

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Subject: FW: Item #26 424-434 Francisco Condominium Conversion
Date: Tuesday, March 2, 2021 8:08:23 AM

From: Jennifer Elmore <jennifere_sf@yahoo.com>

Sent: Monday, March 1, 2021 4:25 PM

To: Waltonstaff (BOS) <waltonstaff@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>
Subject: Item #26 424-434 Francisco Condominium Conversion

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As a resident of San Francisco, having lived three blocks from the 424-434 Francisco Street site, I urge you to please support the Planning Commission disapproval of the condo conversion of a, now tenancy-in-common, rent-controlled building of 6 units to preserve affordable rental and homeownership housing in North Beach. Deny the appeal of this project.

The specific housing needs of this North Beach neighborhood were front & center in evaluating, applying the SF General Plan & Housing Elements to this condo conversion. North Beach has already lost too many affordable rent-controlled buildings. Between 2001-2005 the original owner WB Coyle and his 16 LLC partners have emptied out over 55 rent controlled units, displacing over 120 people the majority of whom worked in North Beach as well. We cannot replace one-for-one the stable, affordable housing that we have lost. Condo conversion **at this site, surrounded by 132 condos already**, would mean further loss of another six units of affordable homeownership or rentals in our community.

This building at **424-434 Francisco** is adjacent to **444 Francisco large condominium complex of 33 units** to the west (1982) and to the east, **418/420 Francisco** also a **2 unit rent-controlled** building which was converted to condos and added **another 11 condos** extending through the block to Vandewater Street. The **total number of condos** to the left and right of 424-434 Francisco is **44units**. Directly across the street, at **445 Francisco**, The Malt House, **another 88 condos** have been added, 28 of which face Francisco Street. **A total of 132 Condos.**

Meanwhile, in 2020 at 2223 Powell, just around the corner, a fire **destroyed 6 units of rent-controlled** housing & displaced 13 people. Two doors down from the fire also on Powell/Bay Street, construction on a **24 unit condominium complex** has begun.

Six blocks away, in 2018, a fire destroyed the 26 unit Verdi Apartment building, displacing over 38 people, seniors & families included. This **loss of 26 rent-controlled units** is not to be replaced in kind, rather, this is slated to become a **47 unit condo** complex.

Francisco/Powell Total condos w/ additional development = 132 + 24 new = **156 Condos** within 1 block

Rent-controlled units lost: 32 due to fire, 2 due to condo conversion= 34

Condominiums to be added: 71 Let's not add 6 more to this total.

I commend the Planning Commissioners for focusing on the real housing needs of our North Beach community, and following the Policies & Objectives of the General Plan in disapproving the condo conversion of 424-434 Francisco Street. Please deny the appeal for condo conversion

From: [Gee, Natalie \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Subject: FW: 424-434 Francisco St. - Special Order Item No. 26 - BOS March 2, 2021
Date: Monday, March 1, 2021 11:17:46 PM
Attachments: [AHA letter re Francisco Street.pdf](#)
[TIC disclosure 2012 with highlights.pdf](#)

Please add this to BOS Item 26/File No. 201379 for Tuesday's meeting.

Thank you,
Natalie

Natalie Gee 朱凱勤, Chief of Staff
Supervisor Shamann Walton, District 10
President, Board of Supervisors
1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282
Direct: 415.554.7672 | **Office:** 415.554.7670

*I am working from home due to the **COVID-19 Stay Safer At Home order** and will be most responsive by email.*

From: Mitchell Omerberg <mitchello@pacbell.net>
Date: Monday, March 1, 2021 at 7:58 PM
To: Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Cc: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Subject: re: 424-434 Francisco St. - Special Order Item No. 26 - BOS March 2, 2021

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Dear Supervisor:

Please find attached a letter and exhibit concerning 424-434 Francisco Street, Special Order Item No. 26, to be considered on March 2, 2021.

Thank you for your consideration.

Sincerely,
Mitchell Omerberg
Affordable Housing Alliance



March 1, 2021

San Francisco Board of Supervisors
City Hall, Room 244
San Francisco, CA 94102

Re: 424-434 Francisco Street – Special Order Item No. 26 - March 2, 2021

Dear President Walton and Members of the Board:

I write to respectfully urge you to deny the appeal of the application for condominium conversion for 424-434 Francisco Street for the reasons set forth below:

The overriding principle in our condo conversion law is contained in Section 1386 of the San Francisco Subdivision Code which states:

“When the City Planning Commission determines that... evictions have occurred for the purpose of preparing the building for conversion,the Tentative Map shall be disapproved.”

If the building is cleared for conversion by evicting the tenants, then the building is ineligible for condo conversion.

This fundamental principle has been in the Subdivision Code since 1980. It reflects the consensus that the specific tenants must be protected, but also the principle contained in the Housing Element of the General Plan that affordable housing must be preserved.

The City has never wavered from this. If anything, the City has only added additional provisions that prohibit conversions following evictions.

And a few years ago, when Supervisors Farrell and Weiner authored legislation to allow a batch of TICs to convert under an expedited program (the program the current owners of Francisco Street are endeavoring to use to convert), those Supervisors left that fundamental principle intact, so that it applies to the expedited conversion program, as well. Buildings that have been cleared for conversion by evicting the tenants are ineligible for condominium conversion under all programs and in all circumstances.

The significance of this provision of the law should not be understated. If “evictions have occurred for the purpose of preparing the building for conversion,” the conversion “shall be disapproved.” It does not say, “oh, if someone else evicted all the tenants, then the conversion goes forward. If someone else did the dirty work, conversion is OK.” No, the law is if “evictions have occurred for the purpose of preparing the building for conversion,” the conversion “shall be disapproved.”

3265 Harrison Street, San Francisco, CA 94110
415-756-3037

Again, it's a significant provision that should not be understated. And that's why it is the subject of the standard form disclosure statement developed by the S.F. Board of Realtors that is provided to, and must be signed and acknowledged by every TIC purchaser.

The TIC Disclosure Statement in use in 2012, when most of these TIC purchasers bought their units, stated:

"NO ASSURANCE OF CONVERSION TO CONDOMINIUMS. No one can represent or warrant that a TIC building will ever be converted to condominiums at any future date. Condominium conversion laws are complex and subject to change."

"LOCAL LAW. San Francisco laws ... may limit ... the right to convert a building with a history of evictions... to condominiums."

"THOROUGH INVESTIGATION REQUIRED. From the property to the.... [sellers], special scrutiny is strongly recommended before a buyer commits to purchase a TIC interest."

"ADVICE FROM QUALIFIED ATTORNEYS. ...Before signing any agreements, ...Buyers.... are urged to consult with a qualified real estate attorney who is knowledgeable regarding residential tenancy-in-common agreements and transactions, the California Subdivided Lands Act and Subdivision Map Act, the Ellis Act, residential landlord-tenant law (State and San Francisco) and residential condominium conversion (San Francisco).

And what would these TIC purchasers have found if they had done their due diligence and conducted a thorough investigation? Maybe consulted a qualified attorney? Maybe just Googled the property?

They would have found the California Court of Appeal decision adopting the trial court factual finding that the owners of Francisco Street had evicted the tenants from all six units in order to convert to condos. Daro v. Superior Court (2007) 151 Cal.App.4th 1079, 1087-88.

They might have found that the owners of Francisco Street previously tried to evict the tenants from all six units in order to demolish the building, if they got to the Rent Board records. They would have found numerous newspaper and on-line accounts, including that two of the evicted tenants died within six months of their evictions.

And they would have found, as you should today, that the building is therefore ineligible for conversion under Subdivision Code Section 1386, and the Housing Element of the General Plan.

Thank you for your consideration of these comments. We urge you to deny the appeal.

Sincerely,

[Mitchell Omerberg](#)

Mitchell Omerberg
Executive Director



TENANCY-IN-COMMON (TIC) DISCLOSURE
SAN FRANCISCO ASSOCIATION OF REALTORS® STANDARD FORM

This is a disclosure regarding a form of ownership under California law known as a Tenancy-in-Common (TIC). It is informational only and not intended in any way to take the place of, or substitute for, consulting with a qualified legal counsel and CPA. Real Estate Brokers and Agents are not qualified to provide any legal, tax or financial advice about TICs. Buyers are urged, before signing any agreements, to review and consider all matters of concern, including but not limited to:

- 1. TIC DEFINED. A TIC is a form of ownership under California Law which is created when more than one individual or entity has an undivided ownership interest in the same property. Typically, in a residential TIC, a written agreement provides for the exclusive right of occupancy of a given part of the property and sets forth rules for management of the property as a whole. No two TIC agreements are necessarily the same, however, and experience or knowledge of one TIC may not translate to another. Each TIC is as unique as the land, building and people involved. One property may be easy to maintain but have a group of owners who do not get along. Or, another property may be expensive to maintain but have a group of owners that gets along well. Each involves important legal, tax and financial rights, liabilities, obligations and interests. The current TIC marketplace is made up of resales of existing TIC interests and the creation of new TICs.
2. A TIC IS NOT A CONDOMINIUM. With a condominium (a form of subdivision), you individually own the unit in which you live and share ownership of the common areas of the condominium project with all of the other condominium owners through a homeowners' association. With a TIC (not a form of subdivision), you own an undivided interest in the entire property with all of the other TIC interest owners and may, or may not, have a contract or lease with them to live in a particular unit. In other words, an owner's use and occupancy of a TIC property is controlled by the TIC Agreement, which should be carefully read and reviewed with an attorney.
3. A CURRENT TIC AGREEMENT IS STRONGLY RECOMMENDED. Having a current, well-drafted TIC Agreement prepared by an attorney knowledgeable about TIC laws and San Francisco's unique requirements is vital to an effective TIC and a right to exclusive occupancy. Care should be taken to make sure that the TIC Agreement meets the specific needs of the property and the owners. If the TIC Agreement does not cover current issues, or worse, if there is no Agreement at all, there may be serious problems, liabilities and expenses that can be difficult or even impossible to resolve. Real Estate Brokers and Agents are not qualified to prepare a TIC Agreement and cannot provide reliable samples of such.
4. A GOOD TIC AGREEMENT IS NO GUARANTEE THE TIC WILL BE PROBLEM-FREE. A well-written, current TIC Agreement is only as good as the people who sign it and their ability to perform. Even the best intentions can go awry due to a job loss, bankruptcy, divorce, or worse. The failure of any TIC interest owner to timely and fully comply with the TIC Agreement's requirements can create very serious financial hardship for the other TIC interest owners.
5. POTENTIAL PROBLEMS THAT A TIC AGREEMENT MAY NOT SOLVE. Many events and problems can be difficult or impossible, as a practical matter, for the TIC owners to resolve. Neither Seller nor the Real Estate Brokers and Agents for the parties can represent or warrant that the TIC property will be operated in accordance with the terms set forth in the TIC Agreement. Nor can they predict that in the future all other owners can or will comply with any TIC Agreement requirements to make the required payments for the operation and maintenance of the TIC property, or what the cost to enforce payment would be. Some of the risks involved are: (i) One of the TIC owners goes bankrupt and the property becomes subject to bankruptcy court jurisdiction; (ii) A lien for unpaid taxes by one of the TIC owners is recorded against the entire property; (iii) There is a foreclosure on a loan secured by the property and, for "fractional" loans the lender of a foreclosed buyer may become a co-owner and seek to more conservatively set reserves and otherwise manage the property,

Buyer's Initials / Seller's Initials [Handwritten initials]

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and for “group loans” each co-owner may suffer damage to their credit rating or be subject to a deficiency judgment under California law; and (iv) Landlord-tenant (rent control or wrongful termination) issues; (v) an accident occurs in the unit that one owner of a TIC interest exclusively occupies, leading to claims of joint liability against the other owners; (vi) Disagreements over the TIC Agreement’s terms and conditions and changes to that Agreement that might be undesirable from an individual owner’s standpoint. Failure to timely repair a roof, plumbing, electrical, foundation or other component can result in unanticipated consequences, e.g. complaints from local government, tenant claims, loss of property insurance (and the ability to get new insurance), issues with existing financing or the ability to refinance, difficulty in selling a TIC interest, etc. TIC Agreements should make provisions for such risks by establishing operating reserve and default fund requirements. The levels of reserve and default funds in the TIC should be carefully reviewed by Buyer with a qualified CPA. Real Estate Brokers and Agents are not qualified to make these determinations.

6. **NO ASSURANCE OF CONVERSION TO CONDOMINIUMS.** No one can represent or warrant that a TIC building will ever be converted to condominiums at any future date. Condominium conversion laws are complex and subject to change. Since 1982, there have been very restrictive annual limits on conversions in San Francisco and a complete ban on converting any building with more than six (6) residential units.
7. **STATE LAW.** (A.) If a State law, commonly known as the “Ellis Act”, was used to end all residential tenancies at a property later subject to a TIC, the owners of the TIC interests may be subject to serious restrictions on the future rental of units for which they have an exclusive use. (B.) A TIC in which there are 4 or fewer undivided interests, each of which is accompanied by a right of exclusive occupancy, is not subject to any special regulatory procedures by the California Department of Real Estate (DRE). In contrast, according to the DRE, a TIC having **5 or more interests**, each of which is accompanied by a right of exclusive occupancy, is subject to the requirement for a **Public Report** approved by the DRE. (To determine if 5 or more interests exist, the DRE disregards whether one co-owner owns several TIC interests or if there are any agreements between the co-owners limiting the total number of interests or the like. It makes its determination in this regard strictly by counting the total number of physical or constructed units at the TIC property.) Public reports, however, are no guarantee whatsoever that there will be any greater protection for a buyer. Indeed, there may be greater risk from a 5 or more interest TIC because of the costs of operation, potential problems and liabilities due to the increased number of co-owners involved, and in the case of a group loan on the property, the size of that joint debt.
8. **LOCAL LAW.** San Francisco laws impact many legal rights and interests important to owners of TIC interests. Local laws provide, among other things, that eviction may only be for a set of specific allowed causes or reasons. They may limit, or attempt to limit, the right to occupy a dwelling unit already occupied by a tenant under the Owner Move-In (“OMI”) provisions, or the right to convert a building with a history of evictions (under the Ellis Act or local law) to condominiums. The laws are actively enforced by the San Francisco Rent Board and by local tenant groups and attorneys. New laws affecting property rights are routinely proposed and enacted. Most seem to favor residential tenants and disfavor the interests of property owners. Such new or proposed laws can affect the value, marketability or desirability of a TIC interest.
9. **THOROUGH INVESTIGATION REQUIRED.** From the property to the current and prospective co-owners involved, special scrutiny is strongly recommended before a Buyer commits to purchase a TIC interest. It is strongly recommended that there be at least one meeting with the existing owners or other prospective buyers to consider whether the group is likely be able to cooperate and get along. A Transfer Disclosure Statement (TDS) prepared by a Seller of an undivided interest in a TIC may cover information within the Seller's knowledge only with respect to the area where the Seller resides and not the remaining areas of the property (other exclusive occupancy TIC areas, roof, foundation, halls, garage, storage areas, etc.). Buyer is advised to have a qualified general contractor of their choice conduct a thorough investigation of the **entire property** and to have further inspections performed by other professionals, as may be recommended by the general contractor or others. Also, because work performed **anywhere** in the TIC property without permits can result in problems for all of the TIC owners, Buyer is urged to investigate the permit history and **all** other public records for the entire property. Be forewarned, the City’s Department of Building Inspection routinely inspects 3 or more unit buildings.
10. **FINANCIAL IMPLICATIONS OF TIC OWNERSHIP.** Because a TIC involves co-ownership and issues of shared liability, information and documentation should be obtained and carefully reviewed regarding the financial condition of the current and prospective TIC owners and their ability to pay joint obligations before

Buyer's Initials _____
Seller's Initials RW

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Buyer removes all conditions associated with the purchase of a TIC interest. Unforeseen changes in the financial condition of one TIC owner can affect the financial and property interests of the other co-owners.

11. FINANCING, REFINANCING AND RESALE TIC INTERESTS. Relative to financing TIC ownership, there are currently two primary types of loans:

A. Group Loans: This type of loan is made to all of the TIC owners and secured by the entire property. All of the TIC owners are thus jointly liable. Most TIC Agreements for properties with group loans require Buyers of a TIC interest to share their personal financial statements with other existing TIC owners and other prospective buyers. There may also be requirements for TIC owners to update the information periodically and provide documentary back up. Such requirements are reasonable as they provide some level of comfort, but no guarantee, that the owners will be able to meet their joint TIC obligations.

B. Fractional Interest Loans: This type of loan is made to each TIC owner separately and secured by that individual TIC owner's undivided co-ownership interest in the property. A TIC owner is thus not jointly liable for another TIC owner's fractional loan. In many cases the lender has already been pre-determined by the seller, or the existing TIC owners, and their interest rates and fees may be higher than the financing available for other types of property. Also, the pre-determined lender may require terms in the TIC Agreement that other potential fractional interest lenders might find unacceptable.

For any type of loan, a TIC interest is generally more difficult and expensive to finance, refinance or resell than a condominium. The interest rates and costs for the loan or "points" may be higher, the required downpayment larger and the length or term of the loan shorter. No seconds or other junior loans may be allowed. The existing financing may not be assumable by Buyer or assumable only with a costly change in terms (e.g., refinancing costs, interest rate differential, etc.) or substantial restrictions. For group loans, the potential issues may further include, without limitation, whether: (i) all new buyers qualify with the existing lender; and (ii) the lender will release the seller from the TIC loan obligation. For fractional interest loans the potential issues may further include, without limitation, whether any such financing will be available at the time of resale or a refinance. Some TIC Agreements also give the other owners a right to approve a new owner or a right of first refusal to buy the TIC interest. While such co-owner rights can be fair and reasonable, that is not always the case.

12. ADVICE FROM QUALIFIED ATTORNEYS. Real Estate Brokers and Agents are not qualified to provide any legal advice, including, without limitation, as regards the rights and obligations of a buyer or seller under a TIC agreement or the legal effect of any grant deeds, deeds of trust or other documents relating to a TIC. Only an attorney can advise on such matters. **Therefore, before signing any agreements or legal instruments, Buyers and Sellers are urged to consult with a qualified real estate attorney who is knowledgeable regarding residential tenancy-in-common agreements and transactions, the California Subdivided Lands Act and Subdivision Map Act, the Ellis Act, residential landlord-tenant law (State and San Francisco) and residential condominium conversion (San Francisco).**

THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE ABOVE.

Date _____

Date 12/10/13 _____

Buyer _____

Seller  _____
Richard Whittow

Buyer _____

Seller _____

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Subject: FW: Reject Condo Conversion on Francisco Street- Uphold the General Plan
Date: Monday, March 1, 2021 9:31:16 AM

From: T Flandrich <tflandrich@yahoo.com>

Sent: Sunday, February 28, 2021 8:42 PM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; ChanStaff (BOS) <chanstaff@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; MelgarStaff (BOS) <melgarstaff@sfgov.org>

Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Reject Condo Conversion on Francisco Street- Uphold the General Plan

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February 26, 2021

Item #26 March 2nd 201379 [Hearing - Appeal of Tentative Map Disapproval - 424, 426, 428, 430, 432, and 434 Francisco Street]

Dear President Walton and Supervisors,

I am writing you today to ask for support in upholding the disapproval of condo-conversion at 424-434 Francisco Street. This is a 6 unit rent- controlled building. While the current TIC owners may not have had involvement with the original, well known North Beach evictor WB Coyle (and myriad LLCs he operated under), the TIC disclosure "Declaration" at the time of TIC sale, would have revealed not only the building's history, but also the risks involved in converting the units into higher value condos.

Planning Commissioners Chan, Moore, and Imperial, cited the General Plan Objectives & Policies in disapproving this project. Also, looking closely at North Beach housing needs, they found this conversion inconsistent with the community objectives of the General Plan.

But it IS important to understand the building history. When the condo conversion was presented in July 2020 at the Planning Commission, the application for condo-conversion raised many questions. The building has a very notorious history, including evictions of 15 tenants (low-income elderly & disabled). And the hearing was therefore re-scheduled to September for further research on many issues.

A fuller staff report was presented at the October 1 Planning Commission hearing where the application was disapproved. The disapproval was based not on the 15-year-old evictions, but on the Housing Elements of the General Plan, which require The City to preserve diversity and affordable housing.

We the opponents of this condo conversion feel that the General Plan must be followed. If these policies are ignored, it will render the entire General Plan Housing Elements meaningless. We therefore urge you to uphold the General Plan, support the Planning Commission decision and deny this appeal.

Theresa Flandrich

Leader, Opposition to the Francisco Street Appeal

Excerpts from the Planning Commission decision as reported in the Planning Dept memorandum October 28, 2020:

"The tenancy in common "TIC" dwelling unit is a more affordable housing type than a condominium...typically valued 10-20% lower than the equivalent condominium unit... provides somewhat increased housing accessibility to middle-income residents. Removal of these TIC units reduces the diversity of housing types, and therefore is not consistent with this (General Plan) policy.

In particular, the North Beach area needs diverse housing and affordable home ownership for first time buyers."

The condominium conversions exacerbate "the inaccessibility of home- ownership in the North Beach neighborhood, a neighborhood with many urban amenities but where an affordable housing balance is currently challenged. "

The memorandum also reports North Beach as "a neighborhood ...where cultural and economic diversity is currently challenged."

"The Commissioners who voted against approval of the condo conversion found that approval of the Condominium Subdivision Conversion thus would not promote the health, safety and welfare of the City."