

1 [Ordinance to Amend the Definition of Tenant and to Address Buildings of 7 Units or More in  
2 the Already Adopted Ordinance to Provide Tenant Home Ownership and to Regulate the  
3 Formation of Certain Condominium-Type Ownership Structures.]

4 **Ordinance amending the San Francisco Subdivision Code by amending Section 1308 to**  
5 **provide that a tenant may also be an owner of record of the property and to remove the**  
6 **requirement that a tenant have an exclusive right to occupy a unit; amending Section**  
7 **1316 to address the formation of tenancies in common in buildings of seven units or**  
8 **more; and making this Ordinance retroactive to November 1, 2002.**

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

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

13 Section 1. FINDINGS. The Board of Supervisors of the City and County of San  
14 Francisco hereby finds and declares as follows:

15 A. The proposed amendments encourage and ensure the development of  
16 residential subdivisions consistent with the objectives of the California Subdivision Map Act  
17 and the San Francisco General Plan.

18 B. Community apartment and stock cooperative conversions are similar to  
19 condominiums in that they have a unique character and affect on the City's population and  
20 housing stock, and therefore, like condominium conversions, differ from other subdivisions  
21 and require the adoption of special requirements for conversions. The purposes of the  
22 requirements for conversion of condominiums are specified in Section 1302, and include, but  
23 are not limited to: protecting purchasers of converted housing; promoting the meaningful  
24 expansion of homeownership opportunities for existing tenants; and preserving a reasonable  
25 balance of ownership and rental housing within the City. This legislation will clarify that these

1 purposes underlie the requirements relating to community apartments and stock cooperatives  
2 as well.

3 C. The unregulated conversion of apartment buildings into tenancies-in-common  
4 prevents the City from insuring that subdivisions are consistent with the objectives of the  
5 Subdivision Map Act and conform to the San Francisco General Plan.

6 D. Tenancies-in-common where the exclusive right of occupancy is not specified in  
7 the deed are similar to condominiums and community apartments, have the same impact on  
8 population and housing stock, and raise significant consumer protection issues regarding the  
9 disclosure of the exclusive right of occupancy and potential fraud and exploitation of the public  
10 and purchaser. For these reasons and for the reasons stated in section 1302, the City finds  
11 that tenancies-in-common where the exclusive right of occupancy is not specified in the deed  
12 are not in the best interest of the public health, safety and welfare.

13 E. The City reasserts its policy, stated in section 1302(c)(2), of the San Francisco  
14 Subdivision Code, of promoting the meaningful expansion of homeownership opportunities for  
15 existing tenants and preventing the displacement of existing tenants by requiring a high  
16 degree of tenant intent to purchase their rental units as a condition of approval of applications  
17 for residential conversion. Also towards the end of promoting home ownership opportunities  
18 for tenants, this legislation would preserve the ability of tenants representing 50% of the units  
19 in a building to purchase their units in agreement with the owner and to go through the  
20 conversion process.

21 Section 2. The San Francisco Subdivision Code is hereby amended by amending  
22 Sections 1308 and 1316 to read as follows:

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Sec. 1308. SUBDIVISIONS.

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

3 (b) "Community Apartments" shall mean an estate in real property consisting  
4 of an undivided interest in common in a parcel of real property and the improvements thereon  
5 coupled with the right of exclusive occupancy, as specified in Section 1316 (a) and (b), of any  
6 apartment located therein.

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

15 (d) "Conversion" shall mean a subdivision which changes the type of  
16 ownership of real property to that defined as a Condominium project, Community Apartment  
17 project or Stock Cooperative and in which two or more condominiums, community apartments  
18 or units in a stock cooperative are newly created wholly or in substantial part within an existing  
19 structure or structures, regardless of the present or prior use of such structures and of  
20 whether substantial improvements have been made to such structures.

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

23 (f) "Stock Cooperative" shall mean a corporation formed or availed of  
24 primarily for the purpose of holding title to, either in fee simple or for a term of years, improved  
25 real property, if all or substantially all of the shareholders of such corporation receive a right of

1 exclusive occupancy, as specified in Section 1316 (a) and (b), in a portion of the real property,  
2 title to which is held by the corporation, which right of occupancy is transferable only  
3 concurrently with the transfer of the share or shares of stock in the corporation held by the  
4 person having such right of occupancy.

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

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

15 (i) "Unit" shall mean the elements of a project which are to be owned  
16 individually or to be exclusively occupied by an owner of record of the property, or a  
17 shareholder of the owner of record of the property.

18 (j) "Tenant", for purposes of the San Francisco Subdivision Code, shall  
19 mean a person or persons entitled under a lease, rental agreement or other agreement with  
20 the owner of record of the property or his or her agent to occupy a dwelling unit. ~~to the~~  
21 ~~exclusion of others, except that a "Tenant" cannot be an owner of record of the property or a~~  
22 ~~shareholder of the owner of record. A "tenant" can be an owner of record of the property or a~~  
23 ~~shareholder of the owner of record who resides in the property.~~ For purposes of this definition,  
24 "Tenant" shall also mean "Subtenant" as defined in Section 1308(k) where the subtenant  
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1 occupies and resides in the unit in agreement with the tenant and with the consent of the  
2 owner.

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

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

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

20 (n) "Allowable capital improvements" shall mean a physical improvement to a  
21 dwelling unit which satisfies the following criteria: (1) adds value to the unit or prolongs its life;  
22 (2) has a useful life of more than one year, and must not otherwise be considered normal  
23 repair or maintenance which would be required to maintain the dwelling in good condition; (3)  
24 satisfies the criteria for a capital improvement under the Internal Revenue Code; and (4) is  
25 constructed in accordance with all applicable codes, laws and regulations.

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

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

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

11 (r) "Purchasing tenant" shall be a person who: (1) has lived in a certain unit  
12 as a tenant for a minimum of one preceding year as of the date of initial registration for the  
13 lottery as selected by the Director; (2) wishes to purchase, or has purchased pursuant to  
14 Section 1396, the unit in which he or she resides, and (3) has entered into a purchasing  
15 tenant agreement as defined herein.

16 (s) "Purchasing Tenant Agreement" shall be a written and notarized  
17 agreement between a purchasing tenant and the owner of record where the purchasing tenant  
18 resides (1) for the sale to the tenant of his or her unit, and (2) to enter jointly into the lottery for  
19 conversion of the building.

20 Sec. 1316. Recordation of Exclusive Right of Occupancy.

21 (a) An owner of record of a property, or a shareholder of the owner of record  
22 of a property, in a building containing three or more units may not have a right of exclusive  
23 occupancy unless that right of exclusive occupancy is specified in the deed of the owner who  
24 has the right of exclusive occupancy.

1 (b) An owner of an undivided interest in common in real property containing  
2 three or more units shall not have the right of exclusive occupancy of any unit on the property  
3 except pursuant to an approved condominium, community apartment or stock cooperative  
4 subdivision.

5 (c) Subsections (a) and (b) shall not apply if every owner of the property who  
6 has an exclusive right of occupancy of any unit on the property is related to each other as  
7 grandparents, parents, brothers, sisters, children, grandchildren, or spouses, or are registered  
8 as Domestic Partners pursuant to San Francisco Administrative Code 62.1-62.8.

9 (d) This section shall apply to all transfers of interests in real property after  
10 the effective date of this Ordinance. Except that this section shall not apply to transfers of  
11 interests in real property in buildings of seven or more units where an exclusive right of  
12 occupancy was established before August 26, 2002. An applicant shall bear the burden of  
13 demonstrating that his or her property satisfies all the requirements of subsection (e) or (f).

14 (e) An owner of an interest in a 100% owner-occupied building containing  
15 three to six units in which all units were owner occupied on July 15, 2001 who, on the effective  
16 date of this Ordinance, has a right of exclusive occupancy of a unit in the building which is not  
17 specified in the deed may file an application for conversion under this Article:

18 (1) subject to Article 9 but not subject to the tenant intent to purchase  
19 requirements of Section 1388 or to the requirement of section 1396 that at least one of the  
20 units has been occupied continuously by one of the applicant owners of record for three years  
21 prior to the date of registration for the lottery, or

22 (2) through a special conversion process subject to Article 9 but not subject  
23 to the tenant intent to purchase requirements of Section 1388 and not subject to the annual  
24 conversion limitations of Section 1396 if such application is filed within a two-year application  
25 window beginning 180 days after the effective date of this legislation.

1 (f) A person who is either an owner of an interest in a 100% owner-occupied  
2 building containing three to six units in which all units became owner occupied after January  
3 1, 2001 but before the effective date of this legislation, or a person who is an owner of an  
4 interest in a four, five, or six-unit building in which all but one of the units is owner-occupied on  
5 the effective date of this Ordinance, has a right of exclusive occupancy of a unit in the building  
6 which is not specified in the deed:

7 (1) may file an application for conversion subject to Article 9 but shall not be  
8 subject to the tenant intent to purchase requirements of Section 1388 or to the requirement of  
9 Section 1396 that at least one of the units has been occupied continuously by one of the  
10 applicant owners of record for three years prior to the date of registration for the lottery, but

11 (2) may not apply for conversion pursuant to subsection (e)(2) of this section.

12 (g) All other owners of an interest in an owner-occupied building who have  
13 not yet converted shall be subject to all of the provisions of Article 9.

14 (h) Notwithstanding Section 1305, if any part of this Section 1316 is held  
15 invalid, the remainder of the Section shall automatically terminate and shall be of no force and  
16 effect.

17 Section 3. This Ordinance shall be retroactive to November 1, 2002.

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

20 By: \_\_\_\_\_  
21 John D. Malamut  
22 Deputy City Attorney

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