversion.

**9. Should a minimum overall project size (number of units) be required for projects to be able to convert to condominiums?**

Recommendation: There should be no minimum size limit.

Analysis: Adoption of a minimum size limit for condominiums would require amendments to the City of San Diego Progress Guide and General Plan and zoning code. These amendments are not recommended. Unless approval of a proposed conversion of a small project would create a threat to public health, safety, or general welfare, the City should not deny approval on the basis of unit count. The consumer protections that



would be provided if a building conditions report is required (recommendation No. 3-I above) would provide necessary protections for buyers of units in smaller condominium complexes.

**10. Should an economic hardship waiver process be established for projects that cannot meet increased standards that may be adopted for condominium conversions?**

Recommendation: There should be no economic hardship waiver process.

Analysis: It would be very difficult to decide what constitutes an economic hardship. A subjective determination that a particular rental project must convert to be economically viable and at the same time cannot upgrade to standards deemed to be desirable for converted properties would be difficult to make and to defend. Neither staff nor the decision makers would be easily able to determine all the financial issues that could impact financial viability.

**11. Could units be restricted to be for buyers only for a specified time period to eliminate speculators who intend to turn over units quickly or rent them out?**

Recommendation: The City should not impose limitations on property owners' rights to move out of their property or to rent their property.

Analysis: Although lenders may impose this sort of limitation in some instances, the City Attorney has advised that attempts by the City to do so would be an illegal restriction of property rights.

**12. What additional steps can be taken to resolve noticing problems?**

A. Tenant's Rights Recommendation: Require condominium conversion applicants to provide, with the first notice given to a tenant or a prospective tenant, a comprehensive list of all notices the tenant will receive and of their rights and benefits as tenants. The Development Services department could establish the form and content of this initial notice in the Land Development manual.

Analysis: Tenant notices are required by state law at various specific times during the condominium conversion process. The required legal language in those notices does not explain the process and may confuse tenants not familiar with the conversion process. If a tenant moves out right after receiving a notice, they may forfeit relocation benefits and the right to purchase. The City cannot modify the state noticing requirements but can add to them. Providing tenants with a comprehensive explanation of the notices they will receive and their rights would reduce confusion and allow them to make informed decisions.

- B. Small Project Recommendation: Require that conversions of four units or less also provide a 90-day Notice of Intent to Sell, and Right to Purchase to tenants who rented after the Parcel Map or Certificate of Compliance was filed.

Analysis: Section 66459 of the state Map Act, which requires that tenants who rented a unit being converted after the final map is filed be given a 90-Day Notice of Intent to Sell and a 90-Day Right to Purchase the unit, specifically excludes conversions of four or less units. This does not preclude the City from requiring these tenant's rights by local ordinance. All other tenant rights are applied to all conversions regardless of number of units being converted and it would seem only fair to extend these important rights to all conversions as well.

**13. What additional steps have been or can be taken regarding provision of homebuyer assistance to occupants of units undergoing conversion to condominiums?**

Recommendations: Expand the condominium conversion home purchase programs to be applicable to any eligible home purchase in the City.

Analysis: On April 22, 2005, the Housing Commission approved expansion of the condominium conversion home purchase programs to be applicable to any eligible home purchase in the City. This change will allow tenants displaced by conversion to buy any home, rather than being restricted to purchasing the unit from which they were displaced.

In addition to the questions raised by the Planning Commission and Councilmember Atkins, staff has also been working with the City Attorney's office to identify some additional regulations that may be appropriate for the condominium conversion process. These include:

- Requiring owners of apartment buildings to notify tenants of any sale of the property,
- Requiring owners to not raise rents, beginning at the date of the 180-day notice,
- Requiring owners to continue to maintain their properties in accordance with applicable codes and not to allow the condition of their property to deteriorate during the condominium conversion process, and
- Requiring mandatory tenant notices for condominium conversion to be given in a particular order.

Our preliminary investigation indicates that these requirements would be within the regulatory authority of the City.

**CONCLUSION**

If the recommendations in this report are supported by the Planning Commission and Land Use and Housing Committee, necessary ordinance changes, environmental review and procedure manuals will be prepared for consideration by the Planning Commission and City Council.

Some of these recommendations would add new responsibilities for the Development Services department and San Diego Housing Commission. Therefore, fees or fee increases may be proposed to accomplish the work necessary to administer and implement these recommendations.

Respectfully submitted,

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Coleen Clementson  
General Plan Program Manager  
Planning Department

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Gary Halbert  
Director  
Development Services

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William Levin  
Senior Planner  
Planning Department

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