

# *City of Brisbane*

## *Subcommittee Report*

TO: City Councilmembers Conway and O'Connell

FROM: Community Development Director and Special Assistant

SUBJECT: Ordinance No. 566 (Zoning Text Amendment RZ-6-11) to Amend Brisbane Municipal Code Titles 16 and 17 Regarding Condominiums

DATE: For February 6, 2013 Planning Issues Subcommittee Meeting

### **Purpose:**

To update the Subdivision Ordinance so as to be consistent with current State law in regards to condominiums, dedication of land for park and recreation purposes, and passive or natural heating/cooling opportunities in subdivision design; and to amend the Zoning Ordinance to clarify condominium approval procedures and to revise the condominium development standards.

### **Background:**

2007-2014 Housing Element Policy H.B.4 directs the City to “discourage the conversion of existing apartment buildings to condominiums or cooperatives unless it is demonstrated that such conversion would not adversely affect the rental market or that the conversion would provide unique housing opportunities for very-low-, low- and/or moderate-income households.” This policy would be implemented through the changes recommended by the Planning Commission in Sections 16.16.220.A, 17.30.010 & 17.30.060. Also see Section 16.24.060.D

Housing Element Program H.B.4.a calls for refining the Zoning Ordinance standards for condominium conversions to reflect this City policy and current State law. To accomplish this, Sections 17.02.150 & 17.30.010-080 were recommended to be revised.

In addition, the Subdivision Ordinance is recommended to be updated to be consistent with the State Subdivision Map Act. These changes were contained in Sections 16.12.010-030, 16.16.190.D, 16.20.270.E & 16.24.010-060 of the recommended ordinance. For purposes of clarity, Section 16.24.090 of the current ordinance was recommended to be relocated as Sections 16.16.220.G & 16.16.230.H.

**Follow-Up:**

At the City Council meeting of November 26, 2012, a subcommittee was established to conduct a detailed review of draft planning ordinances in advance of public hearings.

At the October 15<sup>th</sup> public hearing on the draft condominium ordinance, the City Council requested additional information. Staff's responses are attached, along with information provided in response to the comments submitted by Dana Dillworth at that meeting.

In response to comments regarding exemptions to the requirement for park and recreational land dedication (Section 16.24.060), carbon monoxide alarms and toxic mold (Section 17.30.040.C), revisions to the recommended draft ordinance should be considered by the City Council. Many of the questions raised can be answered without having to revise the draft ordinance. Most of the remaining comments deal with the requirements of State law, are already addressed elsewhere in the Brisbane Municipal Code, or concern existing language in the Municipal Code that is not proposed to be changed.

**Attachments:**

Staff's Responses to Comments at 10/15/12 Meeting  
List Submitted by Dana Dillworth at 10/15/12 Council Meeting  
Draft Revised Redline Version of Condominium Ordinance Amendments  
10/15/12 Agenda Report with Attachments  
Government Code Section 66477 (Quimby Act)

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John Swiecki, Community Development Director



## STAFF'S RESPONSES TO COMMENTS AT 10/15/12 MEETING

At the October 15<sup>th</sup> meeting, the City Council requested additional information regarding the following items:

*Section 16.24.010*—The question was asked whether the City can require fees to cover park operating costs. The fees collected under the Quimby Act (attached at the end of this report) per Government Code Section 66477(a)(3) are only intended to be in lieu of the dedication of land for parks and recreational purposes and can only be used for the purpose of developing new or rehabilitating existing facilities. Recouping the costs of on-going maintenance of parks, including those dedicated under the Quimby Act, would require adoption of a separate park impact fee.

*Section 16.24.040*—The City is required to give credit for park and recreational improvements provided by the subdivider per State law. The language in subsection A is taken directly from Government Code Section 66477(a)(9). Subsection B is a rewording of Government Code Section 66477(e): “Common interest developments, as defined in Section 1351 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.” Given this language, such “private open space” may not be required to be made available to all members of the public.

Note that Civil Code Section 1351(c) defines a “common interest development” as “a community apartment project...a condominium project...a planned development...[or] a stock cooperative.” Because “planned development” as defined in the Civil Code (a project having a common area typically owned and enforced by an association of owners) differs from how it is used in Brisbane’s Zoning Ordinance, staff recommends that draft Section 16.24.040.B be reworded to replace the reference to community apartment project, stock cooperative or planned development with a reference to Civil Code Section 1351(c). This revision is indicated in *blue* in the attached redline version of the draft ordinance.

*Section 16.24.040.B*—The question was asked whether private parks would be recognized in meeting the requirement for the dedication of land for parking or recreational purposes provided per Government Code Section 66477(a). Per Government Code Section 66477(e), condominium projects that provide “private open space within the development which is usable for active recreational use” shall receive credit against the amount of land to be dedicated or in-lieu fee to be paid. In all other cases, any land shall be conveyed to the local public agency which provides park and recreational services, per Government Code Section 66477(b). As can be seen in the attached redline version of the draft ordinance, Section 16.24.010 includes the original 1982 City ordinance’s provision for exceptions approved by the City Council through a development agreement.



*Section 16.24.060.C*—Commercial and industrial subdivisions are specifically exempt from the requirement to dedicate land and/or pay in-lieu fees for park or recreational purposes per Government Code Section 66477(d). See below.

*Section 16.24.060.D*—The draft ordinance would exempt moderate income condominium projects from having to dedicate public park land or pay in-lieu fees, if the amount of private outdoor area for active/passive recreational use is provided per draft Section 17.30.030.B.4. A moderate income household has 81 to 120% of the median income for the County. The 2012 San Mateo County moderate income limits for a family of 4 are from \$88,801 to \$123,600. Government Code Section 66477 and Housing Element Program H.H.1.a do not specifically require that moderate income condominium projects be exempt, so the City Council could revise the recommended ordinance to limit the exemption to very-low and low income condominium projects per Housing Element Programs H.B.9.k & H.H.1.a. Note that the exemption for condominium projects for seniors in Section 16.24.060.E is consistent with Housing Element Policy H.B.3.

*Section 17.30.030.B.2*—This recommended standard would allow two approaches to providing laundry facilities in condominium projects: either each unit has a washer and drier (as would typically be the case for townhouses) or at least 1 washer/drier for each 5 units is provided in a shared laundry room, which is the standard adopted by the Cities of Burlingame, Pacifica and San Mateo.

*Section 17.30.030.B.4*—This recommended standard would require that condominium projects provide active and passive outdoor areas amounting to 400 sq. ft. per unit, that may be either for use in common (such as a turf play area) or for private use (such as a deck). The standard was derived from the average outdoor area provided per unit for all of the residential condominium projects approved to date in Brisbane. This consistent standard would replace a more complicated approach that differentiated between “horizontal” and “vertical” condominiums, depending upon the number of stories, and that only recognized outdoor common areas, without crediting private outdoor areas.

*Section 17.30.030*--During the Planning Commission's hearings, it was stated that the condominiums at Altamar at the Ridge were charged more than other residences for garbage pickup. In addition to a \$22.58 difference in the monthly rate charged the homeowners association as a commercial use (applicable to all multi-family residential developments of 4 or more units) compared to single-family residences for the same 96-gallon/1/2-yard container, there were complicating issues regarding garbage truck access to the enclosures for receptacles for recyclables and solid waste. Those issues have since been resolved between the homeowners association and the scavenger company. The zoning district development standards were amended in 2011 to address trash enclosure design (see, for example, BMC Section 17.28.090.J). The current franchise agreement with South San Francisco Scavenger Company expires February 28, 2014, but the option for a 10-year extension would have to be exercised by the City Council in writing by July 31, 2013.

*Section 17.30.060.A.1*—The draft ordinance would set a rental vacancy rate of 5.0% as the threshold below which condominium conversions would not be permitted, except



where unique affordable housing opportunities would be provided. According to the U.S. Census Bureau, the rental vacancy rate in Brisbane was 5.5% in 2010, compared to 4.1% in 2000. Earlier census counts did not differentiate rental from owner-occupied housing in calculating the vacancy rate.

*Section 17.30.070.B*—This recommended section would require that for conversions of apartment buildings to condominiums, any hazardous and unsafe conditions identified through the inspection required per Section 17.30.060 would have to be corrected prior to the first sale of any of the units. A Certificate of Occupancy would not be required, because the building was already approved for residential occupancy when it was originally built as apartments. The City does not require any inspections upon resale of any residential units.

*Section 17.30.070*—The question was raised as to how the ordinance could address construction defect issues. Civil Code Section 896 already lists detailed standards regarding deficiencies in residential construction for which buyers can seek recovery for damages. Note that these differ from the health and safety standards enforced by the City's building inspectors under the California Building Code.

In addition to the above, the following information is provided in response to the attached comments submitted by Dana Dillworth at the October 15<sup>th</sup> meeting:

*Environmental Assessment*--The Planning Commission found that the recommended changes pursuant to Housing Element Policy H.B.4 and Program H.B.4.a were covered under the Negative Declaration adopted by the City Council January 18, 2011, for the 2007-2014 Housing Element. For additional minor zoning amendments where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act (CEQA) per the general rule contained in State CEQA Guidelines Section 15061(b)(3). No changes to any current open space zoning or environmental safety regulations are recommended. Regarding recreation, the recommended changes to BMC Sections 16.24.010-070 concerning dedication of land for park and recreational purposes are required per Government Code Section 66477 (the Quimby Act), and the replacement of the current requirement for 300 to 750 sq. ft. of common area (BMC Section 17.30.030.C) with a standard 400 sq. ft. per residential condominium unit (Section 17.30.030.B.4) would not result in a significant environmental impact [see State CEQA Guidelines Section 15061(b)(3)].

*Sections 16.16.190.B & C*--As can be seen in the attached redline version of the draft ordinance, no changes are proposed to the Municipal Code's current language regarding public notice, which are in compliance with Government Code Sections 65090, 65091 & 66451.3. Any persons or organizations may request to be placed on the agenda distribution email lists maintained by the City.

*Sections 16.16.220-230*—The findings for approval and disapproval of tentative maps are in compliance with Government Code Sections 66427.2, 66473.1, 66473.5 & 66474. Specifically, the phrase “substantial environmental damage or substantially and avoidably



injure fish or wildlife or their habitat” in Section 16.16.220.E is taken directly from Government Code Section 66474(e). Similarly, the phrase “that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public” in Section 16.16.220.F is taken directly from Government Code Section 66474(g). Referral to applicable public agencies is already addressed in BMC Section 16.16.130. The language in Sections 16.16.230.D & 16.16.230.F is taken verbatim from Government Code Sections 66474(d) & 66474(f); transportation, parking and hazardous exposure impacts of a proposed subdivision would be addressed under the California Environmental Quality Act, not the State Subdivision Map Act.

*Section 16.20.270.B*--As can be seen in the attached redline version of the draft ordinance, no changes are proposed to the Municipal Code’s current language regarding final map approval, which is in compliance with Government Code Section 66474.1, which requires that a final or parcel map must be approved if it is in substantial compliance with the approved tentative map.

*Section 16.20.270.E.2*—The State Subdivision Map Act contains extensive notification requirements applicable to condominium conversions before and after approval (Government Code Sections 66427.1, 66452.3, 66452.8, 66452.17, .18, .19 & .20, and 66459). There is no administrative appeal after the City Council has approved a final map (Government Code Section 66452.5).

*Section 16.24.010*--Government Code Section 66477 provides that cities may adopt ordinances requiring the dedication of land, or the payment of fees in lieu of dedication of land, or a combination of both, for park or recreational purposes as a condition of approval of a tentative subdivision or parcel map. Government Code Section 66477(a)(6) states that if any in-lieu fees are not committed to develop park or recreational facilities within 5 years, “they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.” In Brisbane, the Finance Department tracks the commitment of parks and recreational facilities in-lieu fees.

*Section 16.24.020*—The formula for calculating the amount of land a residential subdivision of over 50 lots must dedicate for recreational facilities is established in Government Code Section 66477(a)(2). One of the components in the formula is the number of units, which would cover the possibility of multiple units on one lot. Note that commercial or industrial subdivisions are specifically exempt from the requirement per Government Code Section 66477(d), as reflected in Section 16.24.060.C of the draft ordinance. For more details, please refer to pages 11 & 12 of the 11/10/11 agenda report to the Planning Commission.

*Section 16.24.030*—Government Code Section 66477(a)(7) specifies those instances in which only fees may be required in lieu of dedication of land. These are either subdivisions of no more than 50 lots or condominium projects of no more than 50 units. To be consistent, Section 16.24.020 should include condominium projects of 50 or more



units, regardless of the number of lots, as being required to dedicate land. This revision is indicated in *blue* in the attached redline version of the draft ordinance.

As can be seen in the attached redline version of the draft ordinance, no changes are proposed to the Municipal Code's current provisions that assign the responsibility for determining the fair market value of land used in the calculating the in-lieu fee to the Planning Director. Because such fees are imposed as a condition of approval of the tentative map, it is the Planning Commission that has the actual authority over the calculation of the fee per Section 16.24.050.A.

*Section 16.24.040*—Government Code Section 66477(e) specifically gives credit for “private open space within the [condominium, community apartment, stock cooperative or planned development] development which is usable for active recreational use” in calculating the amount of land to be dedicated or the in-lieu fee to be paid. It would be presumed that “usable for active recreation use” means available for the use by all owners. Also see above.

*Section 16.24.050*—Although the amount of any required in-lieu fee must be determined when the tentative map is approved, the fee is not required to be paid until the final map is filed or waived. The City would then have 5 years to commit the fee to developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision per Government Code Sections 66477(a)(3) & (6).

*Section 16.24.060.C*—As noted above, Government Code Section 66477(d) specifically exempts commercial or industrial subdivisions from the requirement to dedicate land and/or pay in-lieu fees for park or recreational purposes. There are other means available under General Plan Policies 81, 91 & 93 and Programs 88c, 89a & 91b to require dedications/fees for open space in approving commercial/industrial development.

*Sections 16.24.060.D & E*—General Plan Programs 88c & 91b call for requiring that new development and redevelopment projects dedicate land or pay in-lieu fees for open space and pay impact fees for park and recreation facilities, where appropriate. Housing Element Policies H.B.1, H.B.3, H.B.6 & H.I.1 and Programs H.B.9.k & H.H.1.a to encourage development of affordable housing and senior housing by reducing construction costs and subsidizing fees. Given these different objectives, the Planning Commission recommended that condominium projects dedicated to be affordable to very-low-, low- or moderate-income households or designed and dedicated for seniors be exempt from the requirement to dedicate land [which would only apply to projects with 50 or more units per Government Code Section 66477(a)(7)] or pay in-lieu fees. To avoid confusion, staff suggests that “restricted” be used instead of “dedicated” in these sections, as indicated in *blue* in the attached redline version of the draft ordinance.

*Section 16.24.070*--As can be seen in the attached redline version of the draft ordinance, no changes are proposed to the Municipal Code's current provisions regarding bay access, other than the renumbering of the section. This section is outside the focus of the draft ordinance regarding condominiums.



*Section 17.30.030*—The condominium development standards address the potential noise impacts of air conditioning systems in Section 17.30.030.B.1. Section 17.30.030.B.2 provides two approaches: either each unit has a washer and drier (as would typically be the case for townhouses) or at least 1 washer/drier is provided for each 5 units, which is the standard adopted by the Cities of Burlingame, Pacifica and San Mateo. The requirement for 125 cubic feet of enclosed storage (for example, 3 ft. by 6 ft. by 7 ft.) in Section 17.30.030.B.3 would be the minimum requirement per BMC Section 17.01.070 and would apply only to residential units. The exception to the standard for outdoor areas for active/passive recreational use assumes that in order to be considered “adequate,” any alternatives proposed on site or in the vicinity would have to be available for use in perpetuity.

*Section 17.30.040.A.6.C*—The Use Permit application submittal requirements include a draft copy of the condominium CC&Rs which should include the items listed in this section. Other items, including those addressing various project-specific environmental considerations, may be provided by the applicant or required by the Planning Commission via the conditions of approval.

*Section 17.30.040.B*--Per BMC Section 17.01.105, concurrent processing of multiple applications is required for projects subject to approval of more than one planning permit, unless otherwise determined by the Planning Director. The Use Permit application submittal requirements for condominium development projects present one of those situations in which it would be critical to review the Design Permit application knowing that the project is intended as a condominium development, while at the same time the applicant may face unnecessary expenses in preparing and revising engineered condominium plans and accompanying legal documents for a project that may change substantially through the design review process. The recommended approach is to require concurrent initial submittal of the Design Permit and Use Permit applications but to allow staggered processing to resolve the design issues before following up with the condominium details. Design Permits are valid for two years with extensions possible for up to a total of 3 years per BMC Section 17.42.060.

*Section 17.30.040.C*—Carbon monoxide alarms, when required by California Building Code Section 420.4 for “a building containing a fuel-burning appliance or a building that has an attached garage,” should be included with smoke detectors in the property inspection report required for condominium conversion applications. This revision is indicated in *blue* in the attached redline version of the draft ordinance. The property inspection report is required to be prepared by a licensed professional, and any hazardous and unsafe conditions identified are required to be corrected per Section 17.30.070.B. The misnumbering in this section has been corrected. Regarding toxic mold, the existing list of property components to be inspected did not include interior walls, ceilings or floors. If the City Council so desires, the list of structural elements to be inspected could be amended to include “interior walls, ceilings and floors (inspected for termite, dry rot or water damage, including toxic mold).”



Submitted by DANALI HWOYH ~~FOR~~  
at → 10/15/12  
Mtg.

Zoning Text Amendment RZ-6-11 Municipal Codes Regarding Condominiums

I have some concerns about the proposed language changes that make me wonder if the commissions and committees whose purposes are to provide advice on zoning changes for open space for habitat, for environmental safety conditions, and for recreation have been asked to review this sweeping change. As written, these changes will have social and environmental impacts, yet there is no environmental assessment provided.

16.16.190 B Notice limited to three signboards in the city, should be broader, to the public at large, such as housing coalitions and other communities and organizations of interest.

16.16.190 C Is limited to owners of record only in 300 feet of the proposed subdivision. This is not adequate for other persons, organizations and communities of interest whose mission is to protect open space, low-income housing stock, public trust, public access issues and other services to the community.

16.16.220 Actions do not give the planning commission the right to deny tentative maps.

16.16.220 A- The General Plan is the guiding document. The Specific Plan must be in compliance with the General Plan.

16.16.220 E should also include language to comply with Migratory Bird Act, Rare and Endangered Species Act, State Global Warming provisions etc. Habitat is too broad of a term.

16.16.220 F fails to recognize that public access and easements have been created in the public trust. There are provisions which restrict alterations to those decisions and there are no measurements offered to define "substantially equivalent." There are specific state agencies that need notification of these potential changes, which are not considered in your limited notice practices of 16.16.190

16.16.230 D. should include language about transportation and parking facilities that won't sustain the proposed density, more so than the individual site.

16.16.230 F should also recognize that adjacent uses might cause serious public health problems, not just the proposed site. Exposure to toxic, unsafe conditions should be an appropriate reason to deny a tentative map.

16.20.270B Final map extensions should have limits. Since new laws are regularly enacted to provide greater protections for health and safety, an old final map should be reviewed for compliance with current laws. It shouldn't be extended by mutual consent of two individuals to infinity, especially without recognition of new environmental impacts from other sources.

16.20.270.E.2 should mention the period for written notices are within 10 days of the appeal period after approval of the final map.

Dedication of land for parks and recreational purposes was calculated in our General Plan with a National, very generous standard. It was one whose purpose was to maintain open space for relaxation and promote healthy environments, not make a minimum standard. In-lieu fees are a problem, because they don't guarantee a proportional set-aside for future recreation or densities in the same way dedication of land would.

In 16.24.010 you don't mention what happens if the commitment doesn't happen in five years. You also don't mention that it should be placed in a trust whose accumulated interest serves the trust of open space and recreation.

16.24.020 does not provide for multiple units on one lot. It doesn't mention whether it includes parks for commercial employers, it seems to refer to residential units only with the assumption of 2.35 persons per unit. Open Space and recreation should be clearly required of business and include the number of employees vs. people per units.

16.24.030 now includes the language of lots or units, which were not part of 16.24.020. This language should be consistent. In lieu fees should not be allowed for the reasons stated at the beginning of this page. The in-lieu fees should not be up to the Planning Director's discretion.

16.24.040 The discussion of private open space is of concern, because there is no requirement that the business or residents have access to the private open space. It could become a "club" or an exclusive "membership-only" establishment excluding the proposed low-income community you might use to get exactions, but then deny access later. This would inflate the value, that the developer would use for park and recreational improvement credits, yet not provide the recreation facilities to the community it surrounds.

16.24.050 is not consistent with the five-year requirement previously stated.

16.24.060 C Exemptions should not be allowed for commercial and industrial subdivisions. Employees need recreation. That was well documented in the creation of Sierra Point and in areas near Cosco in South San Francisco, the natural paths are a godsend to the cement environment of big box retail.

16.24.060 D – Low income condominiums should have appropriate access to the Bay and not be allowed to avoid open space and recreation obligations. Older residents need additional support and seating for their pleasure, different recreational opportunities.

16.24.070 A fails to recognize that BCDC has jurisdiction to the shoreline. "Fee or easement" should also include legal road access, not just highway.

16.24.070 C Again, public access is not determined by the planning commission, but a higher, state mandate. Public parking is also part of this provision, but not indicated here. And again, this is a reason to require greater circulation of parcel and subdivision maps.

17.30.030 B.1 fails to mention air quality standards and the impacts of air conditioning systems.

17.30.030 B.2 requiring washer/dryers for each unit fails to recognize the carbon footprint of each replicated device. The environmental impact of thousands of appliances for thousands of units should be reviewed.

17.30.030 B.3. should state that it is a minimum and related it to the square footage and purpose of the unit. 125 cubic feet (not square?) is a very small area. A business that has to store chemicals, refrigerate goods, stock materials or other purposes would not find this adequate. There could be a provision for collective storage too. In some schools, classrooms have adjoining storage or prep areas.

17.30.030 B.4. doesn't make certain the "adequate alternatives" that "available in the vicinity" are under control of the project developer. You can't guarantee the other outdoor areas will be available in the future, this provision shouldn't be allowed.

17.30.040 6.c. should include rainwater retention, native plant use, conservation measures regarding waste, energy use or other important environmental considerations. Covenants regarding sea-level rise.

17.30.040 B. It makes no sense to work on the design permit separately from all the other development requirements. There is also no indication of how long a design permit is retained, as separate from parcel or subdivision maps.

17.30.040 C.2. doesn't include carbon monoxide detectors or a confirmation of information by the city inspector.

17.30.040 2- should be #3 and also include a requirement to review for toxic molds. Particularly because two buildings on the Baylands have had that problem and are presently unusable. This is the utmost important requirement for human health and safety.

Thanks for the opportunity to review this document.  
Sincerely,  
Dana Dillworth



"REDLINE" VERSION OF CONDOMINIUM ORDINANCE AMENDMENTS  
DRAFT REVISED IN RESPONSE TO 10/15/12 COUNCIL MEETING

Changes in the current Municipal Code recommended by the Planning Commission are indicated by ~~striking through~~ the existing language to be deleted and putting the new language *in italics*. Further clarifications recommended by staff are indicated in *blue italics*.

Title 16

SUBDIVISIONS

Chapter 16.12

TENTATIVE AND FINAL PARCEL MAPS AND SUBDIVISION MAPS-WHERE  
REQUIRED

**16.12.010 – Tentative and final subdivision map—When required.**

- A tentative and final subdivision map shall be required for the following:
- A. All subdivisions creating five (5) or more parcels;
  - B. Five (5) or more condominiums as defined in Section ~~783~~ *4360* of the Civil Code;
  - C. A community apartment project containing five (5) or more parcels;
  - D. The conversion of a dwelling to a stock cooperative containing five (5) or more dwelling units.

**16.12.020 – Tentative and final subdivision map—Exceptions to requirements.**

*In the following cases where a tentative and final subdivision map would be required per Section 16.12.010, a tentative and final parcel map shall be required instead:*

- A. ~~Where the land before division contains less than five (5) acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the city council; provided, however, that this section shall not be applicable to the conversion of any existing structure to condominiums, community apartments, or and stock cooperatives projects described in Section 16.12.010;~~
- B. Each parcel created by the division has a gross area of twenty (20) acres or more and has an approved access to a maintained public street or highway;
- C. The land consists of a parcel or parcels of land having approved access to a public street or highway which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the city council as to street alignments and widths; ~~or~~
- D. Each parcel created by the division has a gross area of not less than forty (40) acres or is not less than a quarter of a quarter section; ~~or~~

- E. *The land being subdivided is solely the creation of an environmental subdivision pursuant to Section 66418.2 of the Government Code.*

**16.12.025 – Final subdivision map—Waiver of requirements.** *The requirements for a final subdivision map may be waived for the construction of a condominium project on a single parcel, if the planning commission reviews an application for waiver, accompanied by a tentative subdivision map, and finds that the proposed division of land complies with requirements established pursuant to this title as to the following:*

- A. *Area;*
- B. *Improvement and design;*
- C. *Floodwater drainage control;*
- D. *Appropriate improved public roads;*
- E. *Sanitary disposal facilities;*
- F. *Water supply availability;*
- G. *Environmental protection;*
- H. *Recorded monumentation of the boundaries of the parcels;*
- I. *Other requirements of this title and the Subdivision Map Act.*

**16.12.030 – Tentative and final parcel map—When required.** A tentative parcel map and final parcel map shall be required for the following:

- A. All subdivisions creating less than five (5) parcels;
- B. Less than five (5) condominiums as defined in Section 783 of the Civil Code;
- C. A community apartment project containing less than five (5) parcels;
- D. The conversion of a dwelling to a stock cooperative containing less than five (5) dwelling units;
- E. All subdivisions for which tentative and final *subdivision* maps are not required due to an exception set forth in Section 16.12.020.

**16.12.040 – Tentative and final parcel map—Exceptions to requirements.**  
A tentative parcel map and final parcel map shall not be required in the following cases:

- A. Where the subdivision is created by a short-term lease, terminable by either party on not more than thirty (30) days' written notice, of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code;
- B. Where land is conveyed to or from a government agency, public entity or public utility, or to a subsidiary of a public utility for rights-of-way, unless a showing is made in individual cases that public policy necessitates a parcel map.

**16.12.050 – Final parcel map—Waiver of requirements.** The requirements for a final parcel map may be waived if the planning commission reviews an application for waiver, accompanied by a tentative parcel map, and finds that the proposed division of land complies with requirements established pursuant to this title as to the following:

- A. Area;
- B. Improvement and design;



- C. Floodwater drainage control;
- D. Appropriate improved public roads;
- E. Sanitary disposal facilities;
- F. Water supply availability;
- G. Environmental protection;
- H. Recorded monumentation of the boundaries of the parcels;
- I. Other requirements of this title and the Subdivision Map Act.

**Chapter 16.16**  
**TENTATIVE MAP PROCEDURES**

**16.16.190 – Public hearing.**

- A. When the application is deemed complete, the planning director shall schedule a public hearing at which the tentative map shall be considered by the planning commission.
- B. Not less than ten (10) days before the public hearing the planning director shall give notice of the time and place thereof and a general description of the location of the proposed subdivision by posting in at least three public places in the city.
- C. Not less than ten (10) days prior to such hearing there shall be mailed, postage prepaid, a notice of the time and place of such hearing and a general description of the locale and the proposed subdivision to all persons whose names and addresses appear on the last equalized assessment roll as owning real property within three hundred (300) feet from the exterior boundaries of the proposed subdivision.
- D. In the case of a proposed conversion of residential real property to a condominium project, community apartment project or stock cooperative project, said notice of the public hearing shall be given by United States mail to each tenant of the subject property. In addition to notice of the time and place of the public hearing, the notice shall include notification of the tenants' right to appear and be heard. *Copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.*
- E. Fees may be collected from the subdivider for expenses incurred under this section.
- F. The planning commission shall conduct a public hearing on the application for the tentative map.

**16.16.220 Action by planning commission -- Findings for approval.**

- After the conclusion of the public hearing the planning commission shall approve or conditionally approve the tentative map if it makes all of the following findings:
- A. The tentative map, together with the provisions of its design and improvement is consistent with the general plan and any applicable specific plan. *This subsection shall not be applicable to condominium projects or stock cooperatives which consist solely of the subdivision of airspace in an existing structure unless such general plan contains definite objectives and policies;*

*specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives.*

- B. The real property to be subdivided, and each lot or parcel to be created is of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, geologic hazard or other menace.
- C. Each lot or parcel to be created will constitute a buildable site and will be capable of being developed in accordance with the applicable provisions of the zoning ordinance.
- D. The site is physically suitable for the type and proposed density of development.
- E. The design of the subdivision and improvements, and the type of improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, or to cause serious public health problems.
- F. The design of the subdivision or type of improvements will not conflict with easement, acquired by the public at large, for access through, or use of, property within the proposed subdivision. The planning commission may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall only be applicable to easements of record or easements established by judgment in a court of competent jurisdiction.
- G. *The design of the subdivision will provide for future passive or natural heating or cooling opportunities, to the extent feasible, in terms of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.*
  - 1. *Examples of passive or natural heating and cooling opportunities in subdivision design include design of lot size configuration to permit orientation of a structure in an east-west alignment for southern exposure and to take advantage of shade or prevailing breezes.*
  - 2. *In providing for future passive or natural heating or cooling opportunities in the design of the subdivision, consideration has been given to local climate, contour and configuration of the parcel to be subdivided, and to other design and improvement requirements, without resulting in reduced allowable densities or the percentage of a lot which may be occupied by a building or structure under the zoning ordinance as applicable at the time of filing of the tentative map.*
  - 3. *The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.*

**16.16.230 Action by planning commission -- When disapproval of tentative map is required.**

- The planning commission shall deny approval of a tentative map if it makes any of the following findings:
- A. That the tentative map is not consistent with the general plan or any applicable specific plan. This subsection shall not apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing structure where no new units are to be constructed or added, unless the general



plan or applicable specific plans contain definite objectives and policies, specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives;

B. That the design or improvement of the proposed subdivision is not consistent with the general plan or any applicable specific plan;

C. That the site is not physically suitable for the type of development;

D. That the site is not physically suitable for the proposed density of development;

E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;

F. That the design of the subdivision or the types of improvements is likely to cause serious public health problems;

G. That the design of the subdivision or the type of improvements will conflict with easements acquired by the public at large, for access through or use of, property within the proposed subdivision, and that no alternative easement for access or for use will be provided which will be substantially equivalent to ones previously acquired by the public.

H. *That the design of the subdivision will not provide for feasible future passive or natural heating or cooling opportunities; the requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.*

#### Chapter 16.20 FINAL MAP PROCEDURES

##### 16.20.270 – City council consideration and review of final maps.

A. After the final map has been checked and approved as provided above, and when all certificates, except for the approval certificate of the city clerk appearing on the final map have been signed and, where necessary, acknowledged, the city engineer shall transmit the final map to the city clerk for action by the city council.

B. The city council shall within a period of ten (10) days after the filing of the final map for approval, or at its next regular meeting, approve the final map if the map meets the requirements and conditions which were applicable to the subdivision at the time of the approval of the tentative map imposed by the Subdivision Map Act and by this title. The foregoing time limit may be extended by mutual consent of the city council and the subdivider.

C. The city council shall not approve the final map unless it finds that the proposed subdivision, together with the provisions for its design and improvement is consistent with the general plan of the city or any applicable specific plan. The city council shall deny approval of the final map if it makes any of the findings set forth in Section 16.16.230. Any such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed.

D. Concurrently with the approval of the final map the city council shall accept or reject such offers of dedication as it deems advisable. As a condition precedent to the acceptance of any roads or streets, pedestrianways, drainage channels, easements and other rights-of-way, the city council shall require the subdivider, at his option, to either improve, or in writing agree to improve the streets, pedestrianways, drainage channels, easements and other rights-of-way in the subdivision. The agreement shall be accompanied by adequate security to secure performance.

E. The city council shall not approve the final map for subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project unless it finds all of the following:

1. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has received, pursuant to Section 66452.18 66452.9 of the Government Code, written notification of intention to convert at least sixty (60) days prior to the filing of a tentative map pursuant to Section 66542 of the Government Code. There shall be a further finding that each such tenant, and each person applying for the rental of a unit in such residential real property, has, or will have, received all applicable notices and rights now or hereafter required by this title or Sections 66451 through 66469 of the Government Code. In addition, a finding shall be made that each tenant has received ten (10) days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, *that the period for each tenant's right to purchase begins with the issuance of the final public report, and that such report will be available on request. The subdivider shall also give written notice that the public report from the Department of Real Estate has been received within five (5) days from receipt.* The written notices to tenants required by this subdivision shall be deemed satisfied if such notices comply with the legal requirements for service by mail *and the requirements of Section 66427.1 of the Government Code.*

2. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given written notification within ten (10) days of approval of a final map for the proposed conversion.

3. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given one hundred eighty (180) days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion. The provisions of this subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

4. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a



period of not less than ninety (90) days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

5. This section and Section 16.20.280 shall not diminish, limit or expand, other than as provided in these sections, the authority of any city, county, or city and county to approve or disapprove condominium projects.

**Chapter 16.24**  
**PARK IMPROVEMENTS -- BAY ACCESS -- NATURAL HEATING AND COOLING**

**16.24.010 Dedication of land for park and recreational purposes.**

The subdivider shall provide for adequate and appropriate recreational facilities for the subdivision by the dedication of land in the subdivision or by the payment of fees in lieu thereof, in accordance with the conditions and requirements of this section; provided, however, that the requirements of this section may be satisfied by a development agreement between the subdivider and city council. *The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision. Any fees collected shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later.*

**16.24.020 Amounts of area to be dedicated.**

Where there are *more than fifty (50) or more* lots to be established in the subdivision or when a *condominium project, stock cooperative, or community apartment project exceeds fifty (50) dwelling units even though the number of parcels may be less than fifty (50)*, and where land therein can be properly located for public recreational facilities in accordance with the *policies and standards for parks and recreation facilities contained in the general plan or applicable specific plan*, the subdivider shall dedicate an area for such purposes on the basis of *two (2) three (3) acres* dedicated for each *fifty (50)-acres 1,000 population* within the subdivision to be developed, *assuming 2.35 persons per proposed unit.*

**16.24.030 Dedication -- Payment of fees in lieu.**

Where there are *less than fifty (50) lots or less* in the subdivision or *fifty (50) units or less in a residential condominium project, stock cooperative, or community apartment project, or where the subdivision is of fifty (50) lots or more but land within the subdivision cannot be located on a part of the subdivision as outlined in the general plan*; the subdivider shall, in lieu of dedication of land, pay a fee in a sum equivalent to the following formula: *Number of proposed units times 2.35 persons per household divided by 1,000 times 3 acres times the fair market value of 1 acre of the subject property as Average number in household times recreational standard (4.50 acres per 1,000 population) times fair market*

~~value equals amount to be paid per family unit. Minimum requirements per household unit shall be as follows:~~

~~A. Single-family and duplex areas: Three (3) times 0.0045 times fair market value;~~

~~B. Multiple-family areas: Two and one-half (2-1/2) times 0.0045 times fair market value.~~

~~**16.24.040 Dedication -- Amount of fee in lieu.**~~

~~Where a fee is required to be paid in lieu of land dedication, the amount of such fee shall be based upon fair market value of the amount of land which would otherwise be required to be dedicated pursuant to Section 16.24.030. The fair market value shall be determined by the planning director at the time of the filing of the tentative map; provided, however, that the city council may by resolution establish a fee per dwelling unit to be constructed based upon an estimate of current land values of residential property within the city, and such fee shall be determinative of the fee to be paid by the subdivider in lieu of dedication pursuant to this section. A residential condominium project, stock cooperative, or community apartment project with more than fifty (50) units may be required to dedicate land, even though the number of lots may be less than fifty (50), or pay a fee in lieu.~~

~~**16.24.040 16.24.050 Dedication -- Credits for park and recreational improvements and for private open space.**~~

~~A. If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by this chapter.~~

~~B. If a condominium project or other common interest development as defined in Civil Code Section 1351(c), community apartment project, stock cooperative or planned development provides private open space within the development which is usable for active recreational uses, the value of such land shall be a credit against the payment of fees or dedication of land required by this chapter.~~

~~A. Where private open space for park and recreational purposes is provided in a proposed subdivision and such space is proposed to be privately owned and maintained by the future residents thereof, credit may be given against the requirement of land dedication or payment of fees in lieu of dedication pursuant to Sections 16.24.010 through 16.24.070, provided:~~

~~1. That yards, court yards, setbacks and other open areas required to be maintained by the zoning and building ordinances shall not be included in the computation of such private open space; and~~

~~2. That the private ownership and maintenance of the open space is adequately provided by recorded written agreement, conveyance or restrictions; and~~

~~3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of the property and cannot be defeated or eliminated without the consent of the city; and~~



4. That the proposed private open space is reasonably adapted for use for park and recreational purposes taking into consideration such factors as size, shape, topography, geography, access and location; and
5. That facilities proposed for the open space are in substantial accordance with the provisions of the general plan; and
6. That the open space for which credit is given is a minimum of three (3) acres and provides all of the local park basic elements listed below:
  - a. Children's play apparatus area;
  - b. Landscape park-like and quiet areas;
  - c. Family picnic area;
  - d. Game court area;
  - e. Turf playfield;
- B. Before credit is given, the agency shall make written findings that the standards of this section are met.

**16.24.050 16-24-060 Dedication -- Timing of determination and payment.**

- A. At the time of approval of the tentative map, the approving agency shall determine pursuant to this chapter Sections 16-24-020 and 16-24-030 the land to be dedicated and/or the fees to be paid by the subdivider. At the time of filing of the final map or final parcel map, the subdivider shall dedicate the land or pay the fees as previously determined, except as provided below in Section 16-24-070.
- B. Open space covenants for private park or recreational facilities shall be submitted to the city upon the filing of the final subdivision or parcel map and shall be recorded contemporaneously with such map.
- C. At the time of approval of the final map, the approving agency of the final map shall specify when development of the park and recreational facilities shall be commenced.
- D. Any approval of a waiver of a final parcel map pursuant to Section 16.12.050 shall be subject to dedication of land, payment of fees and/or recordation of open space covenants as required by this chapter.

**16.24.060 16-24-070 Exemptions.**

- The provisions of Sections 16.24.010 through 16.24.050 16-24-060 shall not apply to:
- A. Subdivisions containing less than five (5) parcels and not used for residential purposes; provided, however, that a condition of approval may be attached to the approval of a tentative parcel map may require that if a building permit is requested for construction of a residential structure or structures on one (1) or more of the parcels within four (4) years, the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of such permit;
  - B. Condominium projects or stock cooperatives that which consist of the subdivision of airspace in an existing apartment building that which is more than five (5) years old when no dwelling units are added;
  - C. Commercial or industrial subdivisions: Parcel maps for a division containing less than five (5) parcels for a shopping center containing more than

- three hundred thousand (300,000) square feet of gross leasable area and no residential development or uses;
- D. Condominium projects restricted so as dedicated to be affordable to households with very-low, low, or moderate incomes, subject to restrictions approved by the City and recorded with the County of San Mateo, for which outdoor areas are provided in compliance with Section 17.30.030;
- E. Condominium projects designed and restricted to dedicated for use by households with one or more members who are 62 years of age or older, subject to restrictions approved by the City and recorded with the County of San Mateo.

**16.24.070 16-24-080 Bay access.**

- A. No tentative or final subdivision or parcel map of any subdivision fronting upon the shoreline of San Francisco Bay shall be approved unless the subdivision provides or has available reasonable public access by fee or easement from public highways to land below the ordinary high water mark within or at a reasonable distance from the subdivision.
- B. Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and such map shall expressly designate the governmental entity to which such route or routes are dedicated.
- C. Reasonable public access shall be determined by the planning commission.
- D. In making the determination at what shall be reasonable public access, the planning commission shall consider:
  1. That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel;
  2. The size of the subdivision;
  3. The type of shoreline and appropriate public use;
  4. The likelihood of trespass on private property and reasonable means of avoiding such trespass.

**16.24.090 Passive or natural heating and cooling.**

- A. The design of a subdivision for which a tentative map is required shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.
- B. Examples of passive or natural heating and cooling opportunities in subdivision design include design of lot size configuration to permit orientation of a structure in an east-west alignment for southern exposure and to take advantage of shade or prevailing breezes.
- C. In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be subdivided, and to other design and improvement requirements. Such provision shall not be imposed so as to result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under the zoning ordinance as applicable at the time of filing of the tentative map.
- D. The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.



~~E. For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.~~

## Title 17 ZONING

### Chapter 17.02 DEFINITIONS

**17.02.150 Condominium.** "Condominium" means a building, or group of buildings, in which dwellings units, ~~commercial/retail/office/warehouse spaces offices, retail sales or rental spaces,~~ floor areas, or other portions of the property are owned individually or restricted for the exclusive use of a single owner, and the structure, common areas, and common facilities are owned by all the owners on a proportional, undivided basis. The individual ownership interest may include a fee, a life estate, a leasehold, or a right of use during a specific period of time. *As used in this title, the term includes "community apartment project" and "stock cooperative" as defined by State Civil Code Sections 1351(d) and (m).*

### Chapter 17.30 CONDOMINIUMS

#### 17.30.010 Purpose.

~~The city council finds and determines that condominiums, community apartments, and stock cooperatives differ from apartments in numerous respects, and that, for the benefit of public health, safety, and welfare, such projects should be treated differently from apartments. The city council, therefore, states its express intent to treat such projects differently from apartments and like structures for the protection of the community and the purchasers of condominiums, community apartments, and stock cooperatives.~~

#### *Purposes of chapter*

*The purpose of this chapter is to regulate the development of new residential, commercial and mixed-use condominiums and the conversion of existing units to such condominiums, with the objectives of encouraging local equity ownership, while discouraging the conversion of existing rental housing to condominiums or cooperatives unless it is demonstrated that such conversions would not adversely affect the rental market or would provide unique housing opportunities for very-low, low- and/or moderate-income households, in addition to the objectives set forth in Section 17.01.030.*

#### 17.30.020 Use Permit required ~~s~~ ~~---Conversions---~~ ~~New-construction projects.~~

A. Before final approval and issuance of any building permit for any condominium, community apartments, or stock cooperative project, and before

the conversion of any existing structure to condominiums, community apartments, or stock cooperatives; the developer, builder or other person seeking to construct the project or convert the existing structure shall first obtain from the planning commission a use permit for new construction, or conversion, as the case may be pursuant to the provisions of Chapter 17.40 and this Chapter.

~~B. Such permit shall be issued only upon the approval of the planning commission, or the city council, on appeal, after it has been determined that such project or existing structures conform to the general plan, all applicable zoning regulations, and, in the case of the conversions, to all other city requirements;~~

~~C. Use permits shall be evaluated and processed pursuant to Chapter 17.40. No use permit for a conversion or for new construction shall be granted unless the planning commission, or the city council on appeal, finds that the granting of the application will not under the circumstances of the particular case be detrimental to the health, safety, morals or general welfare of the persons residing or working in the neighborhoods of the proposed project or conversion, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the city.~~

#### 17.30.030 Development standards.

A. The following development regulations shall apply to all newly-constructed condominiums and condominium conversions for residential and/or commercial occupancies:

1. ~~A. Use, Height, Yard, and Other Regulations.~~ Regulations governing the use, building height, required yards, building separation, signs, off-street parking, and other explicit regulations, where applicable and where not governed by the provisions of this chapter, shall be those of the district within which the development is located.

2. ~~B. Density.~~ The maximum allowable density in any residential condominium shall be the density specified for the district in which the condominium is located.

~~C. Outdoor Common Area.~~ In all residential condominiums the outdoor common area, exclusive of all structures, shall contain an area having a slope of not more than ten percent (10%) and a minimum area per unit as follows:

1. For horizontal condominiums, seven hundred fifty (750) square feet per unit; and

2. For vertical condominiums:  
a. Where structures average two (2) stories or less, five hundred (500) square feet per unit;

b. Where structures average between two (2) and three (3) stories, four hundred (400) square feet per unit; and

c. Where structures average three (3) stories or more, three hundred (300) square feet per unit;

~~D. Right of Way.~~ The rights of way and improvements thereon, for all streets, whether to be public or private, shall be approved by the commission;

3. Separate and independent water, sewer, electrical, gas, and telecommunications systems shall be provided for each unit. Exceptions may be approved by the Planning Commission when the applicant satisfactorily



demonstrates, through the provision of adequate CC&Rs and/or other appropriate measures, that the benefits of shared utilities/facilities outweigh the detriments for the project, in terms of the arrangement (side-by-side versus stacked) and/or number of units proposed.

B. The following development regulations shall apply to newly-constructed residential condominiums and residential condominium conversions (including residential units in mixed-use developments):

1. All permanent mechanical equipment, such as motors, compressors, pumps and compactors that could be a source of structural vibration or structure-borne noise shall be shock mounted with inertia blocks or bases and/or vibration isolators.

2. Either washer and drier hookups shall be provided for each unit or 1 washer and 1 drier shall be installed in a laundry room for every 5 units

3. 125 cubic feet of enclosed storage area shall be provided for each unit.

4. Outdoor areas shall be provided for active or passive recreational use for a total combined area equal to 400 sq. ft. per unit. Such areas may include decks, patios, lawns with a slope not exceeding 10%, and landscaped areas accessed with walkways and provided with permanent seating, but shall not include walkways that serve as the required means of egress. Such areas may be for use in common or dedicated to private use. Exceptions may be approved by the Planning Commission if adequate alternatives are proposed on site or available in the vicinity.

**17.30.040 Development-application.— Application for condominium use permit.**

A. The Applications for a use permits for newly-constructed condominiums or condominium conversions ~~condominium-developments~~ shall be accompanied by the following:

1. A. A map to a workable scale, showing the site in relation to surrounding property, existing roads and other existing improvements;

2. B. A site plan, showing ~~existing and~~ proposed improvements, locations of buildings on the ground, orientation of buildings, utilities, public services, public facilities, streets and alleys, landscaping, and the boundaries of the projects, including the details necessary to demonstrate compliance with the applicable development standards per Section 17.30.030;

3. C. Drawings showing how airspace is to be divided within the condominium consistent with the requirements for a "condominium map" per California Civil Code Sections 1531 (e) & (f);

4. D. Application for tentative parcel or subdivision map approval, including a A-copy of the tentative parcel or subdivision map, ~~except where a vesting tentative map is to be used for the development project, in which case a use permit for the condominium, community apartments, or stock cooperative project shall be approved prior to or concurrently with the vesting tentative map;~~

5. E. Floor plans and elevations of all existing and proposed buildings and structures, including the details necessary to demonstrate compliance with the applicable development standards per Section 17.30.030;

6. F. A copy of the proposed declaration of restrictions (for condominium projects with unit-owners associations) and ~~proposed management arrangement relating to the projects, or maintenance agreement (for smaller condominium projects without unit-owners associations)~~ as required by the provisions of Section 1355 of the Civil Code of the state, including the following:

a. A requirement for binding arbitration for tie votes;

b. Provisions addressing property, general liability, earthquake and flood insurance responsibilities;

c. Provisions addressing maintenance responsibilities for roof, gutters, sidewalks, painting, landscaping, any habitat areas subject to the San Bruno Mountain Area Habitat Conservation Plan, and other common area improvements (including timing of maintenance items and method to apportion costs);

d. Provisions for the reconstruction of the project in accordance with codes in effect at the time of such reconstruction, in the event of the destruction of the condominium project.

e. A provision specifying that the City of Brisbane is named as a third-party beneficiary for enforcement purposes, if recommended by the city attorney; and

7. G. Any information deemed necessary or desirable in assisting the commission in its determinations.

**17.30.050 Conversion-application.**

B. The application for a use permit for newly-constructed condominiums shall be accompanied by an application for a design permit as required by Sections 17.01.105 and 17.42.010 of this title. The planning director may determine that the application for the design permit shall be processed first, prior to completion and processing of the application for the condominium use permit.

C. The application for a use permit for a ~~conversion project residential condominium conversion (including conversion of a mixed-use development with residential units)~~ shall include, in addition to the requirements in Section 17.30.040, ~~A imposed elsewhere, the following information:~~

~~A. Original building plans, landscaping plans and other plans showing the locations of all buildings and structures, utility facilities and landscaping;~~

~~B. A tentative subdivision map, except where a vesting tentative map is to be used for the conversion project, in which case a use permit for the conversion project shall be approved prior to or concurrently with the vesting tentative map;~~

1. ~~C. 1.~~ A building history report, including the following:

a. The date of construction of all elements of the project,

b. A statement of the major uses of the project since construction,

c. The date and description of each major repair or renovation of any element since the date of construction,

d. The name and address of each present tenant of the project,

~~e. 2. Failure to provide information required by subdivision 1 of this subsection shall be accompanied by in the event that any of the information in subsections a. through d. cannot be provided, an affidavit or declaration setting~~



forth in detail all efforts undertaken to discover such information and reasons why the information cannot be obtained;

2. ~~D-1.~~ A property inspection report prepared by a licensed civil engineer, structural engineer, architect, general building contractor and/or general engineering contractor, determining the level of current building and fire code compliance for and describing the condition and estimating the useful life of each of the following elements of each structure within the project:

- a. Foundations,
- b. Structural elements,
- c. Roofs,
- d. Drainage systems,
- e. Exterior sidings and finishes,
- f. Paved surfaces,
- g. Mechanical systems,
- h. Electrical systems,
- i. Plumbing systems, including sewer systems,
- j. Landscaping,
- k. Sprinkler systems for landscaping,
- l. Utility delivery systems,
- m. Central or community heating and air conditioning systems,
- n. Fire protection systems, including any automatic sprinkler systems,
- o. Alarm systems and property security in general,
- p. Smoke detectors and any required carbon monoxide alarms,
- q. Standpipe systems,

~~2.~~ Such report shall be presented by a licensed engineer. In addition, a statement of the condition of all appliances in each unit shall be submitted;

3. Written certification from a licensed appliance repair contractor on the working condition of all private and common appliances and mechanical equipment;

4. Written certification from a licensed painting contractor on the condition of all exterior painted surfaces;

5. Written certification from a licensed roofing contractor on the condition of all roofs;

6. E. A structural pest control report prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code;

7. An acoustical test data report on the noise attenuation characteristics of existing party walls, floors and ceilings prepared by a licensed acoustical consultant, based upon a representative sampling of the units, identifying any current Building Code standards for exterior and interior noise transmission that cannot be met.

8. F. A summary of average rents for each bedroom type of rental unit, and a detailed unit history containing the following information:

- a. 4. Location of unit,
- b. 2. Number of rooms,
- c. 3. Size of unit in square feet,

d. 4. Rental rate during two (2) years preceding the date of submittal of the application, indicating dates of rental rate increases,

e. 5. Duration of occupancy of present tenants;

9. G. A housing and tenant relocation report. Such report shall be prepared by a qualified consultant approved by. At the discretion of the planning director, the consultant shall be selected either by the director or the applicant. The cost of the report shall be borne by the applicant. The report shall contain the following information:

a. 4. The number of multiple dwelling rental units which will remain in the city after the conversion,

b. 2. The nature and type of relocation assistance proposed by the applicant, including financial assistance and the provision of alternative housing facilities, including relocation programs,

c. 3. Vacancy information in rental units and the availability thereof;

a. Within San Mateo County in general, and

b. Within northern San Mateo County in particular, including territory within the city cities of Daly City, Pacifica, South San Francisco, Brisbane, Colma, San Bruno, Millbrae, and Burlingame, and the adjacent unincorporated territory;

d. 4. The proposed schedule of meetings which the applicant plans or proposes to hold with tenants to explain the application and its ramifications to the tenants,

e. 5. The proposed phasing or timing schedule of conversion and sale of units,

f. 6. Whether existing tenants will be given any discount from otherwise applicable sales prices,

g. 7. Any plan for temporary displacement of tenants who purchase units,

h. 8. A description of the demographic composition of the tenants, including information on age, persons per unit, persons over age sixty-two (62), number of permanent disabled persons, and tenure per unit;

i. Suitable proof of compliance with the residential tenant notification requirements in Government Code Sections 66452.17 and 66452.18.

#### 17.30.050 Notice.

A. In addition to the requirements set forth in Chapter 17.54, notice shall be given to the residential tenants in any building proposed to be converted to condominiums, concurrent with the notice required by Section 16.16.190.D.

B. Copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.

#### 17.30.060 Findings.

A. In addition to the findings required for the granting of a use permit as set forth in Section 17.40.060, no use permit for a residential condominium conversion (including conversion of a mixed-use development with residential

units) shall be granted unless the planning commission also finds and determines that:

1. The condominium conversion will not adversely affect the rental market by not reducing the residential rental vacancy rate to less than 5.0% or
2. The condominium conversion will provide unique housing opportunities for very-low, low- and/or moderate-income households, based upon proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the planning commission.

**17.30.070 Action by planning commission—Mandatory conditions.**

The planning commission may either grant or deny the application for the condominium use permit. If granted, the planning commission may impose such conditions and requirements as it deems appropriate in order to make all of the findings prescribed in Section 17.30.060, but the following mandatory conditions shall be included in every condominium use permit, as applicable:

- A. The required off-street parking spaces, excluding any guest parking spaces, shall be assigned to and included in the ownership of each individual condominium unit and shall not be sold or transferred except with the sale of such unit.
- B. For residential condominium conversions (including conversion of a mixed-use development with residential units), any hazardous and unsafe conditions identified through the inspection required per Section 17.30.060 shall be corrected prior to the first sale of any of the converted units.

**17.30.060 Property inspection and compliance.**

Prior to the conveyance of any unit, the premises shall be inspected by a licensed civil engineer to ascertain that the structures are consistent with the public health and safety. Such inspection shall be performed at the expense of the applicant. Hazardous and unsafe conditions shall be alleviated and repaired prior to the conveyance of any unit, regardless of whether the condition may have complied with the provisions of this title at the time of original construction. The project must meet, at a minimum, the standards as were in effect as of the date of construction of the structure within the project.

**17.30.080 Appeals.**

- A. Any decision or determination made by the planning commission pursuant to this chapter may be appealed to the city council in accordance with the procedures set forth in Sections 17.52.101 and 17.52.020 of this title, except that the appeal shall be filed within ten (10) calendar days after the date on which the decision or determination is rendered, consistent with Section 16.44.020 and Government Code Section 66452.5.
- B. Notice of any appeal regarding a use permit for residential condominium conversions (including conversion of a mixed-use development with residential units) shall be given to residential tenants of the building subject to the proposed condominium conversion, consistent with Section 16.44.050.B.3 and Government Code Section 66452.5.



# City of Brisbane Agenda Report

TO: Honorable Mayor and City Council  
FROM: Community Development Director via City Manager  
SUBJECT: Ordinance No. 566 (Zoning Text Amendment RZ-6-11) to Amend Brisbane Municipal Code Titles 16 and 17 Regarding Condominiums  
DATE: October 15, 2012

## City Council Goals:

To provide for effective and efficient delivery of City services (Goal #1).  
To preserve and enhance livability and diversity of neighborhoods (Goal #14).

## Purpose:

To update the Subdivision Ordinance so as to be consistent with current State law in regards to condominiums, dedication of land for park and recreation purposes, and passive or natural heating/cooling opportunities in subdivision design; and to amend the Zoning Ordinance to clarify condominium approval procedures and to revise the condominium development standards.

## Recommendation:

That the City Council introduce Ordinance No. 566.

## Background:

2007-2014 Housing Element Policy H.B.4 directs the City to "discourage the conversion of existing apartment buildings to condominiums or cooperatives unless it is demonstrated that such conversion would not adversely affect the rental market or that the conversion would provide unique housing opportunities for very-low-, low- and/or moderate-income households." Program H.B.4.a calls for refining the Zoning Ordinance standards for condominium conversions to reflect this City policy and current State law.

The Planning Commission recommended approval of the proposed ordinance as Zoning Text Amendment RZ-6-11.

## Discussion:

While the attached Planning Commission report and minutes provide a detailed analysis of the recommended changes, a brief summary is provided below.

## Subdivision Ordinance--

*Tentative and Final Parcel Maps and Subdivision Maps-WhereRequired.* The recommended ordinance would update the exclusions from the requirements for tentative and final subdivision maps so as to be consistent with State Government Code Section 66426 (Subdivision Map Act). Per the Map Act, the recommended ordinance would provide for the waiver of a final subdivision map for construction of a condominium project of 5 or more units on a single parcel, as is already provided for projects of 4 or fewer units per specified findings, since the Map Act does not require that such maps actually delineate the units. For proposals that would convert existing rental units into condominiums, a final subdivision map would still be required to assure that notice (including copies of the staff report for condominium conversion applications) is given to any tenants as specifically required in the Map Act.

*Tentative Map Procedures.* The findings required to be made by the Planning Commission for approval of tentative maps would be edited so as to cover condominium conversions consistent with General Plan policy. The requirement that subdivisions be designed to provide for future passive or natural heating or cooling opportunities would be relocated to the tentative map findings section. The findings required for City Council approval of final maps for condominium conversions would be updated to reflect recent amendments in State law.

*Park Improvements--Bay Access.* State law (the Quimby Act) allows cities, by ordinance, to require the dedication of land for park or recreational purposes or the payment of in-lieu fees in approving subdivisions, including new condominium projects. The standard formula for calculating these amounts is 3 acres of park area per 1,000 persons, using the average number of persons per household per the most recent available federal census. BMC Sections 16.24.010 through 16.24.070 are recommended to be updated to reflect current state law and 2010 U.S. Census results. The timeline for dedication, fee payment and construction in BMC Section 16.24.060 is recommended to be clarified as to how it would apply to condominium projects. Exceptions are recommended for condominium projects to be dedicated to be affordable to households with very-low, low, or moderate incomes, if outdoor areas are provided in compliance with the new development standards for condominiums (see below), and for those to be designed and dedicated for use by seniors.

## Zoning Ordinance--

*Definitions.* The definition of "condominium" in the Zoning Ordinance is recommended to be expanded to include "community apartment project" and "stock cooperative," consistent with the Subdivision Ordinance's definitions.

*Condominiums.* The purposes of the condominium ordinance would be clarified in terms of General Plan policies and programs. To discourage the conversion of existing apartment buildings to condominiums unless the rental market would not be adversely affected or unique below-market-rate housing opportunities would be provided as required by the Housing Element, the City's condominium ordinance is recommended to be amended to include a new finding addressing this. Before a Use Permit could be approved for a condominium conversion, the Planning Commission would have to find that either the project would not reduce the residential rental vacancy rate to less than 5% or the project would provide more affordable housing, based upon proposed sales prices, financing and projected monthly dues, than otherwise required by the City's inclusionary housing program.

The development standards for condominiums would be updated to include value-enhancing amenities comparable to other jurisdictions in San Mateo County. The current outdoor common area development standard for condominiums would be simplified to require 400 sq. ft. of outdoor area for active or passive recreational use per unit. Separate utilities would be required for each new or converted unit, with exceptions requiring Planning Commission approval. New standards are proposed for enclosed storage area and laundry facilities for condominiums. In addition, the Planning Commission questioned how the franchise agreement with South San Francisco Scavenger Company structured the charges for shared garbage receptacles for condominiums compared to smaller individual receptacles for single-family residences.

The Use Permit application checklists for new and converted condominiums would be better coordinated to address management, maintenance and code compliance. To evaluate potential noise impacts, an acoustical consultant's report would be required for conversions, identifying any current Building Code standards for noise transmission that cannot be met. As for new condominium construction, the California Building Code was recently updated to include new sound transmission specifications for wall and floor-ceiling assemblies separating units to keep interior noise levels from outside sources at or below 45 decibels.

State requirements for tenant notification would be incorporated into the ordinance. As noted above, new findings would be added. New standard conditions of approval for condominium Use Permits would require correction of any hazardous and unsafe conditions for condominium conversions and parking spaces assigned to each unit for all condominium projects. The new appeal period would be 10 days, consistent with the Subdivision Ordinance.

**Fiscal Impact:**

None.

**Measure of Success:**

Improving the Municipal Code by eliminating conflicts with state law; preserving existing rental housing while encouraging the provision of unique housing opportunities for very-low-, low- and/or moderate-income households.

**Attachments:**

Redline Version of Condominium Ordinance Amendments (NOT INCLUDED)  
Draft Ordinance No. 566 (NOT INCLUDED)  
Planning Commission Resolution RZ-6-11 with Draft Ordinance Attached (NOT INCLUDED)  
Planning Commission Minutes for 11/10/11 Meeting (excerpt)  
Agenda Report for 11/10/11 Planning Commission Meeting



John Swiecki, Community Development Director



Clay Hölstine, City Manager



excerpt  
BRISBANE PLANNING COMMISSION  
Action Minutes of November 10, 2011  
Regular Meeting

NEW BUSINESS

1. **PUBLIC HEARING: Zoning Text Amendment RZ-6-11 to Amend Brisbane Municipal Code Title 17; Chapter 17.02, Definitions, and Chapter 17.30, Condominiums;** City of Brisbane, applicant

Senior Planner Tune presented the agenda report.

Commissioner Parker asked about amending the Building Code to require acoustical sheet rock or other means to reduce noise between units above and below. Commissioner Reinhardt asked whether it might be better to revise the standard for sound transmission class ratings from STC-50 to STC-60. Chairman Mumar commented that footsteps noise varies with the type of construction. Community Development Director Swiecki noted that adoption of more restrictive building standards than in the recently adopted California Building Code would have to be justified to the California Building Standards Commission. Senior Planner Tune suggested that the Deputy Building Official could address the matter when it comes before the City Council.

In response to a question from Commissioner Parker, Senior Planner Tune explained that the proposed storage requirement was intended to provide the type of storage typically found in a private garage.

Commissioner Parker questioned whether individual garbage receptacles should be included for each unit. She noted that while it may be impractical, especially for stacked condominiums, the pickup fee is higher for larger multiplex receptacles. Chairman Mumar stated that the pricing structure would be addressed in the City's franchise agreement with the scavenger company. Director Swiecki noted that this matter was outside the Commission's purview. Senior Planner Tune added that the City Council could consider the impact of the pricing structure upon the affordability of housing when it acts upon the condominium ordinance.

Seeing no one in the audience, Chairman Mumar dispensed with opening and closing the public hearing and made the motion to adopt Resolution RZ-6-11, recommending that the City Council adopt the draft ordinance. The motion was seconded by Commissioner Parker and adopted, 5-0.

# City of Brisbane Planning Commission Agenda Report

TO: Planning Commission  
FROM: Tim Tune, Senior Planner, via John Swiecki, Community Development Director  
SUBJECT: **Zoning Text Amendment RZ-6-11** to Amend Brisbane Municipal Code Title 17, Chapter 17.02, Definitions, and Chapter 17.30, Condominiums; City of Brisbane, applicant.

For the Meeting of 11/10/11

MS

**REQUEST:** Amendments to the Brisbane Municipal Code Section 17.02.150 and Chapter 17.30 regarding condominiums are proposed to implement Housing Element Policy H.B.4 to "discourage the conversion of existing apartment buildings to condominiums or cooperatives unless it is demonstrated that such conversion would not adversely affect the rental market or that the conversion would provide unique housing opportunities for very-low-, low- and/or moderate-income households."

Additional changes would simplify the current requirement for outdoor area for residential condominium projects and add new requirements for enclosed storage, washer/driers and separate utilities. New standard conditions of approval for condominium Use Permits would require correction of any hazardous and unsafe conditions for condominium conversions and parking spaces assigned to each unit for all condominium projects.

The draft ordinance would also amend the Subdivision Ordinance to update various sections regarding condominiums, dedication of land for park and recreational purposes, and passive or natural heating/cooling opportunities in subdivision design.

**RECOMMENDATION:** Recommend that the City Council adopt the draft ordinance, via adoption of Resolution RZ-6-11.

**ENVIRONMENTAL DETERMINATION:** A Negative Declaration was adopted by the City Council January 18, 2011, for the 2007-2014 Housing Element, including Policy H.B.4 and Program H.B.4.a which the proposed ordinance would implement. For additional minor zoning amendments where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act (CEQA). This general rule is contained in State CEQA Guidelines Section 15061(b)(3).

**STAFF ANALYSIS:** The following is a section-by-section review of the current Zoning Ordinance standards for condominium conversions contained in Brisbane Municipal Code

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RZ-6-11  
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Chapter 17.30, as well as the general condominium regulations throughout the Municipal Code, with recommendations for amendments to be consistent with current State law and City policy.

**Definitions:** The definition of "condominium" provided in BMC Section 17.02.150 is recommended to be expanded to include "community apartment project" and "stock cooperative" as defined by State Civil Code Sections 1351(d) and (m) (see attached Draft Redline Ordinance and California Codes Excerpts). These three terms are already defined in the Subdivision Ordinance in BMC Section 16.08.280 B.

**Purpose:** BMC Section 17.30.010 of the condominium ordinance is proposed to be updated to incorporate the intent of the General Plan Program 8c, as well as Policy H.B.4 and Program H.B.4.a:

Program 8c: Encourage local equity ownership in local development in order to retain more economic benefits within the community.

Policy H.B.4 Discourage the conversion of existing apartment buildings to condominiums or cooperatives unless it is demonstrated that such conversion would not adversely affect the rental market or that the conversion would provide unique housing opportunities for very-low-, low- and/or moderate-income households.

Program H.B.4.a Refine the current Zoning Ordinance standards for condominium conversions of existing rental units to reflect current law and City policy.

Please refer to the attached Draft Redline Ordinance for the recommended language.

**Permits—Conversions—New Construction Projects.** Although condominiums are considered a form of subdivision regulated by the State Subdivision Map Act (see attached Condominium Approval Process chart), Government Code Section 66427(a) (attached) specifically states that the tentative subdivision or parcel map for the project need not show the manner in which the building airspace is proposed to be divided. Instead, Civil Code Sections 1531 (e) & (f) provide that the airspace be delineated on a "condominium plan" defined as "(1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan..."

Such a condominium plan is then required as part of the Use Permit required by the City per BMC Section 17.30.02.A for newly constructed or converted condominiums. The requirement for a planning permit (in addition to a subdivision permit) could be considered a disincentive toward encouraging home ownership, counter to General Plan Program 8c, but it is a necessary

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means to be able to require submittal of a condominium plan prior to City approval of proposed condominiums.

The standard Use Permit findings are required for approval of condominium conversions, as well as for new condominium construction. There currently is no specific finding addressing Housing Element Policy H.B.4's requirement that it be demonstrated that a proposed condominium conversion will not adversely affect the rental market. Detailed reports on vacancy rate information are required to complete Use Permit applications for condominium conversions (BMC Section 17.30.050.G.3), but the ordinance includes no standard against which to judge whether a project's impact will be "detrimental to the general welfare" in terms of the availability of rental housing for any displaced tenants in a condominium conversion project, as well as in terms of the greater impact upon the City's rental housing stock.

Because the California Department of Finance established 5.0% as the target rental vacancy rates used in determining the regional housing need allocation for the 2007-2014 Housing Element planning period, staff recommends that this be incorporated into the ordinance as the threshold for permitting conversions. The 2010 U.S. Census found the rental vacancy rate in Brisbane to be 2.0%, down from 4.1% in 2000.

Housing Element Policy H.B.4 would allow condominium conversions, even in a tight rental market, if it could be demonstrated that the conversion would "provide unique housing opportunities for very-low-, low- and/or moderate-income households." The City's density bonus ordinance and inclusionary housing program (BMC Chapter 17.31) could be a means to help provide such opportunities. Per BMC Sections 17.31.090 & 17.31.100 and Government Code Section 65915.5, condominium conversion projects of 5 or more units in which at least 33% of the total units are designated for moderate-income households qualify for an incentive equivalent in value to a 25% density bonus. BMC Section 17.31.030.B.3 requires that all housing developments of 6 or more units, including condominium conversion projects (per BMC Section 17.31.020.X), provide 10-19% of the units as affordable to low-income households and/or moderate-income households.

While condominium conversion projects of less than 5 units do not qualify for density bonuses, and condominium conversion projects of less than 6 units would not be subject to the inclusionary housing program, small rental complexes should still be protected from conversion in a tight rental market unless provisions are made for their affordability.

Accordingly, staff recommends that condominium conversions be prohibited when the rental vacancy rate in Brisbane is less than 5%, unless the conversion would provide more units affordable to very-low-, low- and/or moderate-income households than required by the current inclusionary housing program. This would mean that for projects of 5 or fewer units, which would not be subject to the inclusionary housing project, at least 1 affordable unit would be required to be provided. The affordability of these units should be confirmed through proposed

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sales prices, financing and projected monthly dues, in addition to other factors as determined by the Planning Commission.

Development Standards. Per BMC Section 17.30.030, the typical zoning district development standards for minimum setbacks, maximum height limits, etc., apply to condominiums the same as for any other form of construction. An exception is the current requirement for outdoor common area for residential condominiums, which is not applicable to single-family or rental multi-family development (except in the NCRO-2 District per BMC Section 17.14.060.I, see below). There are other standards that the Commission may wish to consider imposing on condominiums to distinguish them from rental housing. It should then be made clear which of these requirements would apply only to residential condominiums, as opposed to commercial ones, and which would apply only to newly constructed condominiums, as opposed to condominium conversions.

Outdoor Common Area. BMC Section 17.30.030.C currently sets standards for providing "outdoor common area" with a maximum 10% slope standard for such areas, based upon the height of the building and the number and type of units. "Horizontal" townhouse developments are required to provide more outdoor common area than are "vertical" stacked flats. Short stacked-flat developments are required to provide more outdoor common area than taller ones. The standard appears to be based upon assumptions of how much outdoor common area certain types and sizes of projects can accommodate, rather than upon typical need.

Condominium Type	Outdoor Common Area
Horizontal	750 sq. ft.
Vertical--	
≤ 2 Stories	500 sq. ft.
2 - 3 Stories	400 sq. ft.
≥ 3 Stories	300 sq. ft.

In contrast to condominiums, mixed-use residential units in the NCRO-2 District are required to provide 60 sq. ft. of passive open space per unit, either individually or collectively, regardless of the type of unit or height of the building (BMC Section 17.14.060.I). Logically, if condominium occupants need a specific amount of relatively flat outdoor common area, then the same standard should apply to all types of units, regardless of whether they are located beside ("horizontal") or atop ("vertical") one another or are in buildings of any number of stories.

The current requirements date back to 1969. At that time, the ordinance included the provision that "[t]he requirements of this Section may be met in all or part by any equivalent open ground area which is a part to any individual condominium." Thus, it was clearly the intent of the ordinance to accept "private" outdoor areas as part of the overall requirement and not limit such outdoor areas to those held in common. To avoid confusion, it would be preferable to simply use the term "outdoor area."

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When reviewing the City's approved condominium projects (see attached chart), the difficulties in meeting the current standard become apparent. While the intent of the requirement appears to have been to assure that useable outdoor areas such as decks, patios, playgrounds and picnic spots would be provided, the Planning Commission frequently cited any landscaped area, regardless of slope or other suitability for active use, in granting exceptions to the requirement. Based upon the average outdoor area provided per unit for all of the condominium projects that have been approved to date, a standard of 400 sq. ft. per unit is recommended. The new standard would clearly spell out what types of space will be accepted as "outdoor area" and would specify findings for exceptions.

*Utilities.* The ordinance should address whether provision of independent water, sewer, power, telecommunications and other utilities should be a standard requirement for new condominium projects and condominium conversions. For example, while it may be practical and economical for larger condominium developments to share a sewer connection, a two-unit project with no homeowners association to oversee maintenance may find itself divided over who was responsible for a shared sewer line problem. The City of Half Moon Bay specifically requires separate sewer laterals for all "horizontal" condominiums (townhouses). Individual gas and electrical meters allow each unit to be billed separately, and separate water shut-off valves allow plumbing repairs to be made in one unit without turning off the water supply for the entire building, yet there may be cases where the Planning Commission may find that providing such independent utilities may be impractical and excessively expensive.

Staff recommends for newly-constructed condominiums and conversions, the ordinance should require separate and independent water, sewer, electrical, gas and telecommunications systems for each unit. The ordinance should allow for approval of exceptions when the applicant demonstrates to the Planning Commission's satisfaction, through the provision of adequate CC&Rs and/or other appropriate measures, that the benefits of shared utilities outweighs the detriments for the project, in terms of the arrangement ("vertical" vs. "horizontal") and/or number of units proposed.

*Storage and Laundry Facilities.* Some cities have specific private storage and laundry facility requirements for condominium projects. The City of Half Moon Bay requires at least 125 cu. ft. of enclosed, weatherproofed and lockable storage space per unit, while the City of Burlingame requires that 200 sq. ft. of private storage space be provided for each unit. A typical modular storage unit found in shared garages is generally 2-5 ft. deep by 4-8 ft. wide by 5-7 ft. tall with an average capacity of 125 cu. ft. Accordingly, staff recommends a requirement of 125 cubic feet of enclosed storage area for each unit.

The Cities of Burlingame, Pacifica and San Mateo require at least 1 washer and drier for each 5 units. Staff recommends that the development regulations for new condominiums and condo conversions should be revised to include requirements for the provision of either washer and drier hookups for each unit or 1 washer and 1 drier installed in a laundry room for every 5 units.

G. I. S.

*Noise Proofing.* The recently updated California Building Code incorporates new sound transmission standards for attached dwelling units. Per Building Code Section 12.07.6, all wall and floor-ceiling assemblies separating dwelling units from each other and from public or service areas, including garages and mechanical spaces, are required to meet a sound transmission class (STC) rating of 50. With STC-50 construction, very loud sounds, such as music, would muffled to the point where most people next door or above or below would not be annoyed. This type of construction would fall between a double layer of 1/2" drywall on each side of wood studs with batt insulation (STC-45) and 5/8" drywall on each side of 2"x4" steel studs on 24" centers with special sound insulation installed in between. R-13 insulation is required for walls and R-19 for ceilings. Penetrations or openings in construction assemblies for plumbing, electrical outlets, etc. must be sealed, lined, insulated or otherwise treated to maintain the required rating. The Building Code has similar standards for structure-borne noise (vibration) applicable to floor-ceiling assemblies. The purpose of these standards is to keep interior noise levels from outside sources at or below 45 db in any habitable room per Building Code Section 12.07.11.2. These standard requirements should be sufficient to address noise concerns between condominium units located above and below, as well as to side-to-side. For condominium conversions, an acoustical report addressing compliance with these Building Code standards would be required, so potential buyers would be notified of those noise standards which cannot be met (see below).

For newly-constructed residential and mixed-use condominiums and residential/mixed-use condominium conversions, it is recommended that all permanent mechanical equipment, such as motors, compressors, pumps and compactors that could be a source of structural vibration or structure-borne noise should be required to be shock-mounted with inertia blocks or bases and/or vibration isolators.

*Development/Conversion Applications.* BMC Sections 17.30.040 and .050 currently contain separate lists of application requirements for new condominium developments and for condominium conversions, although in some cases the same submittal requirements might apply to both. For example, because Government Code Section 66427 prohibits a requirement for a condominium subdivision map to show the buildings or the manner in which the buildings or the air space above the property shown on the map are to be divided, these details should be required for any application for a Use Permit for condominium conversions, just as they are already required for such applications for new condominium development. The submitted plans should be required to include the details necessary to demonstrate compliance with the applicable Development Regulations.

*Declaration of Restrictions/Maintenance Agreement.* The Use Permit application checklist for condominium conversions should also include a copy of "the declaration of restrictions and proposed management arrangement relating to the project as required by California Civil Code Section 1355" (typically referred to as the declaration of covenants, conditions and restrictions or CC&Rs), just as is required for Use Permits for new construction of condominiums.

G. I. C.



While a declaration of restrictions is typically used to govern larger condominium projects, simpler "maintenance agreements" are used for small condominium projects to avoid the requirement for a homeowners association, but this may result in the need for each unit to take on greater responsibilities.

The required CC&Rs (for projects with unit-owners associations) or maintenance agreement (for smaller projects without a unit-owners association) should require binding arbitration to resolve deadlocked tie votes and should address property, general liability, earthquake and flood insurance responsibilities and maintenance responsibilities for roof, gutters, sidewalks, painting, landscaping, and other common area improvements (including timing of maintenance items and method to apportion costs). The CC&Rs or maintenance agreement should include provisions for the reconstruction of the project in accordance with codes in effect at the time of such reconstruction, in the event of the destruction of the condominium development (as is required by the City of Burlingame). The CC&Rs or maintenance agreement should also specify that the City be named as a third-party beneficiary for enforcement purposes, if recommended by the City Attorney (as is done in the Cities of Daly City and Half Moon Bay).

For projects within the jurisdiction of the San Bruno Mountain Area Habitat Conservation Plan, continued maintenance of any required landscaping, including habitat, must be addressed.

**Condominium Conversion Reports.** For condominium conversions, the application checklist is recommended to include the property inspection report (BMC Section 17.30.060) with the building history report (BMC Section 17.30.050.C). The proposed ordinance would allow the property inspection report to be prepared by a licensed structural engineer, architect, general building contractor and/or general engineering contractor, in addition to a civil engineer (as allowed by the Cities of Burlingame, Half Moon Bay and Redwood City). The report is recommended to identify deficiencies in regards to current building and fire safety codes (see Section 17.30.070.B, below, regarding required corrections), in addition to the condition and expected life expectancy of the listed features of the existing building.

For residential/mixed-use condominium conversions, an acoustical test data report prepared by a licensed acoustical consultant regarding the noise attenuation characteristics of existing party walls and ceilings, based upon a representative sampling of the units, is recommended to be required, so that potential buyers can be notified of any current Building Code standards for exterior and interior noise transmission that cannot be met (as is done in the City of Burlingame). Written certification from a licensed appliance repair contractor on the working condition of all private and common appliances and mechanical equipment would be required, and similar reports from a licensed painting contractor and a licensed roofing contractor would also be required (as is required by the Cities of Burlingame, Half Moon Bay and Pacifica).

For all condominium conversions, the applicant should also be required to submit suitable proof of compliance with the residential tenant notification requirements for tentative map applications in Government Code Sections 66452.8 and 66452.9 and BMC Section 16.20.270.E.1 (for the

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applicant's tenant notification responsibilities regarding final maps, see Government Code Section 66427.1 and BMC Sections 16.20.270.E.2 through 5). Per Government Code Section 66427.1.(b), such written notice shall "comply with the legal requirements for service by mail" (see BMC Section 16.16.190.D).

**Concurrent Applications.** Per BMC Section 17.01.105, concurrent processing of multiple applications is required for projects subject to approval of more than one planning permit, unless otherwise determined by the Planning Director. The Use Permit application submittal requirements for condominium development projects present one of those situations in which it may be critical to review the Design Permit application knowing that the project is intended as a condominium development, while at the same time the applicant may face unnecessary expenses in preparing and revising engineered condominium plans and accompanying legal documents for a project that may change substantially through the design review process. The best approach may be to require concurrent initial submittal of the Design Permit and Use Permit applications but to allow staggered processing to resolve the design issues before following up with the condominium details. Note that Design Permits are not required for projects with only 2 units.

BMC Section 17.30.040.D currently requires concurrent submittal of a tentative subdivision map with Use Permit applications for condominiums (also see BMC Section 16.45.050.B for vesting tentative maps). As explained above, although the tentative map application would be submitted concurrently with the Design Permit and Use Permit applications, it would be processed with the Use Permit after the Design Permit has been approved. This avoids the restriction imposed by Government Code Section 66427, prohibiting the City from denying approval of a parcel, tentative or final map of a condominium project because of the design or location of the buildings on the property if they otherwise comply with City ordinances.

**Property Inspection and Compliance.** The current inspection requirement in BMC Section 17.30.060 duplicates that required to complete condominium conversion Use Permit applications in recommended Section 17.30.040.C.2. The compliance requirement currently in BMC Section 17.30.060 is recommended to be relocated to a new Section 17.30.070.B as a mandatory condition of approval for such Use Permits. Newly constructed condominiums, of course, are inspected for compliance with all applicable codes through the Building Permit process.

**Notice.** A separate section in the condominium ordinance is recommended for notice procedures specifically for Planning Commission public hearings on proposed condominium conversions, consistent with the requirement for tenant notification per BMC Section 16.16.190.D.

The requirement per Government Code Section 66452.3 that copies of the staff report for condominium conversion applications be sent to the tenants of the subject building, as well as to the applicant, are also be addressed in this section.

See above regarding the applicant's responsibilities for giving notice to tenants per BMC Section 16.44.050.B.3 and Government Code Sections 66452.17 & 66452.18 regarding tentative maps,

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and BMC Section 16.20.270.E and Government Code Section 66427.1 regarding final maps. Also note that there are specific notification requirements in the event of an appeal per BMC Section 16.44.050.B.3 and Government Code Section 66452.5.

It is noted here, although it need not be stated in the condominium ordinance, that Government Code Section 66472.2 requires that subdivision applications for condominium conversions must be acted upon within 120 days of the application being complete.

**Findings:** As discussed above, Use Permits for new condominium construction and condominium conversions are currently only subject to the standard Use Permit findings. Staff recommends that specific findings for residential condominium conversions be added (per Housing Element Policy H.B.4) to require:

1. The condominium conversion will not adversely affect the rental market by not reducing the residential rental vacancy rate to less than 5.0% or
2. The condominium conversion will provide unique housing opportunities for very-low, low- and/or moderate-income households, based upon proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the planning commission.

**Standard Conditions of Approval:** Based upon the City of Burlingame's procedures, it is recommended that, as a standard condition of approval, required off-street parking spaces, except guests parking spaces, should be included in the ownership of each individual condominium unit and should not be sold or transferred except with the sale of such unit.

For residential/mixed-use condominium conversions, a standard condition of approval should be that any hazardous and unsafe conditions identified through the inspection required per BMC Section 17.30.060 be corrected prior to the first sale of any of the converted units.

**Appeals:** A separate section in the condominium ordinance is recommended for appeal procedures to supplement BMC Chapter 17.52. To be consistent with the 10-day appeal period specified for tentative maps per Government Code Section 66452.5 and BMC Section 16.44.020, the current 15-day appeal period for Use Permits for condominiums should be shortened to run concurrently. The requirement in BMC Section 16.44.050.B.3 (per Government Code Section 66452.5) that notice of any appeals must be given to residential tenants of any buildings subject to a proposed condominium conversion would be cross referenced in the condominium ordinance.

**Subdivision Ordinance:** BMC Title 16 is not directly subject to the Planning Commission's review, but there are condominium issues that relate to the subdivision ordinance that should be addressed.

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**Condominiums.** As noted above, the State Subdivision Map Act generally requires tentative and final subdivision maps for condominium projects of 5 or more units and tentative and final parcel maps for projects of 4 or fewer units, yet does not require that such maps actually delineate the units. Apparently recognizing that recording a final map that does not actually show the condominium units would be pointless, the Map Act requires that local ordinance provide for the waiver of the requirement for a final parcel map, subject to the finding that the proposal complies with adopted requirements regarding area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, etc. Local ordinance may also waive the requirement for a final subdivision map for the construction of a 5-or-more-unit condominium project on a single parcel.

BMC Sections 16.12.010.B, C & D require tentative and final subdivision maps for condominium projects of 5 or more units, but BMC Section 16.12.020.A specifically excludes condominium projects from the exception provided by Government Code Sections 66426(a) & (f) that requires a parcel map instead of tentative and final subdivision maps for projects creating five or more condominiums on a site less than 5 acres in size that abuts a maintained public street, if no dedications or improvements are required. BMC Sections 16.12.030.B, C & D require tentative and final parcel maps for condominium projects of less than 5 condominium units. BMC Section 16.12.050 provides for a process to allow for the waiver of a final parcel map.

Staff recommends that the Subdivision Ordinance be amended to provide for the waiver of a final subdivision map for construction of a condominium project on a single parcel, if the same findings required for waiver of a parcel map can be made. Although a condominium conversion project, regardless of the number of units, could likely qualify for the parcel map exception and final parcel map waiver under the Map Act, there are very specific notification requirements for final subdivision map approval for such projects in the Government Code. For this reason, a final subdivision map should still be required for a condominium conversion project to assure that adequate notice is given to any tenants.

**Notice.** Consistent with Government Code Section 66452.3 and BMC Section 17.30.050.B, a requirement would be added to BMC Section 16.16.190.D that copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.

**Findings.** The findings required to be made by the Planning Commission for tentative maps in BMC Section 16.16.220.A includes the line "This subsection shall not be applicable to condominium projects or stock cooperatives which consist solely of the subdivision of airspace in an existing structure unless such general plan contains definite objectives and policies, specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives," which should be deleted, since the General Plan does contain Policy H.B.4 and Program H.B.4.a directed at condominium conversions (see above). According to the State Attorney General, the Subdivision Map Act allows the City to deny approval of a subdivision

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map for a condominium conversion project that would individually or cumulatively in conjunction with other conversions in the community result in a major displacement of tenants, a scarcity of rental units, or a defeat of General Plan goals to encourage open occupancy and promote low and moderate income housing.

The subdivision ordinance includes an exception for condominium conversions to the passive heating/cooling design requirements per Government Code Section 66473.1, but these requirements (BMC Section 16.24.090) are not listed with the other findings for approval or disapproval of tentative maps (BMC Sections 16.16.220 & 16.16.230). BMC Section 16.24.090 is recommended to be moved into these other two sections.

The findings required for Final Map approval of proposed condominium conversions in BMC Section 16.20.270.E need to be updated to reflect recent amendments in Government Code Section 66427.1. Please note that per Government Code Section 66452.8(c), a final map for condominium conversion cannot be denied for failure by the subdivider or agent to give the required notice to prospective residential tenants per Section 66452.8 referenced in Section 66427.1.

*Parkland Dedication and In-Lieu Fees.* BMC Sections 16.24.010-070 regarding requirement for parkland dedication and payment of in-lieu fees is recommended to be updated to reflect current state law and 2010 U.S. Census results. The timeline for dedication, fee payment and construction in BMC Section 16.24.060 is recommended to be clarified as to how it would apply to condominium projects.

The Quimby Act (Government Code Section 66477) allows cities, by ordinance, to require the dedication of land for park or recreational purposes or the payment of in-lieu fees. In calculating these amounts for a proposed subdivision, the population of the subdivision is projected using the average number of persons per household as disclosed by the most recent available federal census. The amount of land is not to exceed 3 acres of park area per 1,000 persons, unless the city's existing amount of neighborhood and community park area exceeds this limit, in which case the city may adopt a higher standard not to exceed five acres per 1,000 persons.

Because they are considered subdivisions, condominium projects are subject to these requirements, with the specific exception of condominium projects or stock cooperatives converting existing apartment buildings more than 5 years old without adding any units. Credit for private open space can be given in specified instances per Government Code Section 66477(e).

According to the 2010 U.S. Census, Brisbane had a total population of 4,282 on April 1, 2010, with 1,821 total households. This amounts to 2.35 persons per household, up from 2.20 in 2000. The City currently has 10.89 acres of existing neighborhood and community park area:

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<u>Facility</u>	<u>Acreage</u>
Community Center/Library Park	0.11
Sierra Point Par Course/Picnic Area	0.25
Playground at 4 Solano Street	0.25
Skateboard Park	0.25
Bicentennial Walkways	0.37
Firth Park	0.50
Community Swimming Pool	0.66
Community Park	2.00
Mission Blue Park	6.50
TOTAL	10.89

Thus, the City currently provides 2.54 acres of neighborhood and community park area per 1,000 population. This is less than past calculations due to the increased population without an increase in "existing neighborhood and community parks of the city" [Government Code Section 66477(a)(2)(A)]. Accordingly, consistent with General Plan Policies 95 & 96 and Program 88c, the City can require the dedication of land for park or recreational purposes or the payment of in-lieu fees at a ratio of 3 acres of park area per 1,000 persons, assuming 2.35 persons per household the proposed subdivision or condominium project is designed to accommodate.

An exception to these requirements are recommended for condominium projects dedicated to be affordable to households with very-low, low, or moderate incomes, if outdoor areas are provided in compliance with Section 17.30.030. An exception is also recommended for condominium projects designed and dedicated for use by seniors.

To clarify, proposed Section 16.24.050.D would require dedication of land, payment of fees and/or recordation of open space covenants to be completed prior to recordation of the Final Parcel Map Waiver for condominium projects.

**ATTACHMENTS:**

- Draft Resolution RZ-6-11 and Ordinance **(NOT INCLUDED)**
- Draft Redline Ordinance **(NOT INCLUDED)**
- California Business & Professions Code, Civil Code and Government Code Excerpts
- Condominium Approval Process under State Subdivision Map Act
- Chart of Approved Outdoor Common Area

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**CALIFORNIA  
BUSINESS AND PROFESSIONS CODE EXCERPTS**

11003.2. "Stock cooperative" has the same meaning as specified in subdivision (m) of Section 1351 of the Civil Code, except that, as used in this chapter, a "stock cooperative" does not include a limited-equity housing cooperative.

11004. "Community apartment project" has the same meaning as specified in subdivision (d) of Section 1351 of the Civil Code.

11018.2. No person shall sell or lease, or offer for sale or lease in this state any lots or parcels in a subdivision without first obtaining a public report from the Real Estate Commissioner. This section shall not apply to subdivisions for which a notice of intention is not required under the provisions of this chapter.

**CALIFORNIA  
CIVIL CODE EXCERPTS**

1350. This title shall be known and may be cited as the Davis-Stirling Common Interest Development Act.

1351. As used in this title, the following terms have the following meanings:

(a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) "Common area" means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) "Common interest development" means any of the following:

- (1) A community apartment project.
- (2) A condominium project.
- (3) A planned development.
- (4) A stock cooperative.

(d) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) "Condominium plan" means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate

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consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(A) The record owner of fee title to that property included in the condominium project.

(B) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(C) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(D) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan.

Further, in the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required pursuant to this subdivision.

(f) A "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) "Declarant" means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) "Declaration" means the document, however denominated, which contains the information required by Section 1353.

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(i) "Exclusive use common area" means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(j) "Governing documents" means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.

(l) "Separate interest" has the following meanings:

(1) In a community apartment project, "separate interest" means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, "separate interest" means an individual unit, as specified in subdivision (f).

(3) In a planned development, "separate interest" means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, "separate interest" means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) "Stock cooperative" means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the

corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 817.

1352. This title applies and a common interest development is created whenever a separate interest coupled with an interest in the common area or membership in the association is, or has been, conveyed, provided, all of the following are recorded:

(a) A declaration.

(b) A condominium plan, if any exists.

(c) A final map or parcel map, if Division 2 (commencing with Section 66410) of Title 7 of the Government Code requires the recording of either a final map or parcel map for the common interest development.

1353. (a) A declaration, recorded on or after January 1, 1986, shall contain a legal description of the common interest development, and a statement that the common interest development is a community apartment project, condominium project, planned development, stock cooperative, or combination thereof. The declaration shall additionally set forth the name of the association and the restrictions on the use or enjoyment of any portion of the common interest development that are intended to be enforceable equitable servitudes.

...

(b) The declaration may contain any other matters the original signator of the declaration or the owners consider appropriate.

1355. (a) The declaration may be amended pursuant to the governing documents or this title. Except as provided in Section 1356, an amendment is effective after (1) the approval of the percentage of owners required by the governing documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and (3) that writing has been recorded in each county in which a portion of the common interest development is located.

(b) Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration which fails to include provisions permitting its amendment at all times during its existence may be amended at any time. For purposes of this subdivision, an amendment is only effective after (1) the proposed amendment has been distributed to all of the owners of separate interests in the common interest development by first-class mail postage prepaid or personal delivery not less than 15 days and not more than 60 days prior to any approval being solicited; (2) the approval of owners representing more than 50 percent, or any higher percentage required by the declaration for the approval of an amendment to the declaration, of the separate interests in the common interest development has been given, and that fact



has been certified in a writing, executed and acknowledged by an officer of the association; and (3) the amendment has been recorded in each county in which a portion of the common interest development is located. A copy of any amendment adopted pursuant to this subdivision shall be distributed by first-class mail postage prepaid or personal delivery to all of the owners of separate interest immediately upon its recordation.

1372. Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, parcels, areas, or spaces in like manner regardless of whether the common interest development is a community apartment project, condominium project, planned development, or stock cooperative.

1941. The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in section nineteen hundred and twenty-nine.

1941.1. A dwelling shall be deemed untenable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics or is a residential unit described in Section 17920.3 or 17920.10 of the Health and Safety Code:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing or gas facilities which conformed to applicable law in effect at the time of installation, maintained in good working order.
- (c) A water supply approved under applicable law, which is under the control of the tenant, capable of producing hot and cold running water, or a system which is under the control of the landlord, which produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
- (d) Heating facilities which conformed with applicable law at the time of installation, maintained in good working order.
- (e) Electrical lighting, with wiring and electrical equipment which conformed with applicable law at the time of installation, maintained in good working order.
- (f) Building, grounds and appurtenances at the time of the commencement of the lease or rental agreement in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- (g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control.
- (h) Floors, stairways, and railings maintained in good repair.

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(i) A locking mail receptacle for each residential unit in a residential hotel, as required by Section 17958.3 of the Health and Safety Code. This subdivision shall become operative on July 1, 2008.

1941.2. (a) No duty on the part of the landlord to repair a dilapidation shall arise under Section 1941 or 1942 if the tenant is in substantial violation of any of the following affirmative obligations, provided the tenant's violation contributes substantially to the existence of the dilapidation or interferes substantially with the landlord's obligation under Section 1941 to effect the necessary repairs:

- (1) To keep that part of the premises which he occupies and uses clean and sanitary as the condition of the premises permits.
  - (2) To dispose from his dwelling unit of all rubbish, garbage and other waste, in a clean and sanitary manner.
  - (3) To properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.
  - (4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.
  - (5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.
- (b) Paragraphs (1) and (2) of subdivision (a) shall not apply if the landlord has expressly agreed in writing to perform the act or acts mentioned therein.

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CALIFORNIA  
GOVERNMENT CODE EXCERPTS

66424. "Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (f) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

66426. A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.

(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.

(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.

(e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.

(f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

66427. Requirements for map of condominium, community apartment, or stock cooperative project; Separation of three-dimensional portion from remainder of property or division into condominiums.

(a) A map of a condominium project, a community apartment project, or of the conversion of five or more existing dwelling units to a stock cooperative project need not show the buildings or the manner in which the buildings or the airspace above the property shown on the map are to be divided, nor shall the governing body have the right to refuse approval of a parcel, tentative, or final map of the project on account of the design or the location of buildings on the property shown on the map that are not violative of local ordinances or on account of the manner in which airspace is to be divided in conveying the condominium.

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(b) A map need not include a condominium plan or plans, as defined in subdivision (e) of Section 1351 of the Civil Code, and the government body may not refuse approval of a parcel, tentative, or final map of the project on account of the absence of a condominium plan.

(c) Fees and lot design requirements shall be computed and imposed with respect to those maps on the basis of parcels or lots of the surface of the land shown thereon as included in the project.

(d) Nothing herein shall be deemed to limit the power of the legislative body to regulate the design or location of buildings in such a project by or pursuant to local ordinances.

(e) If the governing body has approved a parcel map or final map for the establishment of condominiums on property pursuant to the requirements of this division, the separation of a three-dimensional portion or portions of the property from the remainder of the property or the division of that three-dimensional portion or portions into condominiums shall not constitute a further subdivision as defined in Section 66424, provided each of the following conditions has been satisfied:

(1) The total number of condominiums established is not increased above the number authorized by the local agency in approving the parcel map or final map.

(2) A perpetual estate or an estate for years in the remainder of the property is held by the condominium owners in undivided interests in common, or by an association as defined in subdivision (a) of Section 1351 of the Civil Code, and the duration of the estate in the remainder of the property is the same as the duration of the estate in the condominiums.

(3) The three-dimensional portion or portions of property are described on a condominium plan or plans, as defined in subdivision (e) of Section 1351 of the Civil Code.

66427.1. (a) The legislative body shall not approve a final map for a subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project, unless it finds as follows:

(1) Each tenant of the proposed condominium, community apartment project, or stock cooperative project, and each person applying for the rental of a unit in the residential real property, has received or will have received all applicable notices and rights now or hereafter required by this chapter or Chapter 3 (commencing with Section 66451).

(2) Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has received or will receive each of the following notices:

(A) Written notification, pursuant to Section 66452.18, of intention to convert, provided at least 60 days prior to the filing of a tentative map pursuant to Section 66452.

(B) Ten days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, that the period for each tenant's right to purchase begins with the issuance of the final public report, and that the report will be available on request.

(C) Written notification that the subdivider has received the public report from the Department of Real Estate. This notice shall be provided within five days after the date that the subdivider receives the public report from the Department of Real Estate.

(D) Written notification within 10 days after approval of a final map for the proposed conversion.

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(E) One hundred eighty days' written notice of intention to convert, provided prior to termination of tenancy due to the conversion or proposed conversion pursuant to Section 66452.19, but not before the local authority has approved a tentative map for the conversion. The notice given pursuant to this paragraph shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

(F) Notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that the unit will be initially offered to the general public or terms more favorable to the tenant pursuant to Section 66452.20. The exclusive right to purchase shall commence on the date the subdivision public report is issued, as provided in Section 11018.2 of the Business and Professions Code, and shall run for a period of not less than 90 days, unless the tenant gives prior written notice of his or her intention not to exercise the right.

(b) The written notices to tenants required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a) shall be deemed satisfied if those notices comply with the legal requirements for service by mail.

(c) This section shall not diminish, limit, or expand, other than as provided in this section, the authority of any city, county, or city and county to approve or disapprove condominium projects.

(d) If a rental agreement was negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean, all required written notices regarding the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project shall be issued in that language.

66427.2. Unless applicable general or specific plans contain definite objectives and policies, specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives, the provisions of Sections 66473.5, 66474, and 66474.61, and subdivision (c) of Section 66474.60 shall not apply to condominium projects or stock cooperatives, which consist of the subdivision of airspace in an existing structure, unless new units are to be constructed or added.

A city, county, or city and county acting pursuant to this section shall approve or disapprove the conversion of an existing building to a stock cooperative within 120 days following receipt of a completed application for approval of such conversion.

This section shall not diminish, limit or expand, other than as provided herein, the authority of any city, county, or city and county to approve or disapprove condominium projects.

66428. (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for either of the following:

(1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, that are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).

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(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

(b) A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with requirements established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to this section, a tentative map may be required by local ordinance.

(c) If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the option of submitting a tentative map, or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

66451. The procedures set forth in this chapter shall govern the processing, approval, conditional approval or disapproval and filing of tentative, final and parcel maps and the modification thereof. Local ordinances may modify such procedures to the extent authorized by this chapter.

66452. (a) A tentative map shall be filed with the clerk of the advisory agency or, if there is no advisory agency, with the clerk of the legislative body, or with any other officer or employee of the local agency as may be designated by local ordinance.

(b) A vesting tentative map shall be filed and processed in the same manner as a tentative map except as otherwise provided by this division or by a local ordinance adopted pursuant to this division.

(c) At the time a vesting tentative map is filed it shall have printed conspicuously on its face the words "Vesting Tentative Map."

66452.3. Any report or recommendation on a tentative map by the staff of the local agency to the advisory agency or legislative body shall be in writing and a copy thereof served on the subdivider and on each tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to any hearing or action on such map by such advisory agency or legislative body. Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

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66452.5. (a) (1) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

(2) The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

(3) Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) (1) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

(2) After the filing of an appeal, the legislative body shall set the matter for hearing.

The hearing shall be held within 30 days after the date of the request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal.

(c) (1) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and any local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

(2) If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and any local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

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(d) (1) Any interested person adversely affected by a decision of the advisory agency or appeal board may file an appeal with the legislative body concerning any decision of the advisory agency or appeal board. The appeal shall be filed with the clerk of the legislative body within 10 days after the action of the advisory agency or appeal board that is the subject of the appeal. Upon the filing of the appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request filed by the subdivider or the appellant. If there is no regular meeting of the legislative body within the next 30 days for which notice can be given pursuant to Section 66451.3, the appeal may be heard at the next regular meeting for which notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

(2) Upon conclusion of the hearing, the legislative body shall, within 10 days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. The legislative body may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings that are not inconsistent with the provisions of this chapter or any local ordinance adopted pursuant to this chapter.

(e) Each decision made pursuant to this section shall be supported by findings that are consistent with the provisions of this division and any local ordinance adopted pursuant to this division.

(f) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing an appeal for expenses incurred under this section.

66452.17. (a) Commencing at a date not less than 60 days prior to the filing of a tentative map pursuant to Section 66452, the subdivider or his or her agent shall give notice of such filing, in the form outlined in subdivision (b), to each person applying after such date for rental of a unit of the subject property immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider.

(b) The notice shall be as follows:

"To the prospective occupant(s) of \_\_\_\_\_ (address):

The owner(s) of this building, at (address), has filed or plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). No units may be sold in this building unless the conversion is approved by the (city, county, or city and county) and until after a public report is issued by the (city, county, or city and county) Department of Real Estate. If you become a tenant of this building, you shall be given notice of each hearing for which notice is required pursuant to Sections

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66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(dated)

I have received this notice on \_\_\_\_\_ (date).

\_\_\_\_\_  
(prospective tenant's signature) "

(c) Failure by a subdivider or his or her agent to give the notice required in subdivision (a) shall not be grounds to deny the conversion. However, if the subdivider or his or her agent fails to give notice pursuant to this section, he or she shall pay to each prospective tenant who becomes a tenant and who was entitled to such notice, and who does not purchase his or her unit pursuant to subdivision (d) of Section 66427.1, an amount equal to the sum of the following:

- (1) Actual moving expenses incurred when moving from the subject property, but not to exceed one thousand one hundred dollars (\$1,100).
- (2) The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed one thousand one hundred dollars (\$1,100).

(d) The requirements of subdivision (c) constitute a minimum state standard. However, nothing in this subdivision shall be construed to prohibit any city, county, or city and county from requiring, by ordinance or charter provision, a subdivider to compensate any tenant, whose tenancy is terminated as the result of a condominium, community apartment project, or stock cooperative conversion, in amounts or by services which exceed those set forth in paragraphs (1) and (2) of that subdivision. If that requirement is imposed by any city, county, or city and county, a subdivider who meets the compensation requirements of the local ordinance or charter provision shall be deemed to satisfy the requirements of subdivision (c).

66452.18. (a) Pursuant to subparagraph (A) of paragraph (2) of subdivision (a) of Section 66427.1, the subdivider shall give notice 60 days prior to the filing of a tentative map pursuant to Section 66452 in the form outlined in subdivision (b), to each tenant of the subject property.

(b) The notice shall be as follows:

"To the occupant(s) of \_\_\_\_\_ (address):

The owner(s) of this building, at (address), plans to file a tentative map with the (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative project). You shall be given notice of each hearing for which notice is required pursuant to Sections 66451.3 and 66452.5 of the Government Code, and you have the right to appear and the right to be heard at any such hearing.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(date) "

The written notices to tenants required by this section shall be deemed satisfied if such notices comply with the legal requirements for service by mail.

66452.50. (a) Notwithstanding any other provision of this division, a local agency may, upon application by a subdivider, in connection with the approval of a tentative or final map for the proposed construction of a condominium development, which requires the obtaining of a tentative or final map under provisions of this division or local ordinances enacted pursuant thereto, enter into a binding agreement with the subdivider mandating that the units be first made available for rental housing for a period of not less than 10 years from the date a certificate of occupancy has been issued for the units within the development; provided that (1) at the expiration of the 10-year period the units within the development may be sold to individual purchasers, in accordance with the approved final map authorizing the development without further proceedings under the provisions of this division or local ordinances enacted pursuant thereto, and (2), except as otherwise provided in subdivision (b), during the period the units are required to be made available for rental purposes, the units are insured or are to be insured or co-insured pursuant to the provisions of Chapter 4 (commencing with Section 51850) of Part 4 of Division 31 of the Health and Safety Code, and (3) each tenant of a unit within the development shall be given 180 days' written notice prior to actual conversion. Such notice shall include an offer of an exclusive right to contract for his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or on terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date written notice of actual conversion was sent to the tenant.

Any such agreement shall be in writing, particularly describe the real property and set forth the name or names of the record title owner of the real property affected thereby, and be executed by the person authorized to act on behalf of the local agency and by the subdivider. From the date of execution of the agreement, it shall be binding upon the local agency, the subdivider, and their successors.

The fact that a condominium development is subject to such an agreement shall be set forth on the face of any tentative or final map approved by the local agency and the agreement shall be recorded in the office of the county recorder in the county in which the real property is located on or before the date of recordation of the final map.

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(b) Multifamily rental housing financed on or after January 1, 1983, with the proceeds of sale of tax-exempt bonds sold pursuant to any laws of this state shall not be subject to the requirements of condition (2) prescribed in the first paragraph of subdivision (a), but shall be subject to all the requirements of the law pursuant to which the bonds are being issued, including, but not limited to, any requirement in such law that the housing be maintained as rental housing for a period in excess of 10 years.

66452.51. Prior to the acceptance of any rent or deposit from a prospective tenant, the following notice shall be provided:

To the prospective occupant(s) of \_\_\_\_\_ (address):

The owner(s) of this building at (address), have received a tentative map with (city, county, or city and county) to convert this building to a (condominium, community apartment, or stock cooperative), no sooner than (date). You will be notified at least 180 days prior to the actual conversion. Further, if you still reside in your unit, you will be given an exclusive right to purchase your unit.

\_\_\_\_\_  
(signature of owner or owner's agent)

\_\_\_\_\_  
(dated)

I have received this notice on \_\_\_\_\_(dated).

\_\_\_\_\_  
(prospective tenant's signature)

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CONDOMINIUM APPROVAL PROCESS UNDER STATE SUBDIVISION MAP ACT

	≤4 condo units	Tentative Parcel Map [optional by local ordinance per Govt Code Sect 66428(a)]	--then--	Final Parcel Map [per Govt Code Sect 66428(a)]
	--or--		--or--	Final Parcel Map Waiver if proposed parcels comply with adopted requirements regarding area, improvement, design, drainage, street improvements, sewers, water supply, environmental protection, etc. [per Govt Code Sect 66428(b)]
G.1.5A.	≥5 condo units	Tentative Subdivision Map [per Govt Code Sect 66426]	--then--	Final Subdivision Map [per Govt Code Sect 66426]
	--or--	Tentative Parcel Map if (a) Site < 5 acres, each parcel abuts public street, and no dedications or improvements required; (b) Each parcel ≥ 20 acres and has access to public street; (c) Land has access to public street and zoned commercial or industrial; (d) Each parcel ≥ 40 acres; or (e) Land is an "environmental subdivision" [per Govt Code Sect 66426(f)]	--then--	Final Subdivision Map Waiver Only for condo construction on a single parcel, if parcel complies with adopted requirements regarding area, improvement, design, drainage, street improvements, sewers, water supply, environmental protection, etc. [optional by local ordinance per Govt Code Sect 66428(b)]
				Final Parcel Map Waiver (see above)

APPROVED OUTDOOR COMMON

Address	Site Area (Sq. Ft.)	Number of Units	Average Unit Area (Sq. Ft.)	Total Outdoor Common Area with <=10% Slope (Sq. Ft.)	Outdoor Common Area		
					Percentage of Site Area	Average Sq. Ft. per Unit	Sq. Ft. per Unit Sq. Ft.
41-49 Joy Avenue	39,640+/-	20	843	840* (20 decks, 42 sq. ft. each)	2% (64% <sup>1</sup> )	42 (1,277 <sup>1</sup> )	0.05 (1.51 <sup>1</sup> )
737 San Bruno Ave.	13,678	8	902	922** (4 patios, 153-180 sq. ft. each, plus 4 decks, 64 sq. ft. each)	7% (28% <sup>2</sup> )	115 (475 <sup>2</sup> )	0.13 (0.53 <sup>2</sup> )
Altamar at the Ridge	618,552	214	1,363	73,960 (decks, patios, exit balconies, outdoor spa area, 2 tot lots)	12%	346	0.25
Viewpoint at the Ridge	643,000+/-	160	1,855	122,245 (entries, decks, tot lot, spa)	19%	764	0.41
237-239 Tulare St.	5,280+/-	2	1,891	850+/- (terraced rear yards)	16%	425	0.22
20-38 Plumas St.	10,000	5	955	3,375***	34%	675	0.71
1 San Bruno Ave.	14,986+/-	15 residential	995+/-	7,360 (roof decks and balconies)	49%	491	0.49
<b>AVERAGE</b>					20% (32% <sup>3</sup> )	408 (636 <sup>3</sup> )	0.32 (0.59 <sup>3</sup> )

\* The Joy Condominiums development was granted a Variance to the per-unit requirement of 500 sq. ft. of outdoor common area with a slope of not more than 10%, since in addition to 1,864 square feet of flower beds, approximately 24,700 sq. ft. of landscaped open area (picnic table, bench, children's play structure) with a slope greater than 10% was provided.

\*\*The Brisbane Terrace development was granted a Variance to the 400 sq. ft. of common area per unit requirement since 2,880 sq. ft. of landscaping and 3,732 sq. ft. of "other open area" were provided on this steep site.

\*\*\*This Habitat for Humanity project was granted a Variance to the 750 sq. ft. of common area per unit requirement as part of the incentives and concessions granted to this affordable housing project in lieu of a density bonus.

<sup>1</sup>including 24,700 sq. ft. of landscaped open area with slope greater than 10%

<sup>2</sup>including 2,880 sq. ft. of landscaping

<sup>3</sup>including <sup>1</sup> and <sup>2</sup>, above



## CALIFORNIA GOVERNMENT CODE

66477. (a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county, or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Sections 4105, 4125, and 4190 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 1351 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.