

[Subdivision Code - Regulating Certain Below Market Rate Condominium Conversion Units]

Ordinance amending the Subdivision Code to establish procedures regarding resale prices, capital improvement costs, marketing, and sales, policies for conveyance through inheritance, title changes, owning, occupying, and refinancing Below Market Rate Condominium Conversion Units (BMR Units), and clarifying effective dates for requirements applicable to BMR Units under Subdivision Code, Section 1344, purchased on or after October 1, 2025.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Findings and Purpose.

(a) The Board adopted the "Below Market Rate Condominium Conversion Program" or "Program" to preserve certain low and moderate income housing through the implementation of Subdivision Code Sections 1341 and 1385 in 1979. The Board suspended the creation of new units under the Program in 1988, after a number of low income housing units had been created. The Department of Real Estate and Department of Public Works originally administered the Program, and in 1988 the Board designated the Mayor's Office of Housing ("MOH"), now known as the Mayor's Office of Housing and Community Development ("MOHCD"), as the City department responsible for monitoring the units created by the Program.

1 (b) In 2008, in Ordinance No. 320-08, the Board of Supervisors adopted
2 clarifications to the Program, codified in Subdivision Code Section 1344. Subdivision Code
3 Section 1344 includes rules for conveyance, pricing, ownership, and occupancy of Below
4 Market Rate Units ("BMR Units") sold by original subdividers and subsequent purchasers. The
5 purpose of this ordinance is to clarify the rules applicable to BMR Units under Subdivision
6 Code Section 1344 that are purchased on or after October 1, 2025.

7
8 Section 2. Article 5 of Division 1 of the Subdivision Code is hereby amended by
9 revising Section 1344, to read as follows:

10
11 **SEC. 1344. BELOW MARKET RATE CONDOMINIUM CONVERSION PROGRAM.**

12 As described below, this Section 1344 is intended to supersede, to the extent described
13 in subsection (a) below, the provisions of Sections 1341, 1341B, and 1385 relating to the
14 regulation of units subject to those provisions ("Condominium Conversion BMR Units" or
15 "BMR Units").

16 (a) **Application.**

17 (1) BMR Units purchased or acquired on or after ~~the effective date of this~~
18 ~~ordinance~~ January 18, 2009. Unless a Section specifically applies only to BMR Units purchased
19 before ~~the effective date of this ordinance~~ January 18, 2009, every part of this Section 1344 applies
20 to BMR Units purchased on or after ~~the effective date of this ordinance~~ January 18, 2009. For these
21 BMR Units, this Section 1344 replaces and supersedes all provisions of Sections 1341,
22 1341B, and 1385.

23 (2) BMR Units purchased or acquired before ~~the effective date of this~~
24 ~~ordinance~~ January 18, 2009.

1 (A) This ordinance applies to all BMR Units purchased or acquired
2 before ~~the effective date of this ordinance~~ January 18, 2009 as specified in each subsection and
3 supersedes Sections 1341, 1341B, and 1385 only as provided herein.

4 * * * *

5 (b) **Definitions.** For purposes of this Program the following definitions shall apply.
6 For terms not defined below, the definitions in the Subdivision Code and the definitions in the
7 City and County of San Francisco Residential Inclusionary Affordable Housing Program
8 Monitoring Procedures Manual, published in 2007 under Planning Code Sections 415 et seq.
9 (previously Section 315) and under this Section 1344 shall apply.

10 * * * *

11 (7) "Fair Market Value" shall mean the greater of the BMR Unit sales price or
12 the Appraised Value of the BMR Unit as of the date of valuation. The owner and the City,
13 acting through ~~the Mayor's Office of Housing~~ MOHCD, may determine the Fair Market Value by
14 mutual agreement without obtaining an appraisal. If the owner and the City are unable to
15 agree on a Fair Market Value, then the "Appraised Value" of the BMR Unit is defined as the
16 value that would be agreed to by a seller who is willing to sell but under no particular urgent
17 necessity or obligation to sell, and a buyer who is ready, willing and able to buy but under no
18 particular or urgent necessity to buy, each dealing with the other with full knowledge of all the
19 uses and purposes for which the Property is reasonably adaptable and available. For
20 purposes of determining the Appraised Value, the Borrower shall select and pay for an
21 appraiser who is an "MAI" member of the American Institute of Real Estate Appraisers or an
22 "SRPA" member of the Society of Real Estate Appraisers (or any such equivalent
23 designations). The City has the option, at City's sole expense, to select an appraiser to
24 conduct an additional appraisal of the Property. If the two appraisals are not in agreement as
25

1 to the Appraised Value of the Property, the amounts determined by the appraisals will be
2 averaged to determine the Appraised Value of the Property for purposes of this ordinance.

3 * * * *

4 (12) "~~Mayor's Office of Housing or~~ MOHCD" shall mean the Mayor's Office of
5 Housing and Community Development or its successor.

6 * * * *

7 (15b) "Post-Affidavit Owner" shall mean an owner who purchased or acquired
8 a BMR Unit on or after December 1, 1992 and before ~~the effective date of this legislation~~ January
9 18, 2009;

10 (15c) "Pre-Legislation Owner" shall mean all owners who purchased or
11 acquired a BMR Unit before ~~the effective date of this legislation~~ January 18, 2009;

12 (15d) "Post-Legislation Owner" shall mean an owner who purchases or
13 acquires a BMR Unit on or after ~~the effective date of this legislation~~ January 18, 2009;

14 (16) "Procedures Manual" shall mean the City and County of San Francisco
15 Residential Inclusionary Affordable Housing Program Monitoring Procedures Manual
16 published in 2007 under Planning Code Sections ~~3415~~ et seq. (previously Section 315), with
17 Condominium Conversion BMR Addendum, on file with the Clerk of the Board in File No.
18 080520. ~~The Mayor's Office of Housing~~ MOHCD shall update the Procedures Manual from time
19 to time as necessary in the same manner as established in Planning Code Section 3415 and
20 shall make the Procedures Manual available to the public, including on its website.

21 (c) **Sale Price.**

22 (1) BMR Units purchased or acquired on or after October 1, 2025 will be subject to
23 the pricing requirements and procedures set forth in the Procedures Manual in effect at the time that
24 the current owner purchased the BMR Unit.

1 (~~12~~) BMR Units purchased or acquired on or after ~~the effective date of this~~
2 ~~ordinance~~ January 18, 2009 and before October 1, 2025. The sale price of all BMR units shall be
3 equal to the current owner's purchase price adjusted by the percentage change in HUD
4 unadjusted area median income from the purchase date to the date of resale pricing,
5 depending on how the BMR Unit is designated and as adjusted for household size as
6 indicated below. In addition, a seller may recoup the cost of approved capital improvements
7 as defined herein and special assessments that were paid by the seller, as well as the cost of
8 using a real estate agent and Multiple Listing Service ("MLS") of up to ~~five percent (5%)~~ of the
9 sale price if they follow the marketing requirements set forth in the Procedures Manual.

10 * * * *

11 (~~23~~) BMR Units purchased or acquired before ~~the effective date of this ordinance~~
12 January 18, 2009. BMR Units purchased or acquired before ~~the effective date of this ordinance~~
13 January 18, 2009 and BMR Units that have not been sold by the original subdivider shall have
14 the sale price as provided in Section 1341(c).

15 (~~34~~) Notwithstanding the provisions of subsection (~~23~~), the Board of
16 Supervisors ratifies the decision by ~~the Mayor's Office of Housing~~ MOHCD to set the sale price
17 for certain BMR Units purchased or acquired before ~~the effective date of this legislation~~ January
18 18, 2009 at 45 Ora Way through 95 Ora Way equal to 2.5 times the annual median income for
19 low or moderate income households, depending on how the BMR Unit is designated, and as
20 adjusted for household size as indicated above in subsection (~~12~~).

21 (d) **Capital Improvements.**

22 (1) BMR Units purchased or acquired on or after October 1, 2025 will be subject to
23 the Capital Improvements Policy set forth in the Procedures Manual in effect at the time that the
24 current owner purchased the BMR Unit.

1 (2) BMR Units purchased or acquired on or after ~~the effective date of this~~
2 ~~ordinance~~ January 18, 2009 and before October 1, 2025. The Capital Improvements Policy for ~~this~~
3 ~~Program~~ BMR Units purchased or acquired on or after January 18, 2009 and before October 1, 2025
4 is contained in the Procedures Manual, on file with the Clerk of the Board in File No. 080520
5 and available on MOHCD's website. The Policy shall include a per unit cap of 10% of the
6 resale price in order to maintain affordability and shall be consistent with the policy for the
7 Residential Inclusionary Affordable Housing Program, Planning Code Sections 3415 et seq.
8 (previously Section 315).

9 (23) BMR Units purchased or acquired before ~~the effective date of this~~
10 ~~ordinance~~ January 18, 2009. MOHCD shall continue to use the 1993 Capital Improvements
11 Policy, on file with the Clerk of the Board in File No. 080520 and available on the ~~Mayor's~~
12 ~~Office of Housing~~ MOHCD website, to implement the requirements of Section 1341(c) and shall
13 publish the Policy on its website.

14 (e) **Sale Procedures, Conveyance Through Inheritance, Title Changes, Owning and**
15 **Occupying BMR Units, and Refinancing of BMR Units.**

16 (1) **Purchasers.** MOHCD shall ~~i~~ensure that all BMR Units conveyed under this
17 Program are sold or transferred to households that qualify as both (A) low- or moderate-
18 income households, depending on how the BMR Unit is designated, as defined; and (B) a
19 First Time Homebuyer household. MOHCD shall give preference as provided in Subsection
20 (56) below and shall follow the procedures set forth in the applicable Procedures Manual.

21 (2) **Duration and Monitoring of Affordability.** As provided by Sections 1341
22 and 1385 BMR Units restricted under this Program are to remain affordable for the life of the
23 BMR Unit. MOHCD shall ~~i~~ensure the BMR Units remain affordable through the following
24 mechanisms. Nothing in this ~~legislation~~ Section 1344 shall preclude ~~the Mayor's Office of~~
25

1 ~~Housing~~MOHCD from instituting additional mechanisms to iensure affordability through the
2 applicable Procedures Manual.

3 (A) BMR Units purchased or acquired on or after ~~the effective date of this~~
4 ~~legislation~~January 18, 2009. MOHCD shall require all BMR Units ~~subject to this Program~~purchased
5 on or after January 18, 2009 to record a Notice of Special Restrictions (NSR) with the Recorder
6 of the City and County of San Francisco. The Notice of Special Restrictions must incorporate
7 the procedures for resale or transfer, affordability restrictions, and other requirements of this
8 Program and provide that the owner ~~or tenant~~ shall adhere to and be bound by the ownership,
9 marketing, monitoring, and enforcement requirements and procedures outlined in the
10 Procedures Manual, as amended from time to time, in effect at the time ~~of sale~~the current owner
11 purchased the BMR Unit. MOHCD shall maintain records of the applicable Procedures Manual
12 for each BMR Unit transferred or resold under this Program. The applicable Procedures
13 Manual will be referenced in the Notice of Special Restrictions for each BMR Unit.

14 (B) BMR Units purchased or acquired before the ~~effective date of this~~
15 ~~legislation~~January 18, 2009. ~~The Mayor's Office of Housing~~MOHCD has a right of first refusal.
16 MOHCD shall exercise this right of first refusal at sale consistent with the provisions of Section
17 1341 and 1341B. In addition, for some BMR Units, ~~an Notice of Special Restrictions (NSR)~~ was
18 recorded against the BMR Unit. For those BMR Units, the provisions in subsection (e)(2)(A)
19 apply. For some BMR Units, the conditions of approval for the project require that an NSR be
20 recorded, but no NSR has yet been recorded. For these BMR Units, the Planning Department
21 and ~~the Mayor's Office of Housing~~MOHCD shall work with the owner to iensure that the owner
22 records an NSR and thereafter, the provisions in subsection (e)(2)(A) shall apply.

23 (3) **Marketing the BMR Units.** ~~The Mayor's Office of Housing~~MOHCD shall be
24 responsible for overseeing and monitoring the marketing of BMR Units under this Section
25 1344. Marketing requirements for BMR Units are contained in the Procedures Manual in effect at the

1 time the current owner purchased the BMR Unit. In general, the marketing requirements and
2 procedures shall encourage an open public marketing strategy ~~and will be contained in the~~
3 ~~Procedures Manual, as amended from time to time. The Mayor's Office of Housing~~ MOHCD may
4 develop occupancy standards for BMR Units of different bedroom sizes ~~in the Procedures~~
5 ~~Manual~~ in order to promote an efficient allocation of affordable units. ~~The Mayor's Office of~~
6 ~~Housing~~ MOHCD may require ~~in the Procedures Manual~~ that prospective purchasers complete
7 homebuyer education training or fulfill other requirements to adequately prepare the buyer for
8 homeownership.

9 (4) **Lottery.** MOHCD shall require a general public lottery for all BMR ~~u~~Units
10 available for purchase.

11 (5) **Inheritance of BMR Units.**

12 (A) BMR Units purchased or acquired on or after ~~the effective date of this~~
13 ~~legislation~~ January 18, 2009. The specific procedures for passing a BMR Unit through
14 inheritance are contained in the Procedures Manual in effect at the time the current owner
15 purchased the BMR Unit. All transfers through inheritance must be reported to and approved by
16 MOHCD and in all cases, the heir must acknowledge and agree to the provisions of the BMR
17 Program. The following households may inherit the right to occupy a BMR Unit: (i) a spouse or
18 registered domestic partner, regardless of income; (ii) a child of the owner if it qualifies as a
19 low- or moderate-income household depending on the designation of the BMR Unit.
20 Consistent with the provisions herein related to owners who acquire BMR Units after ~~the~~
21 ~~effective date of this legislation~~ January 18, 2009, any ~~heir~~ owner who receives title through inheritance
22 must owner occupy the BMR Unit. If the heir chooses not to occupy the Unit, the heir may
23 market and sell the Unit at the BMR Price through a public lottery process. The heir will retain
24 the proceeds of the sale.

1 (B) BMR Units purchased or acquired before ~~the effective date of this~~
2 ~~ordinance~~January 18, 2009. An owner may pass on the right to occupy a Unit through
3 inheritance to a specific household as long as that household agrees to owner-occupy the
4 BMR Unit. If the household chooses not to owner-occupy the Unit, it may sell the Unit at its
5 restricted price consistent with the provisions of this legislation and receive the proceeds of
6 the sale. All transfers through inheritance must be reported to and approved by MOHCD and
7 in all cases, the heir must acknowledge and agree to the provisions of the BMR Program.

8 (56) **Preferences.** ~~The Mayor's Office of Housing~~MOHCD shall give first priority
9 to an existing tenant of a BMR Unit at the time of sale if that tenant qualifies as a low or
10 moderate income household, depending on how the BMR Unit is designated. If there is no
11 existing qualifying tenant who wishes to purchase the BMR Unit, ~~the Mayor's Office of~~
12 ~~Housing~~MOHCD shall adhere to the lottery system set forth in Chapter 47 of the Administrative Code
13 ~~use a lottery system that gives preference to households who live or work in San Francisco and meet all~~
14 ~~other homebuyer requirements~~. Otherwise, ~~it is the policy of the Board of Supervisors to treat all~~
15 households shall be treated equally in allocating affordable BMR Units under this Program.

16 (f) **Rental Procedures.**

17 (1) BMR Units purchased or acquired on or after ~~the effective date of this~~
18 ~~ordinance~~January 18, 2009. All owners purchasing or acquiring BMR Units on or after ~~the~~
19 ~~effective date of this legislation~~January 18, 2009 must owner-occupy the BMR Unit. No rental of
20 such BMR Units shall be permitted without the express written consent of MOHCD and under
21 the circumstances outlined in the Procedures Manual.

22 (2) BMR Units purchased or acquired before ~~the effective date of this~~
23 ~~ordinance~~January 18, 2009.

24 Renting is permitted under the following conditions. The owner may continue to rent
25 the BMR Unit to an income qualified tenant at an affordable rent, as defined. The owner may

1 continue to rent to the current tenant at the current rent level until the tenant vacates, at which
2 time the owner must notify MOHCD of their intent to re-rent the Unit. The owner and MOHCD
3 shall follow the rental procedures as set forth in the Procedures Manual. Additionally, the
4 owner must submit a monitoring report to ~~the Mayor's Office of Housing and Community~~
5 ~~Development~~ (MOHCD), at a timeframe determined by MOHCD, to verify current tenant
6 information and rent levels. For current owners only, the Board hereby supersedes the
7 requirement of Section 1341B effective June 1, 1988 that BMR Units in this Program be
8 owner-occupied.

9 (g) **Other regulations:** This Section 1344 sets forth ~~the current~~ requirements and
10 procedures for the Condominium Conversion Below Market Rate Program ("Program"). To
11 implement this Section, ~~the Mayor's Office of Housing~~ MOHCD shall periodically publish a
12 Procedures Manual containing procedures for monitoring and enforcement of the policies and
13 procedures for implementation of this Program. The Procedures Manual must be made
14 available upon request and on the ~~Mayor's Office of Housing~~ MOHCD website. The Procedures
15 Manual shall not be amended, except for an annual update of the affordability housing
16 guidelines, which reflect updated income limits, prices, and rents, without approval of the
17 Planning Commission or as otherwise specified herein.

18 The Procedures Manual in effect at the time of the most recent owner's purchase of
19 a BMR Unit shall govern the regulation of that BMR Unit until it is transferred or sold. Any
20 future amendments to the Procedures Manual will not be retroactive and will only apply to new
21 owners of BMR Units, unless the owner chose~~chooses~~ an alternative that provides otherwise
22 under former Section 1344(i).

23 (h) **Original Subdividers.** The following provisions shall apply only to Original
24 Subdividers as defined herein.

25 * * * *

1
2 (2) If an Original Subdivider cannot demonstrate 20 years of rental at the
3 affordable rate for the unit size and income designation of the Unit, the Original Subdivider
4 may:

5
6 (A) Continue to rent the Units until a 20-year rental history at the
7 affordable rate for the unit size and income designation of the Unit can be demonstrated. The
8 Units shall be governed by the rules in Section 1344(f)(2). The standards used to determine
9 rental history at the affordable rate for the unit size and income designation of the Unit are
10 found on file with the Clerk of the Board in File No. 080520 and on the ~~Mayor's Office of Housing~~
11 MOHCD website.

12 (B) Enter into an agreement with the City, acting through MOHCD~~the~~
13 ~~Mayor's Office of Housing~~, to pay a housing replacement fee adjusted for income level and
14 number of bedrooms as provided in the table below, or 50% of the difference between the
15 BMR Resale Price and the Fair Market Value at the time of payment, as defined herein,
16 whichever is less. The fee may be paid immediately upon execution of the Agreement or as a
17 City lien, recorded through a note and deed of trust in favor of the City against the property,
18 with a simple interest of 3%. Interest will not start accruing until the date which is 24 months
19 from ~~the effective date of this ordinance~~ January 18, 2009. Fifty percent (50%) of the difference
20 between the BMR Resale Price and the Fair Market Value will be established at the time of
21 repayment. Upon payment of the fee or recordation of a lien in favor of the City, a release of
22 the restrictions under the Program will be recorded against the property. As part of any
23 Agreement under this subsection (h), the Original Subdivider must waive all claims against the
24 City for damages or other alleged injury arising from the Subdivider's participation in the
25 Program. The fee shall be as follows:

* * * *

(j) **Funds.** Any funds received by the City through payments made in accordance with subsections (h) and former subsection (i) shall be deposited in the Mayor's Home Ownership Assistance Loan Fund, created under Administrative Code Section 10.100-108 and use of the funds shall be governed by that section.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ KRISTEN A. JENSEN
KRISTEN A. JENSEN
Deputy City Attorney

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