

I. Condominium Conversion Ordinances

Massachusetts state condominium law allows cities and towns to adopt local ordinances and bylaws that regulate condominium conversion more strongly than the statewide law. MAPC contacted several communities that have passed local condo conversion ordinances to learn more about how local ordinances have been enforced and/or modified over time.

While we were not able to reach all communities to discuss the ordinances, please see Appendices E through H for a sample of condo conversion ordinances containing language that strengthens tenant protections beyond those articulated in the state law. Please visit the MassLegalHelp Resource webpage on local condo conversion ordinances for a summary and analysis of each¹.

- Appendix E: Analysis of City of Boston Condo Conversion Ordinance
- Appendix F: Analysis of Town of Lexington Condo Conversion Ordinance
- Appendix G: Analysis of Town of Marlborough Condo Conversion Ordinance
- Appendix H: Analysis of City of New Bedford Condo Conversion Ordinance
- Appendix I: Summary of City of Berkeley Condo Conversion Ordinance Housing Mitigation Fee

Case Study: Massachusetts Condo Conversion Ordinances in Practice

City of Marlborough. Marlborough's condo conversion ordinance, passed in 1985, differs from the state condo law by specifying that no more than 25% of units in any building or structure may be converted in one calendar year and requires extended five years' notice of conversion for handicapped, elderly, or low- or moderate-income tenants. However, in 2005 the City allowed an owner to obtain a waiver from the law if specific provisions were met.

MAPC spoke with Steve Reid, code enforcement officer for the City of Marlborough to learn more about how the ordinance has been enforced. Steve shared that limited municipal staffing challenges enforcement of condo conversion ordinance elements. The Town of Marlborough's Condo Conversion Ordinance (please see Appendix G for an analysis of the ordinance) was passed in 1985 with good intentions. However, zoning in Marlborough is developer driven (and there is no municipal planner) the ordinance was later modified with an opt-out loop that says if the developer pays \$1,250 per unit to be converted to the City, they do not need to abide by the more stringent conditions. That 2005 modification was brought about because a developer wanted to convert to condos. Right now there is no interest in revisiting the provision because so much new development is happening and a lot of the older stock has already been converted to condos. One of the problems with the converted property (which triggered the change in the ordinance) is the fact that most of the low income residents actually ended up buying the condos but with the foreclosure and mortgage crisis there has been a 30% foreclosure rate. There was also conflict over how high the condo fee would be and because when it was kept low, it created a bad situation – the property, though condos, is ill-kept. ²

¹ McCreight, Mac. July 2008. Local Protections for Tenants Facing Condo Conversion. Source: <http://www.masslegalhelp.org/housing/private-housing/ch20/local-protections-for-tenants-facing-condo-conversion>

² Personal communication with Steve Reid, City of Marlborough Building Inspector, March 2011.

In contrast, the state of California regulates condominium conversions under the California Subdivision Map Act and the Subdivided Lands Act. The State law allows local government to impose additional requirements. The City of Berkeley passed an innovative Condo Conversion Ordinance in 1992 (Berkeley Municipal Code Chapter 21.28 et seq.) that imposes a housing mitigation fee. Accrued revenues from the fee help finance construction and rehabilitation of permanently affordable housing, which has helped to discourage conversions and recapture affordability resulting from conversions.

Case Study: City of Berkeley, California Condo Conversion Ordinance

The City of Berkeley established the housing mitigation fee in part to promote conversions of rental to condominiums versus conversions of rental to Tenancy in Common (TIC), as it was found that difficulties arise for people who invest in TICs. Owners providing additional tenant protections specified in the Condo Conversion Ordinance receive a substantial decrease in the amount of the affordable housing mitigation fee. Revenues from the fee accrue to the Berkeley Housing Trust Fund to help finance construction and rehabilitation of permanently affordable housing in Berkeley.

The fee is calculated in two ways:

- The Nexus-Based Affordable Housing Mitigation Fee is calculated by dividing the difference between the cost of owning the unit as a condominium less the rental costs by the current fixed mortgage rate. If the unit is an owner-occupied TIC unit, the CCO specifies how rental costs are to be calculated.
- The Affordable Housing Mitigation Fee Cap is a reduction to converters who agree to limit future rent increases for the life of the property to any tenant at the time of conversion to no more than 65% of the increase in Consumer Price Index for all Bay Area Consumers. The Mitigation Fee is capped at 8% of the sale price or 4% for 2-unit properties.

The fee is calculated only at the time of sale, unless owners elect to pay the fee up front. Estimated fees prepared by the City are based on either prorated value of each unit based on the price paid when the property was originally purchased – as reported by the County Assessor's office, on an analysis of the sales prices of comparable units, or some other mutually agreed upon basis for estimating the fee. Please see Appendix I for more information.