

As amended in Board  
11/16/04

FILE NO. 041353

ORDINANCE NO.

281-04

1 [Encouraging Condominium Conversions Where Tenants Are Not Displaced.]  
2

3 **Ordinance amending the Subdivision Code by repealing portions of Sections 1302,**  
4 **1308, 1359, 1388, 1396, and 1396.1; by repealing Section 1316 in its entirety; amending**  
5 **Section 1359 to delete the exception for certain two-unit buildings in which a specified**  
6 **eviction has occurred; and by amending Section 1399.6 1396.1 to give preference in the**  
7 **condominium lottery to buildings where certain evictions have not taken place.**

8 Note: Additions are *single-underline italics Times New Roman*;  
9 deletions are *strikethrough italics Times New Roman*.  
10 Board amendment additions are double underlined.  
11 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 Francisco  
14 hereby finds and declares as follows:

15 (a) The Planning Department has determined that the actions contemplated in this  
16 Ordinance are in compliance with the California Environmental Quality Act (California Public  
17 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
18 Board of Supervisors in File No. 041353 and is incorporated herein by reference.

19 (b) The California Court of Appeals issued a published decision in Case No.  
20 A101950 entitled Tom v. City and County of San Francisco (120 Cal. App. 4th 674 (2004))  
21 that affirmed the San Francisco Superior Court's decision to invalidate Ordinance No. 161-01,  
22 "Ordinance to Provide Tenant Home Ownership and to Regulate the Formation of  
23 Condominium-Type Ownership Structures" (the "Invalidated Ordinance"), a copy of which is  
24 on file with the Clerk of the Board of Supervisors in File No. 010891. To comply with the  
25 Court's order and to appropriately reflect the applicable provisions of the Subdivision Code,  
the Board of Supervisors repeals the Invalidated Ordinance.

1           Section 2. The San Francisco Subdivision Code is hereby amended by repealing  
2 portions of Sections 1308, 1359, 1396, and 1396.1 and by repealing Section 1316 in its  
3 entirety, to read as follows:

4           SEC. 1302. PURPOSES.

5           (a) This Code is enacted to establish procedures and requirements for the control  
6 and approval of subdivision development within the City and County of San Francisco in  
7 accordance with SMA.

8           (b) This Code is enacted to encourage and ensure the development of subdivisions  
9 consistent with the objectives of the San Francisco Master Plan.

10          (c) Recognizing that, by their unique character and impact on the City's population  
11 and housing stock, condominium, ~~community apartment,~~ and ~~stock cooperative~~ conversion  
12 subdivisions differ from other subdivisions, implementation of Subsections (a) and (b) of this  
13 Section requires the adoption of special requirements for conversions, the purposes of which  
14 are:

15               (1) To preserve a reasonable balance of ownership and rental housing within  
16 the City and County of San Francisco by providing for an annual limitation on the number of  
17 units which may be converted to condominiums, ~~community apartments,~~ and ~~stock~~  
18 ~~cooperatives~~ in any year.

19               (2) To promote the meaningful expansion of homeownership opportunities  
20 for existing tenants and to prevent the displacement of existing tenants by requiring a high  
21 degree of tenant intent to purchase their rental units as a condition of approval.

22               (3) To reduce the impact of conversions on nonpurchasing tenants who may  
23 be required to relocate, by providing for procedures for notification and adequate time and  
24 assistance for relocation, and providing for the reimbursement of costs resulting from such  
25 relocation.

1 (4) To prevent the displacement of elderly and disabled tenants by assuring  
2 them of extended leases to remain in their units subsequent to conversion.

3 (5) To assure that purchasers of converted housing have been properly  
4 informed as to the physical condition of the structure which is offered for purchase.

5 (6) To prevent the effective loss of the City's low or moderate income  
6 housing stock by requiring sales price limitations on those units proposed for conversion  
7 which are found to be part of the low or moderate income housing stock.

8 (7) To expand the supply of the City's low or moderate income housing stock  
9 by provision of a minimum of 10 percent low or moderate income housing units in any  
10 condominium subdivision, or by construction of an equivalent number of such units elsewhere,  
11 or by in-lieu payments into a City housing development fund.

12 ~~(d) — Tenancies in common where there is an exclusive right of occupancy that is not  
13 specified in the deed are similar to condominiums and community apartments and have the  
14 same impact on population and housing stock, and raise significant consumer protection  
15 issues regarding the disclosure of the exclusive right of occupancy. For these reasons and for  
16 the foregoing reasons in subsections 1 through 7, the City finds that tenancies in common  
17 where the exclusive right of occupancy is not specified in the deed are not in the best interest  
18 of the public health, safety and welfare.~~

19 SEC. 1308. SUBDIVISIONS.

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

22 (b) "Community Apartments" shall mean an estate in real property consisting of an  
23 undivided interest in common in a parcel of real property and the improvements thereon  
24 coupled with the right of exclusive occupancy, ~~as defined in Section 1316(a) and (b),~~ of any  
25 apartment located therein.

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

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

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

17 (f) "Stock Cooperative" shall mean a corporation formed or availed of primarily for  
18 the purpose of holding title to, either in fee simple or for a term of years, improved real  
19 property, if all or substantially all of the shareholders of such corporation receive a right of  
20 exclusive occupancy, ~~as defined in Section 1316(a) and (b)~~, in a portion of the real property,  
21 title to which is held by the corporation, which right of occupancy is transferable only  
22 concurrently with the transfer of the share or shares of stock in the corporation held by the  
23 person having such right of occupancy.

24 (g) "Subdivider" shall mean a person, firm, corporation, partnership or association  
25 who proposes to divide, divides or causes to be divided real property into a subdivision for

1 himself or for others. City agencies, including the San Francisco Redevelopment Agency, are  
2 exempted from this definition.

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

9 (i) "Unit" shall mean the elements of a project which are to be owned individually  
10 and not in common with the owners of other elements of the project ~~or to be exclusively~~  
11 ~~occupied by an owner of record of the property, or a shareholder of the owner of record of the~~  
12 ~~property.~~

13 (j) "Tenant," ~~for the purposes of the San Francisco Subdivision Code,~~ shall mean a  
14 person or persons entitled under a lease, rental agreement or other agreement with the owner  
15 of record of the property or his or her agent to occupy a dwelling unit. A "tenant" can be an  
16 ~~owner of record of the property~~ or a shareholder of the owner of record who resides in the  
17 property. For purposes of this definition, "Tenant" shall ~~also mean~~ "Subtenant" as defined in  
18 Section 1308(k) where the subtenant occupies and resides in the unit in agreement with and  
19 to the exclusion of the tenant and with the consent of the owner.

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

22 (l) "Low-Income Housing Stock" shall mean those rental dwelling units in buiildings  
23 being proposed for conversion for which the rent, at the time the application for conversion is  
24 filed, does not exceed 25 percent of the gross monthly income of a low-income household as  
25 defined in Section 1309(e). For purposes of applying this Section and Section 1309(e), a

1 studio apartment shall be deemed to be a one-person household, a one-bedroom apartment  
2 shall be deemed to be a two-person household, a two-bedroom apartment shall be deemed to  
3 be a three-person household, and a three-bedroom apartment shall be deemed to be a four-  
4 person household.

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

12 (n) ~~"Allowable capital improvements" shall mean a physical improvement to a~~  
13 ~~dwelling unit which satisfies the following criteria:~~

14 (1) ~~Adds value to the unit or prolongs its life;~~

15 (2) ~~Has a useful life of more than one year, and must not otherwise be~~  
16 ~~considered normal repair or maintenance which would be required to maintain the dwelling in~~  
17 ~~good condition;~~

18 (3) ~~Satisfies the criteria for a capital improvement under the Internal Revenue~~  
19 ~~Code; and~~

20 (4) ~~Is constructed in accordance with all applicable codes, laws and~~  
21 ~~regulations.~~

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

1           ~~(op)~~ "Household" shall mean any person or persons who reside or intend to reside in  
2 the same housing unit.

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

7           ~~(r)~~ "Purchasing tenant" shall be a person who:

8           ~~—— (1) ——~~ Has lived in a certain unit as a tenant for a minimum of one preceding  
9 year as of the date of initial registration for the lottery as selected by the Director;

10          ~~—— (2) ——~~ Wishes to purchase, or has purchased pursuant to Section 1396, the unit  
11 in which he or she resides; and

12          ~~—— (3) ——~~ Has entered into a purchasing tenant agreement as defined herein.

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

17           ~~SEC. 1316. RECORDATION OF EXCLUSIVE RIGHT OF OCCUPANCY.~~

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

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

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

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

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

14           ~~—— (1) — Subject to Article 9 but not subject to the tenant intent to purchase~~  
15 ~~requirements of Section 1388 or to the requirement of Section 1396 that at least one of the~~  
16 ~~units has been occupied continuously by one of the applicant owners of record for three years~~  
17 ~~prior to the date of registration for the lottery, or~~

18           ~~—— (2) — Through a special conversion process subject to Article 9 but not subject~~  
19 ~~to the tenant intent to purchase requirements of Section 1388 and not subject to the annual~~  
20 ~~conversion limitations of Section 1396 if such application is filed within a two-year application~~  
21 ~~window beginning 180 days after the effective date of this legislation.~~

22           ~~(f) — A person who is either an owner of an interest in a 100% owner-occupied~~  
23 ~~building containing three to six units in which all units became owner occupied after January~~  
24 ~~1, 2001 but before the effective date of this legislation, or a person who is an owner of an~~  
25 ~~interest in a four, five, or six unit building in which all but one of the units is owner-occupied on~~



1 the effective date of this Ordinance, has a right of exclusive occupancy of a unit in the building  
2 which is not specified in the deed:

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

7 ~~———— (2) ——— May not apply for conversion pursuant to subsection (e)(2) of this section.~~

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

10 ~~(h) — Notwithstanding Section 1305, if any part of this Section 1316 is held invalid, the~~  
11 ~~remainder of the Section shall automatically terminate and shall be of no force and effect.~~

12 SEC. 1359. PARCEL MAP.

13 (a) The requirements of Subsection (c) of Section 1356 of this Code shall apply to  
14 Parcel Maps.

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

17 (c) In the case of Conversions where a Tentative Map is not required, the  
18 requirements of Sections 1314 and the requirements of Article 9 on Conversions shall apply,  
19 provided that hearings as provided in Sections 1313 and 1332 shall not be required, and the  
20 10-percent low and moderate income occupancy as provided in Section 1341 shall not be  
21 required, and provided further that Article 9 shall not be applied to two-unit buildings where  
22 both units are ~~at least one unit is~~ owner-occupied for one year prior to the application for  
23 Conversion. The Director of Planning, however, shall make the determination pursuant to  
24 Section 1385 concerning preservation of low and moderate income housing.

25 SEC. 1388. TENANT INTENT TO PURCHASE.

1 No application for conversion shall be approved unless there are substantial  
2 numbers of tenants who have indicated their intent to purchase their rental unit. This intent  
3 shall be evidenced by the submittal in writing ~~from at least one tenant in a building containing~~  
4 ~~three or four units, or from at least two tenants from two separate units in a building containing~~  
5 ~~five or six units~~ by no less than 40 percent of the tenants of intent to purchase forms, as  
6 provided by the Department of Public Works. In obtaining or soliciting intent to purchase  
7 forms from tenants, subdividers shall comply with any restrictions set forth in the California  
8 Business and Professions Code and Regulations of the Real Estate Commissioner. In  
9 calculating the total number of units necessary to satisfy this provision, there shall be included  
10 in the 40 percent ~~one or two unit~~ requirement any units in which the occupant qualified for  
11 and has expressed an intent to obtain a renewable lifetime lease pursuant to Section 1391(c).

12 Any tenant intent to purchase forms obtained by way of an inducement of the  
13 subdivider to provide benefits to that tenant beyond those established by the Code shall be so  
14 identified and the specific representations of the subdivider shall be set forth in detail. All such  
15 intent to purchase forms shall become a matter of public record and the subdivider shall be  
16 required to comply with his or her representations as conditions of approval.

17 The intent to purchase forms, once signed by a tenant, shall be irrevocable by  
18 said tenant, for purposes of compliance with this Section, provided, however, that the Director  
19 shall invalidate any such form upon a determination that the subdivider has used coercion,  
20 fraud, duress, misrepresentation or threat in connection with obtaining or soliciting such form.

21 SEC. 1396. ANNUAL CONVERSION LIMITATION.

22 This Section governing annual limitation shall apply only to conversion of residential  
23 units.

24 Applications for conversion of residential units, whether vacant or occupied, shall not  
25 be accepted by the Department of Public Works during the period of January 1, 1994 through

1 December 31, 2002, inclusive, except that a maximum of 200 units and ~~200 units with~~  
2 ~~restrictions on resale price~~, as selected yearly by lottery by the Department of Public Works  
3 from all eligible applicants, may be approved for conversion per year during the  
4 aforementioned period for the following categories of buildings:

5 (a) buildings ~~buildings~~ consisting of four ~~six~~ units or less in which one of the units has  
6 been occupied continuously by one of the applicant owners of record for three years, ~~or by the~~  
7 ~~required number of purchasing tenants, each for one year~~, prior to the date of registration for  
8 the lottery as selected by the Director.; or

9 (b) ~~If purchasing tenants as herein defined, representing 100% of the tenants in~~  
10 ~~50% of the units in a building consisting of six units or less wish to purchase their units, the~~  
11 ~~owner and the purchasing tenants must submit to the Department evidence of a purchasing~~  
12 ~~tenant agreement for at least 50% of the units in the building, and thereafter may jointly~~  
13 ~~register for the lottery. If the owner and purchasing tenants win the lottery, the owner and~~  
14 ~~purchasing tenants may apply for conversion if they provide proof in their application for~~  
15 ~~conversion that a minimum of 50% of the interest in the building has been sold to the~~  
16 ~~purchasing tenants.~~

17 ~~(c)~~ For purposes of Section (b) above,

18 ~~(1)~~ The requirement of Subsection (a) of this section that at least one of the  
19 units has been occupied continuously by one of the applicant owners of record is waived, and  
20 ~~(2)~~ The provisions of Section 1316(a) and (b) will be waived for up to two years from the  
21 date of transfer of any interest in the property to a purchasing tenant such that the purchasing  
22 tenants may own their own units and enter into an exclusive right of occupancy that will be  
23 recorded upon the completion of a subdivision. The waiver set forth in this subsection (c)(2)  
24 may be extended for one additional year or any other time period consistent with the  
25

1 provisions of California Government Code Section 66452.6 upon written request and approval  
2 by the Director.

3 ~~———— (d) ——— Purchasing tenants and owners as described in Subsection (b) above~~  
4 shall:

5 ~~———— (1) ——— Be eligible for selection in Pool A if they meet the requirements outlined in~~  
6 ~~Section 1396.1(b); and (2) Will have preference over all other lottery participants for the first~~  
7 ~~40 units available in Pool C as defined in Section 1396.1(d)(1). Up to 40 units per year will be~~  
8 ~~selected in a preliminary Pool C lottery which will proceed after termination of the selection~~  
9 ~~process established for Pool A participants in Section 1396.1(b) and after termination of the~~  
10 ~~selection process established for Pool B participants in Section 1396.1(c), and will consist of~~  
11 ~~only units in those buildings that have been registered for the lottery by purchasing tenants~~  
12 ~~and owners as described in Subsection (b) above. After units are selected in this preliminary~~  
13 ~~Pool C lottery, the Pool C lottery shall proceed pursuant to Section 1396.1(d). If there were~~  
14 ~~less than 40 units selected for the preliminary lottery, unallocated units shall be added to Pool~~  
15 ~~C. If there were applicants representing more than 40 units for the preliminary Pool C lottery,~~  
16 ~~those applicants described in Subsection (b) above who did not win the preliminary Pool C~~  
17 ~~lottery will participate in the Pool C lottery pursuant to Section 1396.1(d).~~

18 ~~(e) ——— To be eligible for conversion under this Section 1396, purchasing tenants and~~  
19 ~~owners of record jointly applying for conversion must provide proof in their application for~~  
20 ~~conversion that they have offered renewed leases or extended rental agreements to all~~  
21 ~~nonpurchasing tenants in the building. Any extended leases or rental agreements made~~  
22 ~~pursuant to this Section shall expire only upon the death or demise of such tenant or the~~  
23 ~~surviving member of the tenant's household, provided such surviving member was a tenant on~~  
24 ~~the date on which the tenancy commenced, or at such time as the tenant voluntarily vacates~~  
25 ~~the unit after giving due notice of such intent to vacate. Each lease shall contain a provision~~

1 ~~allowing the tenant to terminate the lease and vacate the unit upon 30 days' notice. The lease~~  
2 ~~in effect at the time of subdivision application shall be extended on the same terms and~~  
3 ~~conditions except that rents may be adjusted only pursuant to the provisions set forth in~~  
4 ~~Administrative Code Section 37.3. This Section shall not alter or abridge the rights or~~  
5 ~~obligations of the parties performance of their covenants, including but not limited to the~~  
6 ~~provision of services, payment of rent or the obligations imposed by Sections 1941, 1941.1~~  
7 ~~and 1941.2 of the California Civil Code. There shall be no decrease in dwelling unit~~  
8 ~~maintenance or other services historically provided to such units and such tenants.~~

9 (f) ~~For purposes of this Section, Subsections (b) through (e), if a nonpurchasing~~  
10 ~~tenant obtains a lease pursuant to Subsection (e) above and such lease is not invalidated, the~~  
11 ~~provisions of Sections 1390 and 1391 shall not apply.~~

12 (b) Buildings consisting of six units or less in which 50 percent or more of the units  
13 have been occupied continuously by the applicant owners of record for three years prior to the  
14 date of registration for the lottery as selected by the Director; or

15 (c) Community apartments as defined in Section 1308 of this Code, which, on or  
16 before December 31, 1982, met the criteria for community apartments in Section 1308 of this  
17 Code and which were approved as a subdivision by the Department of Public Works on or  
18 before December 31, 1982, and where 75 percent of the units have been occupied  
19 continuously by the applicant owners of record for three years prior to the date of registration  
20 for the lottery as selected by the Director.

21 The conversion of a stock cooperative as defined in Section 1308 of this Code to  
22 condominiums shall be exempt from the annual limitation imposed on the number of  
23 conversions in this Section and from the requirement to be selected by lottery where 75  
24 percent of the units have been occupied continuously by the applicant owners of record for  
25 three years prior to the date of registration for the lottery as selected by the Director.

1 No application for conversion of a residential building submitted by a registrant shall be  
2 approved by the Department of Public Works to fill the unused portion of the 200-unit annual  
3 limitation for the previous year.

4 SEC. 1396.1. ANNUAL CONVERSION LIMITATION LOTTERY PROCEDURES.

5 This Section shall govern conduct of the lottery required by Section 1396 for the  
6 conversion of residential units.

7 (a) The lottery shall be comprised of two ~~three~~ pools (Pool A, and ~~Pool B, and Pool~~  
8 ~~C~~).

9 (b) Pool A.

10 ~~(1) Pool A shall consist of 200 units.~~

11 ~~(2) Pool A shall consist only of those eligible buildings consisting of~~  
12 ~~purchasing tenants pursuant to Section 1396, and where at least one purchasing tenant in a~~  
13 ~~three or four unit building, or at least two purchasing tenants in a five or six unit building,~~  
14 ~~meets the requirement as a median income household as defined in Section 1308. Pool A~~  
15 ~~applicants must apply to the Mayor's Office of Housing for a determination that they qualify as~~  
16 ~~a household of median income and present evidence of this determination to the Director in~~  
17 ~~order to take part in the Pool A lottery.~~

18 ~~(3) If all buildings eligible in Pool A comprise more than 200 units, the~~  
19 ~~Director of the Department of Public Works shall conduct a lottery among the buildings eligible~~  
20 ~~for Pool A so that no more than 200 units are selected for conversion in Pool A. If such a~~  
21 ~~lottery takes place, it will take place before the lottery for Pool B and Pool C. If all buildings~~  
22 ~~eligible in Pool A comprise less than 200 units, the unused portion of Pool A shall not revert to~~  
23 ~~Pools B or C.~~

24 ~~(4) Units selected for conversion under Pool A shall only be approved for~~  
25 ~~conversion if the purchasing tenants provide proof to the Director of the Department of Public~~

1 ~~Works that the recorded property deed contains a restriction on resale such that any resale~~  
2 ~~within 50 years from the date of the recordation of the sale to the purchasing tenant shall be at~~  
3 ~~a price which does not exceed the growth in the Housing component of the Consumer Price~~  
4 ~~Index, All Urban Consumers, San Francisco-Oakland-San José, CA, as published from time~~  
5 ~~to time by the U.S. Department of Labor, and which may include the actual cost of allowable~~  
6 ~~capital improvements, as defined in Section 1308, made by the owner, without any adjustment~~  
7 ~~for either inflation or depreciation. In order to include allowable capital improvements in the~~  
8 ~~resale price, the owner shall keep accurate records relating to the cost and type of~~  
9 ~~improvement. Where capital improvements are made to portions of a building or lot which are~~  
10 ~~shared by other dwelling units, only that portion of the capital improvement attributable to the~~  
11 ~~subject unit shall be considered, and in no event shall the increased value of the unit exceed~~  
12 ~~the actual direct cost of the allowable capital improvements. It shall be a condition of tentative~~  
13 ~~approval or tentative parcel map approval that qualifying buildings record the restriction on the~~  
14 ~~resale price as a Notice of Special Restriction against title and that such restriction shall~~  
15 ~~appear as a note on a final map or parcel map as a matter of record.~~

16 ~~————(5)—— The President of the Board of Supervisors shall convene a task force to~~  
17 ~~recommend to the Board of Supervisors the appropriate city agency to be responsible for~~  
18 ~~administration of the determination of median income applicants in Section 1396.1(b)(2) and~~  
19 ~~preparing regulations and the monitoring and enforcement of the restriction on resale price of~~  
20 ~~Section 1396.1(b)(4). The committee shall consist of a representative from the Mayor's Office~~  
21 ~~of Housing, the Department of Public Works, the Office of the Mayor, and the Board of~~  
22 ~~Supervisors. The committee shall make its recommendation to the Board of Supervisors no~~  
23 ~~later than September 20, 2001.~~

24 ~~(c)—— Pool B.~~

1 (1) For the 1995 lottery, Pool AB shall consist only of those eligible buildings  
2 which participated but which failed to be selected in any previous lottery held during the years  
3 1990 through 1994. For the 1996 lottery, Pool AB shall consist of only those eligible buildings  
4 which participated but failed to be selected in any lottery held during the years 1990 through  
5 1994 and the 1995 lottery. For all subsequent lotteries after 1996, Pool AB shall consist of  
6 only those eligible buildings which participated but which have failed to be selected for  
7 conversion in at least three previous lotteries, two of which must be lotteries held after 1994.  
8 If all buildings eligible in Pool AB comprise 100 or fewer units, all such buildings shall  
9 automatically be approved for conversion. Any unallocated units in Pool AB shall be added to  
10 Pool BC.

11 (2) If all buildings eligible in Pool AB comprise more than 100 units, the  
12 Director of the Department of Public Works (Director) shall conduct a lottery among the  
13 buildings eligible for Pool AB so that no more than 100 units are selected for conversion in  
14 Pool AB. All buildings not selected for conversion through the Pool AB lottery shall then  
15 participate in Pool BC, under the procedures set forth below.

16 (cd) Pool BC.

17 (1) Pool BC shall consist of all eligible buildings pursuant to Section 1396  
18 above, together with any buildings from Pool AB that were not selected for conversion in the  
19 Pool AB lottery.

20 (2) Buildings from Pool BC shall be selected for conversion by random  
21 selection of lottery tickets submitted for eligible buildings.

22 (3) Each building in Pool BC shall receive one lottery ticket for the current  
23 lottery, plus a maximum of one lottery ticket for any and all lotteries held during the years  
24 1990 through 1994 in which the building participated but failed to be selected for conversion in  
25



1 the lottery, plus one lottery ticket for every lottery after 1994 in which the building participated  
2 but failed to be selected for conversion.

3 (4) No building in Pool BG shall receive more than five tickets.

4 (de) Applicants shall provide proof of participation in past lotteries to the Director.

5 (1) Proof of participation in any lottery held during the years 1990 through  
6 1994 shall be as follows:

7 (i) Presentation by the registrant of a letter of regret from the Director for any  
8 lottery held during the years 1990 through 1994; or

9 (ii) Presentation by the registrant of a cancelled check for payment of lottery  
10 registration fees from any lottery held during the years 1990 through 1994; or

11 (iii) Any other proof of participation in any lottery held during the years 1990  
12 through 1994, as determined acceptable by the Director.

13 (2) Proof of participation in any lottery held in or after 1995 shall be  
14 determined upon presentation by the registrant of a letter of regret from the Director.

15 (ef) Commencing with the 1997 lottery, any building seeking more than one lottery  
16 ticket shall demonstrate to the satisfaction of the Director that one or more of the qualified  
17 owners of the building were owners of the building at the time of the lotteries in which the  
18 building participated but failed to be selected for conversion.

19 (fg) For purposes of determining whether a building failed to be selected for  
20 conversion in a previous lottery:

21 (1) Those buildings which were chosen in a previous lottery but were not  
22 converted for any reason whatsoever shall not be considered as having failed to be selected  
23 in that lottery.

24 (2) Any previous failures to be selected by lottery do not have to occur in  
25 consecutive years.

1 (3) No credit shall be given for any year in which the building did not  
2 participate in the lottery.

3 Section 43. After repealing portions of the San Francisco Subdivision Code as set forth  
4 in Section 2 above, the The San Francisco Subdivision Code is hereby amended by  
5 amending Section 1359, to read as follows:

6 SEC. 1359. PARCEL MAP.

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

9 (b) The Parcel Map shall conform to the requirements of Chapter 2, Article 3 of  
10 SMA 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 Sections 1314 and the requirements of Article 9 on Conversions shall apply,  
13 provided that hearings as provided in Sections 1313 and 1332 shall not be required, and the  
14 10-percent low and moderate income occupancy as provided in Section 1341 shall not be  
15 required, ~~and provided further that Article 9 shall not be applied to two-unit buildings where~~  
16 ~~both units are owner-occupied for one year prior to the application for Conversion and~~  
17 provided further that Article 9 shall not be applied to two unit buildings where both units are  
18 owner occupied for one year prior to the application for Conversion. The Director of Planning,  
19 however, shall make the determination pursuant to Section 1385 concerning preservation of  
20 low and moderate income housing.

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

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

10 (e) If the owners of record cannot satisfy the requirements of Subsection (d), then  
11 the 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 deny the  
15 application, or if the applicant has submitted an application for conversion, shall immediately  
16 deny the application for conversion. Moreover, the Department, the Director, or other  
17 authorized person or entity may also enforce the provisions of this Subsection under Section  
18 1304 or any other applicable provision of law as warranted.

19 Section 4. After repealing portions of the San Francisco Subdivision Code as set forth  
20 in Section 2 above, the Subdivision Code is hereby amended by amending Section 1396, to  
21 read as follows:

22 SEC. 1396. ANNUAL CONVERSION LIMITATION.

23 This Section governing annual limitation shall apply only to conversion of residential  
24 units.

1 Applications for conversion of residential units, whether vacant or occupied, shall not  
2 be accepted by the Department of Public Works during the period of January 1, 1994 through  
3 December 31, 20026, inclusive, except that a maximum of 200 units as selected yearly by  
4 lottery by the Department of Public Works from all eligible applicants, may be approved for  
5 conversion per year during the aforementioned period for the following categories of buildings:

6 (a) buildings consisting of four units or less in which one of the units has been  
7 occupied continuously by one of the applicant owners of record for three years prior to the  
8 date of registration for the lottery as selected by the Director; or

9 (b) Buildings consisting of six units or less in which 50 percent or more of the units  
10 have been occupied continuously by the applicant owners of record for three years prior to the  
11 date of registration for the lottery as selected by the Director; or

12 (c) Community apartments as defined in Section 1308 of this Code, which, on or  
13 before December 31, 1982, met the criteria for community apartments in Section 1308 of this  
14 Code and which were approved as a subdivision by the Department of Public Works on or  
15 before December 31, 1982, and where 75 percent of the units have been occupied  
16 continuously by the applicant owners of record for three years prior to the date of registration  
17 for the lottery as selected by the Director.

18 The conversion of a stock cooperative as defined in Section 1308 of this Code to  
19 condominiums shall be exempt from the annual limitation imposed on the number of  
20 conversions in this Section and from the requirement to be selected by lottery where 75  
21 percent of the units have been occupied continuously by the applicant owners of record for  
22 three years prior to the date of registration for the lottery as selected by the Director.

23 No application for conversion of a residential building submitted by a registrant shall be  
24 approved by the Department of Public Works to fill the unused portion of the 200-unit annual  
25 limitation for the previous year.

1            Section 25. After repealing portions of the San Francisco Subdivision Code as set forth  
2 in Section 2 above, the ~~The San Francisco~~ Subdivision Code is hereby amended by  
3 amending Section ~~1399.6~~ 1396.1, to read as follows:

4            SEC. 1396.1. ANNUAL CONVERSION LIMITATION LOTTERY PROCEDURES.

5            This Section shall govern conduct of the lottery required by Section 1396 for the  
6 conversion of residential units.

7            (a)    The lottery shall be comprised of two pools (Pool A and Pool B).

8            (b)    Pool A.

9            (1)    For the 1995 lottery, Pool A shall consist only of those eligible buildings  
10 which participated but which failed to be selected in any previous lottery held during the years  
11 1990 through 1994. For the 1996 lottery, Pool A shall consist of only those eligible buildings  
12 which participated but failed to be selected in any lottery held during the years 1990 through  
13 1994 and the 1995 lottery. For all subsequent lotteries after 1996, Pool A shall consist of only  
14 those eligible buildings which participated but which have failed to be selected for conversion  
15 in at least three previous lotteries, two of which must be lotteries held after 1994. If all  
16 buildings eligible in Pool A comprise 100 or fewer units, all such buildings shall automatically  
17 be approved for conversion. Any unallocated units in Pool A shall be added to Pool B.

18            (2)    If all buildings eligible in Pool A comprise more than 100 units, the  
19 Director of the Department of Public Works (Director) shall conduct a lottery among the  
20 buildings eligible for Pool A so that no more than 100 units are selected for conversion in Pool  
21 A. All buildings not selected for conversion through the Pool A lottery shall then participate in  
22 Pool B, under the procedures set forth below.

23            (c)    Pool B.

1 (1) Pool B shall consist of all eligible buildings pursuant to Section 1396  
2 above, together with any buildings from Pool A that were not selected for conversion in the  
3 Pool A lottery.

4 (2) Buildings from Pool B shall be selected for conversion by random  
5 selection of lottery tickets submitted for eligible buildings.

6 (3) Each building in Pool B shall receive one lottery ticket for the current  
7 lottery, plus a maximum of one lottery ticket for any and all lotteries held during the years  
8 1990 through 1994 in which the building participated but failed to be selected for conversion in  
9 the lottery, plus one lottery ticket for every lottery after 1994 in which the building participated  
10 but failed to be selected for conversion.

11 (4) No building in Pool B shall receive more than five tickets.

12 (d) Applicants shall provide proof of participation in past lotteries to the Director.

13 (1) Proof of participation in any lottery held during the years 1990 through  
14 1994 shall be as follows:

15 (i) Presentation by the registrant of a letter of regret from the Director for any  
16 lottery held during the years 1990 through 1994; or

17 (ii) Presentation by the registrant of a cancelled check for payment of lottery  
18 registration fees from any lottery held during the years 1990 through 1994; or

19 (iii) Any other proof of participation in any lottery held during the years 1990  
20 through 1994, as determined acceptable by the Director.

21 (2) Proof of participation in any lottery held in or after 1995 shall be  
22 determined upon presentation by the registrant of a letter of regret from the Director.

23 (e) Commencing with the 1997 lottery, any building seeking more than one lottery  
24 ticket shall demonstrate to the satisfaction of the Director that one or more of the qualified  
25

1 owners of the building were owners of the building at the time of the lotteries in which the  
2 building participated but failed to be selected for conversion.

3 (f) For purposes of determining whether a building failed to be selected for  
4 conversion in a previous lottery:

5 (1) Those buildings which were chosen in a previous lottery but were not  
6 converted for any reason whatsoever shall not be considered as having failed to be selected  
7 in that lottery.

8 (2) Any previous failures to be selected by lottery do not have to occur in  
9 consecutive years.

10 (3) No credit shall be given for any year in which the building did not  
11 participate in the lottery.

12 (gh) In addition to the other provisions relating to Pool AB and Pool BG described in  
13 subsections (de) through (f) above:

14 (1) the first 175 units selected by lottery in Pools AB and BG must meet the  
15 following requirements: the Applicant for the lottery must certify under penalty of perjury and the  
16 Department must verify with the Rent Stabilization and Arbitration Board, and with the Human Rights  
17 Commission as applicable, that ~~within 5 years prior to the effective date of this legislation~~ since  
18 November 16, 2004, no eviction or threat of eviction as defined in San Francisco Administrative  
19 Code Section 37.9(a)(8) – (14) of a senior, disabled person, or catastrophically ill tenant as defined  
20 below has occurred, or if an eviction has taken place under Administrative Code Section 37.9(a)(11) or  
21 (14,) that the original tenant reoccupied the unit after a temporary eviction. For purposes of this  
22 section a “senior” shall be a person who is 60 years or older and has been residing in the unit for 10  
23 years or more at the time of the lottery; a “disabled” tenant is defined for purposes of this Section as a  
24 person who is disabled or blind within the meaning of Section 12955.3 of the California  
25 Government Code the federal Supplemental Security Income/California State Supplemental

1 Program (SSI/SSP), and who is determined by SSI/SSP to qualify for that program or who  
2 satisfies such requirements through any other method of determination as approved by the  
3 Rent Stabilization and Arbitration Board Title 42 U.S.C. Section 12102(2)(A); and a  
4 “catastrophically ill” tenant is defined for purposes of this Section as a person who is disabled as  
5 defined by above, and who is suffering from a life threatening illness as certified by his or her primary  
6 care physician.

7 (2) If there are not 175 units that meet the requirements of subsection (g~~h~~)(1) above,  
8 then the remaining units will not be awarded by lottery in that year’s lottery or any future lottery. If  
9 there are more than 175 units that meet the requirements of subsection g~~h~~(1) above, then those units  
10 may compete for the remaining 25 units as described in subsection g~~h~~(3) below.


11 (3) The remaining 25 units in Pool ~~AB~~ and Pool ~~BC~~ will be selected as described in  
12 subsections (b~~e~~) through (f) and may, but do not need to, meet the additional requirements of  
13 subsection (g~~h~~)(1) above.

14 (4) If the Department determines that an Applicant has knowingly provided false  
15 material information under subsection g~~h~~(1) above, the Department shall immediately deny the  
16 application for the lottery, or if the Applicant has submitted an application for conversion, shall  
17 immediately deny the application for conversion. Moreover, the Department, the Director or other  
18 authorized person or entity may also enforce the provisions of this Section under Section 1304 or any  
19 other applicable provision of law as warranted.

20 Section ~~36~~. The Board of Supervisors intends that the severability provisions of  
21 Section 1305 shall apply to this ordinance.



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

3 By:   
4 John D. Malamut  
5 Deputy City Attorney

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# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails Ordinance

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**File Number:** 041353

**Date Passed:**

Ordinance amending the Subdivision Code by repealing portions of Sections 1302, 1308, 1359, 1388, 1396, and 1396.1; by repealing Section 1316 in its entirety; amending Section 1359 to delete the exception for certain two-unit buildings; and by amending Section 1396.1 to give preference in the condominium lottery to buildings where certain evictions have not taken place.

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November 16, 2004 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Maxwell,  
Peskin, Sandoval

Excused: 2 - Ma, McGoldrick

November 23, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell,  
McGoldrick, Peskin, Sandoval

File No. 041353

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 23, 2004 by the Board of Supervisors of the City and County of San Francisco.

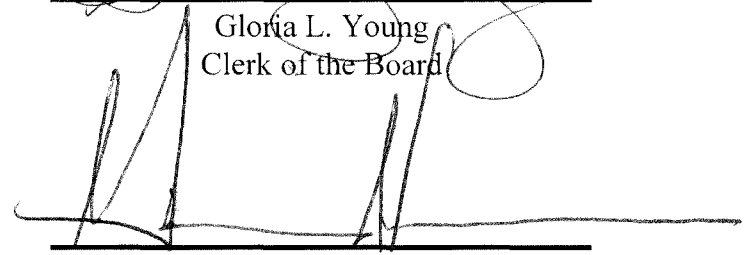
DEC 01 2004

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**Date Approved**



Gloria L. Young  
Clerk of the Board



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Mayor Gavin Newsom