[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 ~~strikethrough 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.

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

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

SEC. 1344. BELOW MARKET RATE CONDOMINIUM CONVERSION PROGRAM.

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

(a) **Application.**

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

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

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

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(b) **Definitions**. For purposes of this Program the following definitions shall apply. For terms not defined below, the definitions in the Subdivision Code and the definitions in the City and County of San Francisco Residential Inclusionary Affordable Housing Program Monitoring Procedures Manual, published in 2007 under Planning Code Sections *4*15 et seq. *(previously Section 315)* and under this Section *1344* shall apply.

* * * *

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

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

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(12) "~~*Mayor's Office of Housing or*~~ MOH*CD*" shall mean the Mayor's Office of Housing *and Community Development* or its successor.

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

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

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

(16) "Procedures Manual" shall mean the City and County of San Francisco Residential Inclusionary Affordable Housing Program Monitoring Procedures Manual published in 2007 under Planning Code Sections ~~*3*~~*3415* et seq. *(previously Section 315)*, with Condominium Conversion BMR Addendum, on file with the Clerk of the Board in File No. 080520. ~~*The Mayor's Office of Housing*~~*MOHCD* shall update the Procedures Manual from time to time as necessary in the same manner as established in Planning Code Section *3415* 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 October 1, 2025 will be subject to the pricing requirements and procedures set forth in the Procedures Manual in effect at the time that the current owner purchased the BMR Unit.

(~~1~~2) BMR Units purchased or acquired on or after ~~*the effective date of this ordinance*~~ *January 18, 2009 and before October 1, 2025*. The sale price of all BMR units shall be equal to the current owner's purchase price adjusted by the percentage change in HUD unadjusted area median income from the purchase date to the date of resale pricing, 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 approved capital improvements as defined herein and special assessments that were paid by the seller, as well as 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.

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(~~2~~3) BMR Units purchased or acquired before ~~*the effective date of this ordinance*~~ *January 18, 2009*. BMR Units purchased or acquired before ~~*the effective date of this ordinance*~~ *January 18, 2009* and BMR Units that have not been sold by the original subdivider shall have the sale price as provided in Section 1341(c).

(~~3~~4) Notwithstanding the provisions of subsection (~~2~~3), the Board of Supervisors ratifies the decision by ~~*the Mayor's Office of Housing*~~*MOHCD* to set the sale price for certain BMR Units purchased or acquired before ~~*the effective date of this legislation*~~*January 18, 2009* 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~~2).

(d) **Capital Improvements.**

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

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

(~~*2*~~*3*) BMR Units purchased or acquired before ~~*the effective date of this ordinance*~~*January 18, 2009*. MOH*CD* shall continue to use the 1993 Capital Improvements Policy, on file with the Clerk of the Board in File No. 080520 and available on the ~~*Mayor's Office of Housing*~~*MOHCD* website, to implement the requirements of Section 1341(c) and shall publish the Policy on its website.

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

(1) **Purchasers.** MOH*CD* shall ~~*i*~~*e*nsure that all BMR Units conveyed under this Program are sold or transferred to households that qualify as both (A) low- or moderate-income households, depending on how the BMR Unit is designated, as defined; and (B) a First Time Homebuyer household. MOH*CD* shall give preference as provided in Subsection (~~*5*~~*6*) below and shall follow the procedures set forth in the *applicable* Procedures Manual.

(2) **Duration and Monitoring of Affordability**. As provided by Sections 1341 and 1385 BMR Units restricted under this Program are to remain affordable for the life of the BMR Unit. MOH*CD* shall *ie*nsure the BMR Units remain affordable through the following mechanisms. Nothing in this ~~*legislation*~~*Section 1344* shall preclude ~~*the Mayor's Office of*~~

~~Housing~~*MOHCD* from instituting additional mechanisms to *ie*nsure affordability through the *applicable* Procedures Manual.

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

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

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

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

(4) **Lottery**. MOH*CD* shall require a general public lottery for all BMR ~~*u*~~*U*nits available for purchase.

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

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

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

(~~*5*~~*6*) **Preferences**. ~~*The Mayor's Office of Housing*~~*MOHCD* shall give first priority to an existing tenant of a BMR Unit at the time of sale if that tenant qualifies as a low or moderate income household, depending on how the BMR Unit is designated. If there is no existing qualifying tenant who wishes to purchase the BMR Unit, ~~*the Mayor's Office of Housing*~~*MOHCD* shall *adhere to the lottery system set forth in Chapter 47 of the Administrative Code* ~~*use a lottery system that gives preference to households who live or work in San Francisco and meet all other homebuyer requirements*~~. Otherwise, ~~*it is the policy of the Board of Supervisors to treat*~~ all households *shall be treated* equally in allocating affordable BMR Units under this Program.

(f) **Rental Procedures.**

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

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

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

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

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

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

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

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

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

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

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(j) **Funds.** Any funds received by the City through payments made in accordance with subsection~~s~~ (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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