

[Below Market Rate Condominium Conversion Program.]

**Ordinance amending the San Francisco Subdivision Code by adding Section 1344 to update and clarify the provisions relating to Below Market Rate Units under the Condominium Conversion Program including provisions related to the calculation of sales price, renting, capital improvements, duration and monitoring of affordability, marketing, and ongoing regulations; and amending Sections 1308, 1309, 1341, 1341B, 1343, 1359, and 1385 to make conforming changes, and making findings including findings under the California Environmental Quality Act (CEQA).**

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

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

Section 1. Findings. The Board of Supervisors hereby finds and determines as follows:

(a) Program History: The City of San Francisco created the Below Market Rate Condominium Conversion Program ("Condominium Conversion Program" or "Program") to require, in part, that certain units converted to condominiums be restricted as below-market rate units ("BMR Units"). The Condominium Conversion Program was adopted as part of the San Francisco Subdivision Code in the late 1970s under sections 1341, 1341B and 1385. The Program was intended to comply with the City's Residence Element of the Master Plan, which called for expanding opportunities for homeownership while preserving and expanding the supply of low- and moderate-income housing. The Program allowed apartment buildings to be converted to condominiums only if 10% or greater of the converted units were set aside as affordable units for households earning less than 80% or 120% of Area Median Income

1 ("AMI"), as determined by the Planning Commission. Renters in the units were given the right  
2 of first refusal to purchase the unit and seniors who chose not to purchase were given lifetime  
3 leases.

4 (b) Number of BMR Units, Income Levels and Unit Mix: As of March 3, 2008, the  
5 Condominium Conversion Program includes a total of 599 BMR units. Of these BMR Units,  
6 45% are designated low-income units with maximum prices, rents and incomes set at 80%  
7 AMI and 55% are designated moderate-income units with maximum prices, rents and  
8 incomes set at 120% AMI. Overall, BMR Unit sizes are small with 24% being studios, 58% 1-  
9 bedrooms, 16% 2-bedrooms and less than 2% being 3-bedrooms or larger. Furthermore,  
10 approximately 31% of all BMR Units were mapped for condominium use and have been  
11 maintained rentals by the original subdivider.

12 (c) Suspension of Program: The Subdivision Code was amended in 1988 to  
13 suspend further conversion of BMR Units under this program and to restrict the number of  
14 conversions through a lottery method that capped the number of conversions at 200 per year.  
15 All BMR Units that were designated as BMR units under the Condominium Conversion  
16 Program have remained so, except for a certain number of units that were released by the  
17 City because the owner demonstrated that a low- or moderate- income buyer could not be  
18 found for the unit. No new units are being produced through this Program. The 1988  
19 amendments also clarified household requirements, resale procedures and appointed the  
20 Mayor's Office of Housing ("MOH") as the City department responsible for monitoring the  
21 program.

22 (d) Current Issues with Program: The provisions of the Condominium Conversion  
23 Program have become out-of-date by today's standards of effectively implementing and  
24 monitoring a BMR program. It would benefit the City and the owners of BMR units to have  
25

1 clearly defined policies and procedures. While some issues are unique to the Condominium  
2 Conversion Program, there is an opportunity to align it with the Inclusionary Housing  
3 Program's Procedures Manual, which was discussed widely and at length in 2007 and  
4 subsequently adopted by the Board of Supervisors.

5 (e) The Planning Department has completed environmental review of this ordinance  
6 pursuant to the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and  
7 Chapter 31 of the San Francisco Administrative Code. Documentation of that review is on file  
8 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

9 Section 2. The San Francisco Subdivision Code is hereby amended by adding Section  
10 1344, to read as follows:

11 **Sec. 1344. BELOW MARKET RATE CONDOMINIUM CONVERSION PROGRAM.**

12 As described below, this Section is intended to supersede, to the extent described in  
13 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 ordinance.  
18 Unless a Section specifically applies only to BMR Units purchased before the effective date of  
19 this ordinance, every part of this Section 1344 applies to BMR Units purchased on or after the  
20 effective date of this ordinance. For these BMR Units, this Section 1344 replaces and  
21 supersedes all provisions of Sections 1341, 1341B, and 1385.

22 (2) BMR Units purchased or acquired before the effective date of this ordinance.  
23  
24  
25

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

4 (B) At the owner's option, the owner may sign an agreement with the City to make  
5 his or her BMR Unit subject to all of the provisions of this Section as if the BMR Unit was  
6 purchased or acquired on or after the effective date of this ordinance. The owner must agree  
7 to be governed by the totality of the regulations including, but not limited to, the provisions  
8 related to sale price, capital improvements, and rental procedures.

9 (b) **Definitions.** For purposes of this Program the following definitions shall apply.  
10 For terms not defined below, the definitions in the Subdivision Code and the definitions in the  
11 Affordable Housing Monitoring Procedures Manual, published under Planning Code Sections  
12 315 et seq. and under this Section shall apply.

13 (1) "Annual Gross Income" shall mean gross income as defined in CCR Title 25,  
14 Section 6914, as amended from time to time, except that the Mayor's Office of Housing may,  
15 in order to promote consistency with the procedures of the San Francisco Redevelopment  
16 Agency, develop an asset test that differs from the State definition if it publishes that test in  
17 the Procedures Manual.

18 (2) "Below Market Rate Condominium Conversion Program" or "Program" shall  
19 mean the actions taken by the City to preserve certain low and moderate income housing  
20 through the implementation of Sections 1341 and 1385.

21 (3) "BMR Unit" shall mean a unit restricted as a below market rate unit under the  
22 provisions of Section 1341 or 1385.

1           (4)    "Conditional Use" for purposes of this Ordinance means a conditional use  
2 authorization that, pursuant to the Planning Code, is required for the residential component of  
3 a project.

4           (5)    "Conditions of Approval" shall be a set of written conditions imposed by the  
5 Planning Commission or another permit-issuing City agency or appellate body to which a  
6 project applicant agrees to adhere and fulfill when it receives a conditional use or planned unit  
7 development permit for the conversion of a BMR Unit subject to this Program.

8           (6)    "First Time Homebuyer" shall mean a household who has not held an ownership  
9 interest in any residential or commercial real property in the last three years.

10          (7)    "Household of Low Income" shall mean a household whose combined annual  
11 gross income for all members does not exceed 80 percent of Area Median Income as  
12 published by the United States Department of Housing and Urban Development (HUD) and  
13 adjusted for household size.

14          (8)    "Household of Moderate Income" shall mean a household whose combined  
15 annual gross income for all members does not exceed 120 percent of Area Median Income as  
16 published by the United States Department of Housing and Urban Development (HUD) and  
17 adjusted for household size.

18          (9)    "Maximum Annual Rent" shall mean the maximum rent that a Property Owner  
19 may charge any tenant occupying a BMR Unit for the calendar year as published by MOH.  
20 The maximum annual rent for a BMR Unit of the size indicated below shall be no more than  
21 30 percent of the annual gross income for a household of low or moderate income as defined  
22 in this Section, depending on how the BMR Unit is designated, and as adjusted for the  
23 household size indicated below as of the first date of the tenancy:

24 TABLE INSET:  
25

Number of Bedrooms	Number of Persons in Household
0	1
1	2
2	3
3	4
4	5

(10) "Mayor's Office of Housing or MOH" shall mean the Mayor's Office of Housing or its successor.

(11) "Notice of Special Restrictions" shall mean a document recorded with the San Francisco Recorder's Office for any unit subject to this Program detailing the sale and resale or rental restrictions and any restrictions on purchaser or tenant income levels included as a Condition of Approval of the principal project relating to the unit.

(12) "Owner" shall mean the record owner of the fee or a vendee in possession.

(13) "Procedures Manual" shall mean the City and County of San Francisco Affordable Housing Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as amended. The Mayor's Office of Housing shall update the Procedures Manual in the same manner as established in Planning Code Section 315 to include Procedures for this Below Market Rate Condominium Conversion Program and shall make the Procedures Manual available to the public, including on its website.

(c) **Sale Price.**

(1) BMR Units purchased or acquired on or after the effective date of this ordinance. The sale price of all BMR units shall be equal to 2.5 times the annual median income for low

or moderate income households, depending on how the BMR Unit is designated, and as adjusted for household size as indicated below. In addition, a seller may recoup the cost of using a real estate agent and Multiple Listing Service ("MLS") of up to five percent (5%) of the sale price if they follow the marketing requirements set forth in the Procedures Manual.

TABLE INSET:

Number of Bedrooms	Number of Persons in Household
0	1
1	2
2	3
3	4
4	5

(2) BMR Units purchased or acquired before the effective date of this ordinance and BMR Units that have not been sold by the original subdivider. BMR Units purchased or acquired before the effective date of this ordinance and BMR Units that have not been sold by the original subdivider shall have the sale price as provided in Section 1341(c).

(3) Notwithstanding the provisions of subsection (2), the Board of Supervisors ratifies the decision by the Mayor's Office of Housing to set the sale price for certain BMR Units purchased or acquired before the effective date of this legislation at 45 Ora Way through 95 Ora Way equal to 2.5 times the annual median income for low or moderate income households, depending on how the BMR Unit is designated, and as adjusted for household size as indicated above in subsection (1).

(d) **Capital improvements.**

1           (1)     BMR Units purchased or acquired on or after the effective date of this ordinance.  
2     MOH shall develop a policy on allowable capital improvements for this Program that is  
3     consistent with the policy for the Residential Inclusionary Affordable Housing Program,  
4     Planning Code Sections 315 et seq. As part of this policy, MOH may establish a per unit cap  
5     to allowable capital improvements in order to maintain affordability. The Capital  
6     Improvements Policy shall be a part of the Procedures Manual.

7           (2)     BMR Units purchased or acquired before the effective date of this ordinance.  
8     MOH shall continue to use the 1993 Capital Improvements Policy to implement the  
9     requirements of Section 1341(c) and shall publish the Policy on its website.

10          (e)     **Sale Procedures.** Unless specifically provided otherwise, these procedures  
11     apply to all BMR Units, regardless of when purchased or acquired.

12          (1)     Purchasers. MOH shall insure that all BMR Units conveyed under this Program  
13     are sold or transferred to households that qualify as both (A) low- or moderate-income  
14     households, depending on how the BMR Unit is designated, as defined; and (B) a First Time  
15     Homebuyer household. MOH shall give preference as provided in Subsection (5) below and  
16     shall follow the procedures set forth in the Procedures Manual.

17          (2)     Duration and Monitoring of Affordability. As provided by Sections 1341 and  
18     1385 BMR Units restricted under this Program are to remain affordable for the life of the BMR  
19     Unit. MOH shall insure the BMR Units remain affordable through the following mechanisms.  
20     Nothing in this legislation shall preclude the Mayor's Office of Housing from instituting  
21     additional mechanisms to insure affordability through the Procedures Manual.

22          (A)     For BMR Units purchased or acquired on or after the effective date of this  
23     legislation, MOH shall require all BMR Units subject to this Program to record a Notice of  
24     Special Restrictions with the Recorder of the City and County of San Francisco. The Notice of  
25



1 Special Restrictions must incorporate the resale procedures, affordability restrictions, and  
2 other requirements of this Program and provide that the owner or tenant shall adhere to the  
3 marketing, monitoring, and enforcement procedures outlined in the Procedures Manual, as  
4 amended from time to time, in effect at the time of sale. MOH shall maintain records of the  
5 applicable Procedures Manual for each BMR Unit resold under this Program. The Procedures  
6 Manual will be referenced in the Notice of Special Restrictions for each BMR Unit.

7 (B) For BMR Units purchased or acquired before the effective date of this  
8 legislation, the Mayor's Office of Housing has a right of first refusal. MOH shall exercise this  
9 right of first refusal consistent with the provisions of Section 1341 and 1341B. In addition, for  
10 some BMR Units, a Notice of Special Restrictions (NSR) was recorded against the BMR Unit  
11 or the conditions of approval for the project require that an NSR be recorded. For those BMR  
12 Units, the provisions in subsection (A) apply.

13 (3) Marketing the BMR Units. The Mayor's Office of Housing shall be responsible  
14 for overseeing and monitoring the marketing of BMR Units under this Section. In general, the  
15 marketing requirements and procedures shall encourage an open public marketing strategy  
16 and will be contained in the Procedures Manual, as amended from time to time. The Mayor's  
17 Office of Housing may develop occupancy standards for BMR Units of different bedroom sizes  
18 in the Procedures Manual in order to promote an efficient allocation of affordable units. The  
19 Mayor's Office of Housing may require in the Procedures Manual that prospective purchasers  
20 complete homebuyer education training or fulfill other requirements to adequately prepare the  
21 buyer for homeownership.

22 (4) Lottery: MOH shall require a general public lottery for all BMR units available for  
23 sale. For BMR Units purchased or acquired before the effective date of this ordinance, an  
24 owner may pass on the Unit through inheritance to a specific household as long as that  
25

1 household meets the income qualifications for the Program, agrees to owner-occupy the BMR  
2 Unit, and is a First Time Homebuyer. For BMR Units purchased or acquired on or after the  
3 effective date of this ordinance, MOH shall be authorized to implement regulations in the  
4 Procedures Manual limiting if and to what extent a BMR unit may be passed on through  
5 inheritance.

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

13 (f) **Rental Procedures.**

14 (1) BMR Units purchased or acquired on or after the effective date of this ordinance.  
15 All owners purchasing BMR Units on or after the effective date of this legislation must owner-  
16 occupy the BMR Unit. No rental of such BMR Units shall be permitted without the express  
17 written consent of MOH and under the circumstances outlined in the Procedures Manual.

18 (2) BMR Units purchased or acquired before the effective date of this ordinance, but  
19 on or after June 1, 1988. The Board of Supervisors reiterates and readopts the requirement  
20 that it legislated effective June 1, 1988 that BMR Units in this Program must be owner  
21 occupied. The Board instructs MOH to enforce this requirement. To this end, for BMR Units  
22 purchased or acquired by individuals before the effective date of this legislation but on or after  
23 June 1, 1988, the homeowner may continue to rent to an income qualified tenant at an  
24 affordable rent, as defined, for a period of no longer than 24 months after the effective date of  
25

1 this legislation. At the end of the 24-month period, the owner must occupy the BMR Unit or  
2 sell it.

3 (3) For BMR Units purchased or acquired by individuals before June 1, 1988 or  
4 owned by the original Subdivider or its successor in interest, renting is permitted under the  
5 following conditions. The owner may continue to rent the BMR Unit to an income qualified  
6 tenant at an affordable rent, as defined. The owner may continue to rent to the current tenant  
7 at the current rent level until the tenant vacates, at which time the owner must notify MOH of  
8 their intent to re-rent the Unit. The owner and MOH shall follow the rental procedures as set  
9 forth in the Procedures Manual. Additionally, the owner must submit a monitoring report to  
10 the Mayor's Office of Housing (MOH), at a timeframe determined by MOH, to verify current  
11 tenant information and rent levels.

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

21 The Procedures Manual in effect at the time of initial purchase or initial rental of a BMR  
22 Unit shall govern the regulation of that BMR Unit until it is sold or re-rented unless an owner or  
23 current tenant chooses to be governed by all of the more up-to-date provisions of the then-  
24 current Procedures Manual. In that case, the owner or tenant must agree to be governed by  
25

1 the totality of the new regulations -- an owner or tenant may not pick some provisions from the  
2 Procedures Manual in effect at the time of initial purchase or initial rental and some in effect in  
3 the then-current Procedures Manual. If the owner or tenant chooses to be governed by the  
4 then-current Procedures Manual he or she shall sign an agreement with the City to that effect,  
5 and the Planning Department and Mayor's Office of Housing shall apply all of the rules and  
6 regulations in the then-current Procedures Manual to the BMR Unit.

7 Section 3. The San Francisco Subdivision Code is hereby amended by amending  
8 Sections 1308, 1309, 1341, 1341B, 1359, and 1385, to read as follows:

9 **SEC. 1308. SUBDIVISIONS.**

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

12 (b) "Community Apartments" shall mean an estate in real property consisting of an undivided  
13 interest in common in a parcel of real property and the improvements thereon coupled with  
14 the right of exclusive occupancy of any apartment located therein.

15 (c) "Condominium" shall mean an estate in real property consisting of an undivided interest  
16 in common in a portion of a parcel of real property together with a separate interest in space  
17 in a residential, industrial, or commercial building on such real property, such as an  
18 apartment, office, or store. A Condominium may include in addition a separate interest in  
19 other portions of such real property. Such estate may, with respect to the duration of its  
20 enjoyment, be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, or  
21 (3) and estate for years, such as a leasehold or subleasehold. This definition is intended to  
22 conform to Section 783 of the California Civil Code and any other section of California law.

23 (d) "Conversion" shall mean a subdivision which changes the type of ownership of real  
24 property to that defined as a Condominium project, Community Apartment project or Stock  
25

1 Cooperative and in which two or more condominiums, community apartments or units in a  
2 stock cooperative are newly created wholly or in substantial part within an existing structure or  
3 structures, regardless of the present or prior use of such structures and of whether substantial  
4 improvements have been made to such structures.

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

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

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

17 (h) "Subdivision" shall mean the division of any improved or unimproved land, shown on the  
18 latest equalized County assessment roll as a unit or as contiguous units, for the purpose of  
19 sale, lease or financing, whether immediate or future. Property shall be considered as  
20 contiguous units even if it is separated by roads, streets, utility easements or railroad rights-of-  
21 way. This definition shall specifically but not exclusively include Condominiums, Community  
22 Apartments, Stock Cooperatives and Conversions.

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

1 (j) "Tenant" shall mean a person or persons entitled under a lease, rental agreement or other  
2 agreement with the owner of record of the property or his or her agent to occupy a dwelling  
3 unit. A "tenant" can be an owner or a shareholder of the owner of record who resides in the  
4 property. For purposes of this definition, "Tenant" shall mean "Subtenant" as defined in  
5 Section 1308(k) where the subtenant occupies and resides in the unit in agreement with and  
6 to the exclusion of the tenant and with the consent of the owner.

7 (k) "Subtenant" shall mean a person or persons whose rights to occupy a dwelling are  
8 derived from the tenant rather than from the property owner or his or her agent.

9 (l) "Low-Income Housing Stock" shall mean those rental dwelling units in buildings being  
10 proposed for conversion for which the rent, at the time the application for conversion is filed,  
11 does not exceed 25 percent of the gross monthly income of a low-income household as  
12 defined in Section 1309(e). For purposes of applying this Section and Section 1309(e), a  
13 studio apartment shall be deemed to be a one-person household, a one-bedroom apartment  
14 shall be deemed to be a two-person household, a two-bedroom apartment shall be deemed to  
15 be a three-person household, and a three-bedroom apartment shall be deemed to be a four-  
16 person household.

17 (m) "Moderate-Income Housing Stock" shall mean those rental dwelling units in buildings  
18 being proposed for condominium conversion, the rental for which at the time of filing the  
19 application for conversion exceeds the amount which would cause the unit to be defined as  
20 low-income housing stock pursuant to Section 1308(l), but does not exceed 25 percent of the  
21 gross monthly income of a moderate-income household as defined in Section 1309(f). In  
22 relating the size of the unit to household size, the same relationships set forth for low-income  
23 housing shall apply.

1 (n) "Gross Income" shall have the meaning set forth in Section 1344. ~~mean all income from~~  
2 ~~whatever source derived as provided in the Internal Revenue Code (26 U.S.C. Section 61) whether or~~  
3 ~~not exempt from federal income tax.~~

4 (o) "Household" shall mean any person or persons who reside or intend to reside in the  
5 same housing unit.

6 (p) "Household of median income" and "Household of low income" shall have the meaning set  
7 forth in Section 1344. ~~mean a household whose combined annual gross income for all members does~~  
8 ~~not exceed one hundred (100) percent of the median income for the San Francisco Metropolitan~~  
9 ~~Statistical Area, as calculated by the United States Department of Housing and Urban Development~~  
10 ~~(HUD) and adjusted for household size.~~

## 11 **SEC. 1309. TERMINOLOGY.**

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

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

17 (c) "Final Map" shall mean a map prepared in accordance with Chapter 2, Article 2 of  
18 SMA and this Code, which map is designed to be placed on record in the office of the  
19 Recorder.  
20

21 (d) "Improvement Plan" shall mean an engineering plan or a set of engineering plans  
22 showing the location and construction details of improvements.  
23  
24  
25

1 (e) Intentionally left blank. ~~"Low income" shall mean the income of households, as defined by~~  
2 ~~Concept 79.1 of the 1970 U.S. Census "User's Guide," whose immediate household income does~~  
3 ~~not exceed 80 percent of the median household income for the San Francisco Standard~~  
4 ~~Metropolitan Statistical Area as determined by the U.S. Department of Housing and Urban~~  
5 ~~Development and adjusted according to the determination of that Department pursuant to the~~  
6 ~~Housing and Community Development Act of 1974.~~

7 (f) Intentionally left blank. ~~"Moderate income" shall mean the income of households, as~~  
8 ~~defined by Concept 79.1 of the 1970 U.S. Census "User's Guide," whose immediate household~~  
9 ~~income is greater than 80 percent but does not exceed 120 percent of the median household~~  
10 ~~income for the San Francisco Standard Metropolitan Statistical Area as determined by the U.S.~~  
11 ~~Department of Housing and Urban Development and adjusted according to the determinations~~  
12 ~~of that Department pursuant to the Housing and Community Development Act of 1974.~~

13 (g) "Parcel Map" shall mean a map prepared in accordance with Chapter 2, Article 3  
14 of SMA and this Code, which map is designed to be placed on record in the office of  
15 the Recorder.  
16

17 (h) "Soil Engineer" shall mean a registered civil engineer, experienced in engineering  
18 geology, responsible for the soil engineering work outlined in this Code, including  
19 supervision, analysis and interpretation of field investigation and laboratory tests for a  
20 specific project; preparation of geological and soil engineering recommendations and  
21 specifications; and supervision of grading construction work.

22 (i) "Standard Specifications" shall mean the Standard Specifications of the Bureau of  
23 Engineering.  
24  
25



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

4 (k) "Tentative Map" shall mean a map made for the purpose of showing the design of  
5 a proposed subdivision and the existing conditions in and around it; such a map need  
6 not be based upon an accurate or detailed final survey of the property.

7 (l) "Vesting tentative map" shall mean a tentative map which shall have at the time of  
8 filing printed conspicuously on its face the words "Vesting Tentative Map."  
9

#### 10 **SEC. 1341. LOW AND MODERATE INCOME OCCUPANCY.**

11 The provisions of this Section and its application to certain properties may be affected by  
12 amendments creating Section 1344. Please consult Section 1344 in addition to this Section for  
13 Units subject to the Below Market Rate Condominium Conversion Program.

14 (a) In all subdivisions involving 50 or more lots or units, except for condominium or  
15 cooperative conversion subdivisions, the subdivider shall make available 10 percent of  
16 the units for low and moderate income occupancy provided that the Department of City  
17 Planning finds that governmental subsidies for such occupancy are available to the  
18 subdivider. This requirement shall not limit the authority of the City otherwise to  
19 encourage the provision of low and moderate income housing, or of the subdivider to  
20 make available additional low and moderate income housing.

21 (b) In all condominium or cooperative conversion subdivisions with five or more lots or  
22 units, the subdivider shall make available 10 percent of the lots or units for rental or for  
23 purchase by households of low or moderate income. In the event that the total number  
24  
25

1 of units determined to be within the low or moderate income housing stocks pursuant to  
2 Section 1385 is greater than 10 percent of the total number of units in the subdivision,  
3 such greater number shall apply, and such number of units determined to be within the  
4 low or moderate income housing stock shall be made available for purchase as set  
5 forth in Section 1385, thereby precluding the application of the alternatives set forth in  
6 Section 1341 to such number of units. In the event the total number of units determined  
7 to be within the low or moderate income housing stock pursuant to Section 1385 is less  
8 than 10 percent of the total number of units in the subdivision, the difference between  
9 such number of units determined to be within the low or moderate income housing  
10 stock and the 10 percent required by Section 1341 may be satisfied by the alternatives  
11 set forth in this Section.

12 (c) If the units are to be made available for purchase, then the sales prices of such  
13 units shall not exceed 2.5 times the annual median income for low or moderate income  
14 households, as defined, and as adjusted for household size according to the  
15 relationship to the size of the dwelling, as set forth in Section 1309. Priority for  
16 purchase of these units shall be as set forth in Section 1385. Any low or moderate  
17 income household which purchases a dwelling pursuant to this Section shall grant a  
18 right-of-first-refusal, to the City and County of San Francisco, or to such other entity  
19 that at a future time may be designated by the City and County of San Francisco, to  
20 repurchase the dwelling from the initial purchaser at the original price plus the cost of  
21 any improvements paid for by the owner, plus an increase proportionate to the  
22 increases in the housing component of the "Bay Area Cost of Living Index, U.S. Dept.  
23 of Labor," over the intervening time period. The City and County of San Francisco, or  
24  
25

1 designated agent, shall reconvey such unit to other qualified purchasers if the right to  
2 purchase is exercised by the City or its designated agent.

3 (d) If the converted units are to be for rental, then the rent in such units shall not  
4 exceed the rent charged at the time of filing the application for conversion, or the  
5 maximum rent that would be allowed so as to keep the unit within moderate income  
6 housing stock, whichever rent level is lower. Once established, rent levels for any units  
7 remaining as rental pursuant to this Section may be increased annually consistent with  
8 any changes in the residential rent component of the "Bay Area Cost of Living Index,  
9 U.S. Dept. of Labor." In cases of hardship to the subdivider, or in cases where a rent  
10 increase authorized herein is considered by the tenant to be not consistent with  
11 increases in the residential rent component of the Bay Area Cost of Living Index, either  
12 a subdivider or a tenant may request relief under this Section from the Director or his or  
13 her designee. In considering the reasonableness of a rent increase, the Director shall  
14 consider whether the rental revenues are sufficient to adequately maintain the building  
15 in safe and sound condition, and in conformity with any applicable sections of the San  
16 Francisco Housing and Building Codes. The Director may allow rent increases greater  
17 than the proportionate increases in the residential rent component of the "Bay Area  
18 Cost of Living Index, U.S. Dept. of Labor," in order to allow the building to be  
19 maintained in safe and sound condition. The rental increase provisions of this Section  
20 shall apply only in the absence of other applicable rent increase or arbitration laws.

21 (e) Converted units made available for purchase by households of low or moderate  
22 income pursuant to this Section, or purchased or acquired by a tenant or qualified  
23 household subject to the price limitation of Section 1385, shall remain within the low or  
24  
25

1 moderate income housing stock pursuant to the recapture provision of Subsection (c)  
2 above. Units made available for rental pursuant to Subsection (d) above shall remain  
3 as rental units for no less than 20 years, provided, however, that such rental units may  
4 be sold by the original subdivider or any subsequent owner during such 20-year period  
5 at a price not exceeding the price at which the City and County of San Francisco would  
6 be entitled to repurchase the unit if exercising its right of first refusal under Subsection  
7 (c) above, and further provided that such maximum price shall not reflect the cost of  
8 any improvements made within two years after recording of the final or parcel map for  
9 the conversion.

10 (f) As an alternative to the provisions of Subsections (b) and (c) above, the subdivider  
11 shall make a bona fide agreement, satisfactory to the Department of City Planning, to  
12 construct or cause to be constructed within a period commencing 18 months prior to  
13 the date of filing the application for conversion and ending 18 months after filing of the  
14 final or parcel map, or to provide through other means, the same number of units and  
15 under the same conditions as would be required for low or moderate income  
16 occupancy under the provisions of Subsections (b), (c) and (d) above, in areas  
17 approved by the Department of City Planning as being non-impacted with assisted  
18 housing.

19 (g) As a further alternative to the provisions of Subsections (b), (c) and (f) above, the  
20 subdivider shall pay to the City and County of San Francisco an amount equal to 10  
21 percent of the difference between the aggregated total of the proposed market rate  
22 sales prices, as indicated on the price list supplied with the application packet, and the  
23 aggregate total of the sales prices if the units were to be sold at moderate-income  
24

1 sales prices, as determined by the sales price formula of Section 1385 and Subsection  
2 (c) above. This payment shall be made within two years of the recordation of the Final  
3 Map.

4 (h) Funds collected pursuant to Subsection (g) above, shall be deposited into the  
5 Housing Development Fund, which fund is to be used for persons and households of  
6 low or moderate income.

7  
8 **SEC. 1341B. REQUIREMENTS FOR RESALE OF CONVERTED UNITS ON OR AFTER**  
9 **JUNE 1, 1988.**

10 The provisions of this Section and its application to certain properties may be affected by  
11 amendments creating Section 1344. Please consult Section 1344 in addition to this Section for Units  
12 subject to the Below Market Rate Condominium Conversion Program.

13  
14 (1) This Section shall govern exclusively where the City and County of San Francisco,  
15 on or after June 1, 1988, exercises the right of first refusal under Section 1341(c) to  
16 repurchase converted units. This Section shall not apply, however, to any units which  
17 are the subject of an application for conversion filed on or after June 1, 1988.

18 (2) The following definitions shall apply:

19 (a) "Household" shall mean the person or persons who will permanently reside  
20 in the unit. Such persons shall include dependents as that term is defined in the  
21 Internal Revenue Code provided that said dependents permanently reside in the  
22 unit.

23 (b) "Eligible household" shall mean a household in which the combined gross  
24 income plus 10 percent of the value of all interests in real estate, notes  
25

1 receivable, bank accounts, stocks and bonds does not exceed the maximum  
2 allowable income for the household under Subsection (d) below at the time of  
3 purchase of the unit.

4 (c) "Gross income" shall mean all income from whatever source derived as  
5 provided in the Internal Revenue Code (26 USC § 61), whether or not exempt  
6 from federal income tax. Such income includes, but is not limited to, the  
7 following:

8 (1) Compensation for services, including fees, commissions, and similar  
9 items;

10 (2) Gross income derived from business;

11 (3) Gains derived from dealings in property;

12 (4) Interest;

13 (5) Rents;

14 (6) Royalties;

15 (7) Dividends;

16 (8) Alimony and separate maintenance payments;

17 (9) Annuities;

18 (10) Income from life insurance and endowment contracts;

19 (11) Pensions;

20 (12) Income from discharge of indebtedness;

1 (13) Distributive share of partnership gross income;

2 (14) Income in respect of a decedent; and

3 (15) Income from an interest in an estate or trust.

4  
5 (d) "Maximum allowable income" shall mean 120 percent of the San Francisco  
6 Standard Metropolitan Statistical Area Median Income as published annually by  
7 the U.S. Department of Housing and Urban Development. The resulting figures  
8 may be adjusted upwards as necessary, not to exceed 15 percent, by the  
9 Director the Mayor's Office of Housing in order to assure that eligible  
10 households qualify for financing by institutional lenders.

11 (e) "First-time buyer" shall mean a person who has not purchased or acquired  
12 any dwelling as a principal place of residence within the past three years as  
13 verified by federal tax returns for said three-year period.

14 (3) The Mayor's Office of Housing shall be responsible for administering the resale of  
15 and reconveyance of units converted to condominiums under Sections 1341 and 1385  
16 of this Code, including the exercise of the City's right-of-first-refusal as to sales  
17 following the first sale of the unit referred to in Section 1341(c). The Mayor's Office of  
18 Housing shall, whenever possible, reconvey converted units to purchasers who qualify  
19 as eligible households. The Mayor's Office of Housing shall give preferential  
20 consideration to households with dependents and to first-time buyers. The Mayor's  
21 Office of Housing shall adopt a preferential rating system to accomplish this purpose.

22 (4) All purchasers must become owner occupants.

23  
24 ~~SEC. 1343. POLICIES AND PROCEDURES FOR USE OF THE HOUSING DEVELOPMENT FUND.~~

1           ~~(1) Purpose of the Fund.~~

2                     ~~(a) To reduce the cost of construction of new residential structures, or rehabilitation of~~  
3                     ~~existing structures, so that dwelling units in such structures are affordable by persons~~  
4                     ~~and families of low and moderate income.~~

5                     ~~(b) To expand homeownership opportunities for persons and families of low or~~  
6                     ~~moderate income.~~

7                     ~~(c) The determination of what constitutes housing affordable to persons and families of~~  
8                     ~~low and moderate income shall be in accordance with the then current Department of~~  
9                     ~~Housing and Urban Development guidelines.~~

10           ~~(2) Eligible Uses of the Fund.~~

11                     ~~(a) Monies from the Fund may be made available to nonprofit housing corporations for~~  
12                     ~~the acquisition of available and feasible sites for developing low and moderate income~~  
13                     ~~housing and the rehabilitation of existing sites for low and moderate income housing.~~

14                     ~~(b) Monies from the Fund may be used for costs incident to the acquisition or~~  
15                     ~~rehabilitation of property, including, but not limited to, architectural and engineering~~  
16                     ~~costs.~~

17                     ~~(c) Any developer receiving monies from this Fund shall ensure that a minimum of 51~~  
18                     ~~percent of the units in the project are made available to persons and families of low and~~  
19                     ~~moderate income.~~

20                     ~~(d) Monies may be used to pay the cost of administering the Fund, including the costs~~  
21                     ~~incurred by the the Mayor's Office of Housing in order to monitor those units which~~  
22                       
23                       
24                       
25



1           ~~have been set aside for persons and families of low and moderate income and to~~  
2           ~~facilitate the resale of converted units.~~

3           ~~(3) Administration of the Fund. The Fund shall be administered by the Mayor's Office of~~  
4           ~~Housing.~~

5           ~~(4) Application for Loan or Grant Funds. Any nonprofit corporation concerned with the~~  
6           ~~construction of housing, or concerned with the provision of housing opportunities for low or~~  
7           ~~moderate income persons, may make application to the Mayor's Office of Housing for the use of~~  
8           ~~monies from the Fund to be applied in accordance with the provisions of this Section 1343.~~

9           ~~Applications shall specify how monies from the Fund would make units affordable by persons or~~  
10          ~~households of low or moderate income and shall specify how units assisted by the Fund would remain~~  
11          ~~in occupancy by low or moderate income households.~~

12          ~~Applications shall be reviewed by the Mayor's Office of Housing, whose decisions shall be final.~~

13          ~~(5) Authorization to Expend. The Mayor and the Executive Director of the Mayor's Office of~~  
14          ~~Housing shall approve expenditures from the Housing Development Fund. The funds are~~  
15          ~~deemed appropriated solely for the purposes set forth in Subsections (1) and (2) above.~~

16          ~~(6) Interest. Interest earned from the Housing Development Fund shall become part of the~~  
17          ~~principal and shall not be drawn from the funds for any purpose other than that for which the~~  
18          ~~Housing Development Fund is established.~~

19          ~~(7) Accrual of Monies in Fund. Any unexpended balances remaining in the Housing~~  
20          ~~Development Fund at the close of any fiscal year shall be deemed to have been provided for a~~  
21          ~~specific purpose within the meaning of Section 6.306 of the Charter and shall be carried~~  
22          ~~forward and accumulated in the Housing Development Fund for the purpose recited herein.~~

1 ~~(8) Reporting on Program Status. The Mayor's Office of Housing shall report quarterly to the~~  
2 ~~Board of Supervisors on the current status of the Fund, the amount approved for disbursement,~~  
3 ~~the number and types of projects assisted, and shall make recommendations for any changes~~  
4 ~~deemed necessary to improve the effectiveness of the Fund in achieving its purpose.~~

5 **SEC. 1359. PARCEL MAP.**

6 (a) The requirements of Subsection (c) of Section 1356 of this Code shall apply to  
7 Parcel Maps.  
8

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

11 (c) In the case of Conversions where a Tentative Map is not required, the  
12 requirements of Section 1314 and the requirements of Article 9 on Conversions shall  
13 apply, provided that hearings as provided in Sections 1313 and 1332 shall not be  
14 required, ~~and the 10 percent low and moderate income occupancy as provided in Section 1341~~  
15 ~~shall not be required,~~ and provided further that Article 9 shall not be applied to two-unit  
16 buildings where both units are owner-occupied for one year prior to the application for  
17 Conversion. ~~The Director of Planning, however, shall make the determination pursuant to~~  
18 ~~Section 1385 concerning preservation of low and moderate income housing.~~

19 (d) In addition to the requirements of Subsection (c), the owners of record of a two-  
20 unit building conversion that qualify for the exemption from Article 9 must certify under  
21 penalty of perjury and the Department must verify with the Rent Stabilization and  
22 Arbitration Board, and with the Human Rights Commission as applicable, that since  
23 November 16, 2004, no eviction as defined in San Francisco Administrative Code  
24 Section 37.9(a)(8)--(14) of a senior, disabled person, or catastrophically ill tenant as  
25

1 defined below has occurred, or if an eviction has taken place under Administrative  
2 Code Section 37.9(a)(11) or (14), that the original tenant reoccupied the unit after a  
3 temporary eviction. For purposes of this Subsection a "senior" shall be a person who is  
4 60 years or older and has been residing in the unit for 10 years or more at the time of  
5 the lottery; a "disabled" tenant is defined for purposes of this Subsection as a person  
6 who is disabled within the meaning of Title 42 U.S.C. Section 12102(2)(A); and a  
7 "catastrophically ill" tenant is defined for purposes of this Subsection as a person who  
8 is disabled as defined above, and who is suffering from a life threatening illness as  
9 certified by his or her primary care physician.

10 (e) If the owners of record cannot satisfy the requirements of Subsection (d), then the  
11 owners of record shall comply with Article 9, including its Section 1396.1(g)(3), prior to  
12 submitting an application for Conversion.

13 (f) If the Department determines that an applicant has knowingly provided false  
14 material information under Subsection (d) above, the Department shall immediately  
15 deny the application, or if the applicant has submitted an application for conversion,  
16 shall immediately deny the application for conversion. Moreover, the Department, the  
17 Director, or other authorized person or entity may also enforce the provisions of this  
18 Subsection under Section 1304 or any other applicable provision of law as warranted.  
19

## 20 **SEC. 1385. PRESERVATION OF LOW AND MODERATE INCOME HOUSING.**

21 The provisions of this Section and its application to certain properties may be affected by  
22 amendments creating Section 1344. Please consult Section 1344 in addition to this Section for Units  
23 subject to the Below Market Rate Condominium Conversion Program.  
24  
25

1           The Department of City Planning shall determine whether any units to be converted are  
2 part of the City's low and moderate income housing stocks. If the Department of City Planning  
3 determines that any unit to be converted is part of the City's low or moderate income housing  
4 stocks, then the price of the unit upon conversion shall not be such as to remove it effectively  
5 from said low or moderate income housing stocks and shall be no greater than 2.5 times the  
6 highest income level for low and moderate income households as defined in Section 1309(e)  
7 and (f), and as adjusted for household size according to the size of the dwelling, as set forth in  
8 Sections 1309(l) and (m). The resulting sales prices established pursuant to this formula may  
9 be increased consistent with any increases in the housing component of the "Bay Area Cost  
10 of Living Index, U.S. Dept. of Labor," during the period between the most recent  
11 establishment of the above highest income levels and the date of commencement of sales. If  
12 the tenant does not exercise the contract right to purchase the unit which has been  
13 determined to be part of the low or moderate income housing stock, then the unit shall be  
14 made available exclusively for purchase by qualified households of low or moderate income  
15 on first-come, first-served basis for a period of not less than 12 months from the date of the  
16 decision by the tenant not to exercise the contract right to purchase or, if there is no tenant,  
17 from the date of issuance of the State Department of Real Estate Final Subdivision Public  
18 Report, at a price no greater than that allowed under the low and moderate income price  
19 guidelines set forth above. Priority, however, shall be given to low or moderate income  
20 households who can demonstrate that they had previously relocated from a dwelling in a  
21 building which has been approved for condominium conversion. The alternatives for low and  
22 moderate income occupancy set forth in Section 1341 shall not apply, except for those  
23 additional number of units which may be required pursuant to Section 1341(a) to be made  
24 available for rental or for purchase by households of low or moderate income. In cases where  
25

no low or moderate income household has purchased or contracted to purchase such unit within this 12-month period, after good-faith efforts by the subdivider, the subdivider may offer the unit to the general public with no price limitation.

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

By: SUSAN CLEVELAND-KNOWLES  
Deputy City Attorney